



Ottawa, Friday, March 19, 1993

Appeal No. AP-91-185

IN THE MATTER OF an appeal heard on
November 6, 1992, under section 81.19 of the *Excise Tax Act*,
R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated November 8, 1991, relating to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

AKOS DEVELOPMENT CORP.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

John C. Coleman
John C. Coleman
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-185

AKOS DEVELOPMENT CORP.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act from a determination of the Minister of National Revenue. The issue is whether the appellant is entitled to a federal sales tax inventory rebate calculated using the tax factor of 8.1 percent, as prescribed under paragraph 3(h) of the Federal Sales Tax Inventory Rebate Regulations, or the tax factor of 13.5 percent, as argued by the appellant.

HELD: *The appeal is dismissed. The Tribunal has no jurisdiction to vary the provisions of the Federal Sales Tax Inventory Rebate Regulations.*

Place of Hearing: Vancouver, British Columbia
Date of Hearing: November 6, 1992
Date of Decision: March 19, 1993

Tribunal Members: Sidney A. Fraleigh, Presiding Member
John C. Coleman, Member
Michèle Blouin, Member

Counsel for the Tribunal: Brenda C. Swick-Martin
Shelley Rowe

Clerk of the Tribunal: Nicole Pelletier

Appearance: Wayne D. Garnons-Williams, for the respondent

Appeal No. AP-91-185

AKOS DEVELOPMENT CORP.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
JOHN C. COLEMAN, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a determination of the Minister of National Revenue. The issue is whether the appellant is entitled to a federal sales tax (FST) inventory rebate calculated using the tax factor of 8.1 percent, as prescribed under paragraph 3(h) of the *Federal Sales Tax Inventory Rebate Regulations*² (the Regulations), or the tax factor of 13.5 percent, as argued by the appellant.

The appellant is an importer and wholesaler of various sporting goods. The goods in issue are balls, for use in various sports, imported from the United States. At the time of importation, the appellant paid FST equal to 13.5 percent of the value of the balls. The respondent decided that the appellant was entitled to an FST inventory rebate calculated using a tax factor of 8.1 percent. The appellant appealed that decision on the basis that the rebate should have been calculated using a tax factor of 13.5 percent, since the amount of FST originally paid at the time that the balls were purchased was calculated using the rate of 13.5 percent.

The appellant did not appear at the hearing, and the Tribunal heard the arguments of counsel for the respondent. Counsel referred to *Techtouch Business Systems Ltd. v. The Minister of National Revenue*³ and to the Tribunal's decision that it had no jurisdiction to vary the tax factor of 8.1 percent prescribed under the Regulations.

The Tribunal's jurisdiction with respect to appeals concerning the FST inventory rebate provisions of the Act is limited by subsection 120(5) of the Act, which provides that "the rebate payable to a person in respect of the person's inventory ... is ... the amount determined by a prescribed method using prescribed tax factors." The prescribed tax factors for the purposes of subsection 120(5) of the Act are limited to those set forth in section 3 of the Regulations. The respondent determined that the applicable tax factor for the balls is prescribed, under paragraph 3(h) of the Regulations, at 8.1 percent. The Tribunal finds that none of the other tax factors prescribed in paragraphs 3(a) to (g) of the Regulations is applicable to the balls in issue, and no arguments were presented by the appellant suggesting that such was the case.

Given that the Tribunal has no authority to vary the tax factors prescribed in section 3

1. R.S.C. 1985, c. E-15.

2. SOR/91-52, December 18, 1990, Canada Gazette Part II, Vol. 125, No. 2 at 265.

3. Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.

of the Regulations, or to add new tax factors not prescribed in section 3 of the Regulations, and that the only tax factor applicable to the goods in issue is that found in paragraph 3(h) of the Regulations, the appeal is dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

John C. Coleman

John C. Coleman
Member

Michèle Blouin

Michèle Blouin
Member