CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, January 26, 1993

Appeal No. AP-91-213

IN THE MATTER OF an appeal heard on November 2, 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 December 27, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

J. & D. TROPHIES & ENGRAVING **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal returns this matter to the respondent for purposes of determining the value of the rebate that should be granted to the appellant.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

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

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-213

J. & D. TROPHIES & ENGRAVING **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the appellant is entitled to the federal sales tax inventory rebate under section 120 of the Excise Tax Act for: (1) the parts and components held in inventory for purposes of further manufacturing or processing into finished goods; and (2) finished trophies held in inventory that incorporate tax-paid parts and components.

HELD: *The appeal is allowed.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*November 2, 1992*
Date of Decision:	*January 26, 1993*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Robert C. Coates, Q.C., Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Hugh J. Cheetham*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Dorothy Cerniuk, for the appellant* *Frederick Woyiwada, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-213

J. & D. TROPHIES & ENGRAVING **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal made pursuant to section 81.19 of the *Excise Tax Act*[1] (the Act) from a decision of the Minister of National Revenue (the Minister) dated December 27, 1991. The appeal proceeded on the basis of written submissions pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*.[2] In this regard, the parties submitted an agreed statement of facts, from which the facts set out herein are taken.

The appellant is in the business of manufacturing and selling trophies. The goods in issue include the parts and components, purchased as such by the appellant, from which the trophies are assembled. The goods in issue also include some completed trophies produced by the appellant before January 1, 1991, and held in inventory on that date. Markups representing the federal sales tax (FST) paid by the appellant's suppliers were paid by the appellant when the parts and components were purchased.

On January 2, 1991, the appellant applied for an FST inventory rebate (the rebate) in respect of the goods in issue on the basis that they represented tax-paid inventory held on January 1, 1991. On April 11, 1991, the appellant was advised by the Department of National Revenue (Revenue Canada) that the goods in issue did not qualify for the rebate. By notice of objection served on May 8, 1991, the appellant objected to Revenue Canada's determination. (A notice of objection is not normally served until after a notice of determination has been issued. In this case, the respondent was prepared to disregard this procedural error on the part of the appellant.) By notice of determination dated May 21, 1991, the respondent disallowed the appellant's application for the rebate. By notice of decision dated December 27, 1991, the respondent disallowed the appellant's objection and confirmed the earlier notice of determination.

The issue in this appeal is whether the appellant is entitled to the rebate under section 120 of the Act for: (1) the parts and components held in inventory for purposes of further manufacturing or processing into finished goods; and (2) finished trophies held in inventory that incorporate tax-paid parts and components.

The appellant made no formal submissions. Its views on the matter were reflected in correspondence with the Minister and the Tribunal, which correspondence is found in the Tribunal's file.

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1. R.S.C. 1985, c. E-15.
2. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18, p. 2912.

365 Laurier Avenue West
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The respondent argued that neither the parts and components nor the finished goods qualified for the rebate. With respect to the parts and components, the respondent submitted that, under subsection 120(3) of the Act, the rebate is to be paid only in respect of unused tax-paid goods in inventory. The respondent stated that, to be "in inventory," goods must have been held for the purpose of being sold to others in the ordinary course of the taxpayer's business. This position is derived from the respondent's interpretation of the definitions of the word "inventory" in subsection 120(1) of the Act and the phrase "taxable supply," and the word "supply" found in subsection 123(1) of the Act.[3] Based on the Supreme Court of Canada's decision in *The Queen v. York Marble, Tile and Terrazzo Limited*,[4] the respondent argued that materials given new forms and used in the production of articles are held for the purpose of manufacture, not sale. As such, the parts and components in issue were not held for sale in the ordinary course of the appellant's business and, thus, could not be considered to be in the appellant's inventory.

Turning to the finished goods, the respondent submitted that, to be considered "tax-paid goods," goods must have been acquired before 1991. The respondent argued that the goods in issue were not acquired but produced by the appellant, as they had undergone a process of manufacture. Further, the respondent argued that to be considered "tax-paid goods," they must be goods in respect of which tax imposed under subsection 50(1) of the Act has been paid. As the completed trophies had not yet been sold, no tax could have been imposed or paid in respect of them. Therefore, the completed goods were not "tax-paid goods in inventory."

Contrary to the position of the respondent, the Tribunal believes that goods held by the appellant that may be subject to further manufacture, assembly, etc., before sale still constitute "taxable supply." The Tribunal approaches the interpretation of the rebate provisions of the Act cognizant of section 12 of the *Interpretation Act*[5] which states that,

> *[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.*

The Tribunal recognizes that the object of the sales tax inventory rebate provisions is to avoid double taxation,[6] and it gives these provisions a "fair, large and liberal construction and interpretation" in concluding that these goods qualify for the rebate.

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3. "Inventory" is defined in part to mean "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... by way of sale, lease or rental to others in the ordinary course of the person's business." "Taxable supply" is defined to mean "a supply that is made in the course of a commercial activity, but does not include an exempt supply." "Supply" is defined to mean "the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition."

4. [1968] S.C.R. 140.

5. R.S.C. 1985, c. I-21.

6. See, for example, the Goods and Services Tax Technical Paper, dated August 8, 1989, wherein the Minister of Finance stated that in order to avoid double taxation of goods on which federal sales tax had been paid, rebates of the tax already paid would be provided. See, also, the document entitled The Goods and Services Tax, which was tabled in the House of Commons on December 19, 1989, wherein the Minister of Finance noted that rebates would be provided to firms holding inventories to avoid double taxation of those goods.

The Tribunal believes that such goods, though destined for further workings, are nonetheless "held at that time for taxable supply ... by way of sale." This interpretation is supported by a reading of the French version of the definition of "inventory," which was canvassed in *Techtouch Business Systems Ltd. v. The Minister of National Revenue*.[7]

With respect to the finished goods, the majority of the Tribunal notes, in interpreting the definition of "tax-paid goods" differently from the Minister, that nowhere in the definition does it state that the relevant tax must have been paid "on the full retail value" of the goods. Rather, it states that the rebate is available for goods "in respect of" which FST has been paid. In considering the significance of this phrase, the majority of the Tribunal notes the decision of Dickson J. in *Gene A. Nowegijick v. The Queen*, wherein he states:

> *The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.*[8]

As FST has been paid on the parts that were assembled into the finished goods, the majority of the Tribunal believes that this tax has been paid "in relation to" or "in connection with" the new goods that were made by the appellant. It is evident to the majority of the Tribunal that there is "some connection" between the tax paid on the parts that are incorporated in the finished goods and the finished goods themselves.

In addition, the majority of the Tribunal observes that, in the definition of "inventory" in section 120 of the Act, the phrase "tax-paid goods" is preceded by the words "items of." The majority of the Tribunal believes that this indicates that it is not necessarily the goods on which tax was paid which qualify as inventory, but that the definition extends to items derived from such goods, if such items are in inventory at the requisite time.

In regard to the foregoing, the majority of the Tribunal also notes that section 4 of the *Federal Sales Tax Inventory Rebate Regulations*[9] (the Regulations) does not require a taxpayer to distinguish between tax-paid goods and goods for which tax was paid on only a component of those goods. Section 4 of the Regulations also states, in part, that the rebate can be based on "the aggregate of the total value of the person's inventory ... determined as of that time in accordance with the method that the person would be required to use for purposes of computing the person's income from a business for purposes of the *Income Tax Act*." Nowhere is there, therefore, a requirement that the inventory value, if it reflects the lower of cost or market value, should be further segmented to reflect only the cost of raw materials.

Counsel for the respondent further argued that the completed trophies held in inventory were not "acquired" by the appellant, but were assembled or produced by the appellant. The majority of the Tribunal believes that these two concepts are not mutually exclusive. The Concise Oxford Dictionary[10] defines "acquire" to mean to "gain by and for oneself; come into possession (lit. or fig.) of." Clearly, the appellant came into possession of the finished goods by assembling or producing them.

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7. Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.
8. [1983] 1 S.C.R. 29 at 39.
9. SOR/91-52, December 18, 1990, Canada Gazette Part II, Vol. 125, No. 2, p. 265.
10. Seventh Edition, Oxford: Clarendon Press, 1982, p. 9.

Accordingly, the appeal is allowed. The majority of the Tribunal finds that all the parts and components held by the appellant in inventory on January 1, 1991, either separately or as part of finished goods, fall within the terms of section 120 of the Act. The Tribunal returns this matter to the respondent for purposes of determining the value of the rebate that should be granted to the appellant.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

ADDITIONAL REASONS OF MEMBER COATES

I agree with my colleagues that this appeal be allowed. However, on the question of the completed trophies held in inventory, for reasons expressed in *A.J.V. Tools Ltd. v. The Minister of National Revenue*,[11] I would only allow the rebate on the value of the tax-paid components used to manufacture the trophies held in inventory on January 1, 1991.

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

11. Canadian International Trade Tribunal, Appeal No. AP-91-229, December 16, 1992.