CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, February 26, 1993

Appeal No. AP-91-214

IN THE MATTER OF an appeal heard on July 27, 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 24, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

MVP TROPHIES **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-214

MVP TROPHIES **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate under section 120 of the Excise Tax Act for components held in inventory for purposes of further manufacturing or processing into finished goods and components incorporated into finished trophies.

HELD: *The appeal is allowed.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*July 27, 1992*
Date of Decision:	*February 26, 1993*
Tribunal Members:	*Desmond Hallissey, Presiding Member* *Sidney A. Fraleigh, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*Brenda C. Swick-Martin*
Clerk of the Tribunal:	*Janet Rumball*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-214

MVP TROPHIES **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
SIDNEY A. FRALEIGH, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of a determination of the Minister of National Revenue (the Minister) in which the appellant's application for a federal sales tax (FST) inventory rebate was disallowed. The parties have consented to having this appeal heard by way of written submissions, and an agreed statement of facts has been filed.

The appellant assembles items, such as cups, columns, figures and bases into trophies using steel rods, engraves on aluminum and sells the assembled trophies to its customers. Some of the appellant's items, including plaques (with engraving), medals, ribbons and some figures, are sold to its customers as is.

Prior to January 1, 1991, the appellant was exempt from obtaining a manufacturer's licence under the Act by virtue of subsection 54(2) of the Act and paragraph 2(1)(*a*) of the *Small Manufacturers or Producers Exemption Regulations*.[2] As such, the appellant was required to pay FST on the items which it purchased for use in making its trophies and was exempt from collecting or remitting tax on the sales of its finished trophies.

Since January 1, 1991, the appellant has been a registrant of the Goods and Services Tax (GST) and, thus, has been required to remit the GST on the trophies which it sold after January 1, 1991. On January 9, 1991, the appellant filed an application for the FST inventory rebate in respect of inventory held as of January 1, 1991.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act on all or any of the items which it held in inventory as of January 1, 1991.

1. R.S.C. 1985, c. E-15.
2. SOR/82-498, May 13, 1982, Canada Gazette Part II, Vol. 116, No. 10 at 1869.

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The relevant sections of the Act are as follows:

120. (1) In this section,

"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.

(3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,

(a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8).

123. (1) In section 121, this Part and Schedules V, VI and VII,

"taxable supply" means a supply that is made in the course of a commercial activity, but does not include an exempt supply.

The appellant claimed that it should be refunded the FST paid on the value of the parts included in its inventory. It also submitted that it should be entitled to a refund on the display trophies in its inventory because FST was paid on the wholesale value of these trophies. The fact that goods must be held for taxable supply by way of sale, lease or rental to others in the ordinary course of business to qualify for the FST inventory rebate does not preclude entitlement to the rebate when the parts are joined together into a finished product.

Counsel for the respondent opposed the appeal on the grounds that: (a) the items held in inventory by the appellant on January 1, 1991, that were to be used in the production of the trophies were not "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" as explicitly required under subsections 120(1) and 123(1) of the Act; and (b) the finished trophies held in inventory by the appellant on January 1, 1991, were not "tax-paid goods" within the meaning of subsection 120(1) of the Act and, thus, did not qualify for the rebate under subsection 120(3) of the Act.

Regarding the components held in inventory which are sold to customers "as is" without any work performed on them by the appellant, it was submitted that there is no evidence that such sales were of such a volume and of such frequency as to constitute sales in the ordinary course of the appellant's business as required under subsection 120(1) of the Act. However, in the event that the sales of these items are found to be sold in the ordinary course of the

appellant's business, the respondent recognizes that such items would likely qualify for the rebate as tax-paid goods in inventory under subsection 120(3) of the Act and submitted that the exact value of such a rebate be determined through an audit.

The facts and issues in this case closely resemble those raised in the Tribunal's earlier decision in *Techtouch Business Systems Ltd. v. The Minister of National Revenue*.[3] For the reasons set forth in that decision, the Tribunal finds that all of the components in issue are tax-paid goods within the meaning of section 120 of the Act. In the Tribunal's view, the components are held for taxable supply whether in the form of unassembled inventory or as parts of assembled or manufactured goods. Parliament's intent in introducing the FST inventory rebate scheme was to avoid double taxation, and, therefore, the Tribunal has given weight to the fact that FST was paid on all of the components in issue regardless of whether they are in unassembled form, sold "as is" over the counter or assembled into trophies. In reaching its decision, the Tribunal continues to reject the restrictive interpretation accorded to the legislation by the respondent to the effect that unassembled components used in the production of trophies are not "held ... for taxable supply ... by way of sale" within the meaning of section 120 of the Act and that components incorporated into the finished trophies are not "tax-paid goods."

Accordingly, the appeal is allowed. 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 to determine the value of the rebate that should be granted to the appellant.

In regard to the foregoing, the Tribunal also observes that the amount of FST inventory rebate to be paid to the appellant is prescribed under sections 3 and 4 of the *Federal Sales Tax Inventory Rebate Regulations*[4] (the Regulations). The majority of the Tribunal observes that an application of the Regulations to this case would result in the application of a tax factor of 8.1 percent to the value of the inventory of the components in assembled and unassembled form, and not to the value of the inventory of finished trophies, as the latter do not constitute "tax-paid" goods and, thus, inventory for purposes of section 120 of the Act and the Regulations.

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Charles A. Gracey
Charles A. Gracey
Member

3. Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.
4. SOR/91-52, December 18, 1990, Canada Gazette Part II, Vol. 125, No. 2 at 265.

ADDITIONAL REASONS OF MEMBER HALLISSEY

I agree with my colleagues that the appellant is entitled to an FST inventory rebate. However, I would have granted the rebate on the basis of the value of the inventory of the finished or assembled goods. I see no requirement to revert back to the value of the components now incorporated into the finished goods. Provided only that the finished goods consist of tax-paid components and that they are valued at the lesser of cost or marked value, the rebate should have been granted on the value of the inventory of the finished goods.

Desmond Hallissey
Desmond Hallissey
Presiding Member