CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, October 19, 1992

Appeal No. AP-91-186

IN THE MATTER OF an appeal heard on July 20, 1992, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated December 23, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

VALLEYBROOK GARDENS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-91-186

VALLEYBROOK GARDENS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant carries on a farming business producing ornamental plants for sale. Its two main customers include retail nurseries and landscapers. A rebate was claimed on its behalf for the federal sales tax paid on plastic labels that describe the type and characteristics of the plants that they accompany. The rebate was disallowed on the basis that the labels are not goods for sale, lease or rental to customers in the appellant's ordinary course of business. The issue in this appeal is whether the appellant is eligible for a federal sales tax inventory rebate for the labels in accordance with section 120 of the Excise Tax Act.

***HELD**: The appeal is allowed.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*July 20, 1992*
Date of Decision:	*October 19, 1992*
Tribunal Members:	*Robert C. Coates, Q.C., Presiding Member* *Kathleen E. Macmillan, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*John Schroeder, for the appellant* *Wayne D. Garnons-Williams, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-186

VALLEYBROOK GARDENS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal made pursuant to section 81.19 of the *Excise Tax Act*[1] (the Act) which proceeded on the basis of an agreed statement of facts and the written submissions of the parties. The issue in this appeal is whether the appellant is eligible for a federal sales tax inventory rebate in accordance with section 120[2] of the Act. Specifically, the Tribunal must determine whether certain labels were held for taxable supply by way of sale, lease or rental within the meaning of the rebate provisions of the Act.

The appellant carries on a farming business producing ornamental plants for sale. Its two main customers are retail nurseries and landscapers. A rebate was claimed on its behalf for the federal sales tax (FST) paid on plastic labels that describe the type and characteristics of the plants that they accompany. The rebate was disallowed on the basis that the labels are not goods for sale, lease or rental to customers in the appellant's ordinary course of business. On the basis of an objection, the Minister of National Revenue (the Minister) confirmed that the goods were not held in inventory, available for "taxable supply ... by way of sale." A rebate of $245.28 was allowed, leaving an outstanding amount of $4,664.34 for which the appellant appealed to this Tribunal.

When Parliament adopted the legislation establishing the Goods and Services Tax (GST), it provided provisions in order to effect an orderly transition to the new system. One of the main transitional provisions relates to the refunding of FST on tax-paid inventory. Very briefly, and for purposes of this appeal, upon filing a claim, an FST rebate is paid to a GST registrant who had tax-paid goods in inventory at the beginning of January 1, 1991. "Inventory" includes items of tax-paid goods held in Canada for taxable supply by way of sale, lease or rental to others in the ordinary course of the person's business. "Tax-paid goods" include new goods acquired before 1991 that have not been previously written off in the accounting records of the person's business and in respect of which tax imposed under subsection 50(1) of the Act has been paid and is not recoverable except under section 120 of the Act. "Taxable supply" means a supply that is made in the course of a commercial activity, but does not include an exempt supply. Finally, "supply" means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition.

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1. R.S.C. 1985, c. E-15, as amended.
2. Added by S.C. 1990, c. 45, s. 12.

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Counsel for the respondent submitted that the labels in the appellant's inventory on January 1, 1991, were not held by the appellant for the provision of property or a service by way of sale, lease or rental to others in the ordinary course of business and, thus, did not constitute a "taxable supply" within the meaning of the Act. Counsel submitted that the labels were held as prepared materials that are ancillary to a service.

Counsel referred to GST Memorandum 900 (the Memorandum) that states, in part, that for goods to be considered to be held for sale and, thus, qualify for an FST rebate, they must be offered for sale by the GST registrant.[3] Counsel argued that the labels were not "offered for sale by the registrant." Rather, they were used as an ancillary piece to the main product being sold, that being the plants. He further noted that, pursuant to the Memorandum, goods for sale, lease or rental excludes goods that are ancillary to a service performed.[4] Since the labels are not an integral and essential part of the appellant's products and since plants are saleable without the printed plastic tags, they are not goods that qualify for an FST inventory rebate. Counsel admitted that this administrative policy and interpretation of the Act are not binding on the Tribunal, but argued that they should be accorded weight and may serve as an important factor in case of doubt about the meaning of the legislation.[5]

Counsel noted that, pursuant to the respondent's interpretation of the Act, there will be double taxation on part or all of the labels held in inventory by the appellant on January 1, 1991. He argued, however, that the Tribunal is bound to apply the law and that it lacks the jurisdiction to grant equitable remedies.

The appellant's representative argued that the labels meet the conditions of eligibility for the rebate. They are new goods, tax-paid, held in inventory for sale and are not written off. Plants are typically sold with tags describing their name, use and characteristics. This was elaborated on in the appellant's response to the respondent's brief, where it was asserted that when a price is quoted to a landscaper, it is determined in part by whether labels are required or not. Without labels, the price is lower. It was argued, therefore, that if a customer has the choice of whether or not to purchase the labels, then they are offered for sale.

The representative argued that the labels are a vital part of the product being purchased by retail nursery shops. He claimed that the quality of the label is a major reason for the appellant's success in the marketplace. The entire goal of the farm is to produce plants for sale, and the labels are an important element of the product. They are not incidental or consumable items, nor are they considered packaging.

It was contended that double taxation is to be avoided under Canadian tax law. However, under the current interpretation by the Minister, both FST and GST will be paid on the labels, a situation that was not intended by the legislation.

In the Tribunal's view, this case parallels one of its earlier decisions[6] that dealt with the treatment of tax-paid goods held in inventory during the period of transition from the FST to

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3. Subparagraph 5(*a*)(*ii*).
4. Clause 5(*a*)(*iv*)(*D*). The examples given are shampoo used by a beauty salon and soft drinks or alcoholic beverages used by restaurants and hotels in the preparation of drinks for patrons.
5. *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29.
6. *Techtouch Business Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.

the GST. At issue is whether goods held in inventory, labels in this instance, are held for taxable supply by way of sale, lease or rental.

When the appellant sells a plant, the value of the accompanying label is reflected in the price charged. This is demonstrated by the fact that landscapers choosing to purchase plants without labels are charged a lower price than if labels are included. The printed labels are clearly incorporated into and form a part of the finished product, properly labelled plants, which are taxable under the GST.

In the Tribunal's view, the printed labels constitute tax-paid goods that are held for taxable supply by way of sale. As explained in the *Techtouch* decision,[7] the Tribunal interprets "held ... for taxable supply ... by way of sale, lease, or rental" broadly to include tax-paid goods, such as these labels, that are essentially material inputs to finished goods that are taxable under the GST.

Accordingly, the appeal is allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Charles A. Gracey
Charles A. Gracey
Member

7. *Ibid.*