

Ottawa, Friday, October 30, 1992

Appeal No. AP-91-216

IN THE MATTER OF an appeal heard on June 10, 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 18, 1991, relating to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

GULLCO INTERNATIONAL LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

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

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-216

GULLCO INTERNATIONAL LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant manufactures and sells equipment for automated cutting and welding. The issue in this appeal is whether manufactured goods held by the appellant in its inventory on January 1, 1991, are eligible for the federal sales tax (FST) inventory rebate pursuant to section 120 of the Excise Tax Act.

HELD: *The appeal is dismissed. One of the conditions to benefit from the FST inventory rebate is that FST imposed under subsection 50(1) of the Act must have been paid. Given that the appellant admitted that it had not paid FST on the majority of its purchase and that there was no evidence that FST had been paid on the rest of the components, the Tribunal finds that the appellant does not meet one of the conditions of the rebate provisions, namely, the definition of "tax-paid goods" which clearly requires payment of FST imposed under subsection 50(1) of the Act.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: June 10, 1992
Date of Decision: October 30, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
W. Roy Hines, Member
Michèle Blouin, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

*Appearances: Donald Davies, for the appellant
Howard Baker, for the respondent*

Appeal No. AP-91-216

GULLCO INTERNATIONAL LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
W. ROY HINES, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a decision of the Minister of National Revenue.

The appellant manufactures and sells equipment for automated cutting and welding. On February 12, 1991, after the coming into force of the Goods and Services Tax (the GST), the appellant filed an application for the federal sales tax (FST) inventory rebate pursuant to section 120 of the Act² for tax paid on the above-noted equipment. The appellant's application was disallowed, and on December 18, 1991, that determination was confirmed by the respondent; hence, the appeal to the Tribunal.

The issue in this appeal is whether manufactured goods held by the appellant in its inventory on January 1, 1991, are eligible to benefit from the FST inventory rebate pursuant to section 120 of the Act.

For the purpose of this appeal, the relevant provisions of section 120 of the Act read as follows:

"inventory" of a person as of any time means items of tax-paid goods that are described in the person's inventory in Canada at that time and that are

...(a) held at that time for taxable supply (within the meaning assigned by subsection 123(1)) by way of sale, lease or rental to others in the ordinary course of the person's business,

...

"tax-paid goods" means goods, acquired before 1991 by a person, that have not been previously written off in the accounting records of the person's business for the purposes of the Income Tax Act and that are, as of the beginning of January 1, 1991,

...(a) new goods that are unused,

...(b) remanufactured or rebuilt goods that are unused in their condition as remanufactured or rebuilt goods, or

...(c) used goods

and in respect of which tax imposed under subsection 50(1) (other than tax paid by the person under subparagraph 50(1)(a)(ii)) has been paid and is not, but for this section, recoverable. (Emphasis added)

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

2. See *An Act to amend the Excise Tax Act, the Criminal Code, the Customs Act, the Customs Tariff, the Excise Act, the Income Tax Act, the Statistics Act and the Tax Court of Canada Act*, S.C. 1990, c. 45, s.12.

Several arguments were raised by the parties during this appeal; however, the evidence gathered at the hearing brings down to one question the scope of the Tribunal's analysis. The testimony of the appellant's witness indeed established that the appellant generally purchased, on a tax-exempt basis, the components that it further incorporated into the goods in issue. It follows, therefore, that FST imposed under subsection 50(1) of the Act was not paid with respect to these components. The crux of the appellant's contention in this regard is that there is an element of indirect taxation in the purchase of components and that the appellant should be entitled to recover the FST included in the cost of these goods. Although it is probably true, in part, that components bore FST, this argument is irrelevant in light of the statutory framework provided by the Act. The Tribunal must apply the law. In this case, when Parliament enacted the provisions dealing with the GST and the FST inventory rebate, it decided that certain goods in specific circumstances and under prescribed conditions would be entitled to an FST rebate. One of these conditions is that FST imposed under subsection 50(1) of the Act must have been paid. Given the appellant's admission that it generally used its manufacturer's licence to purchase components on a tax-exempt basis and because of the lack of evidence that FST had been paid for the rest of the components, the Tribunal finds that the appellant does not meet one of the conditions of the rebate provisions, namely, the definition of "tax-paid goods" which clearly requires payment of FST imposed under subsection 50(1) of the Act.

For the foregoing reasons, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Michèle Blouin

Michèle Blouin
Member