



Ottawa, Wednesday, December 16, 1992

**Appeal No. AP-91-229**

IN THE MATTER OF an appeal heard on June 26, 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 20, 1991, with respect to  
a notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**A.J.V. TOOLS 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

John C. Coleman  
John C. Coleman  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-229**

**A.J.V. TOOLS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The goods in issue are floats and trowels and the components of same awaiting further assembly into the finished products. A trowel is a small, hand-held tool with a flat pointed blade. It is used to apply and spread mortar. A float is a tool for smoothing plaster. The issue in this appeal is whether the appellant is eligible for the federal sales tax (FST) inventory rebate under the Excise Tax Act for its inventory of raw materials used to manufacture finished trowels and floats, as well as its inventory of finished trowels and floats.*

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

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: June 26, 1992*  
*Date of Decision: December 16, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member*  
*John C. Coleman, Member*  
*Charles A. Gracey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Janet Rumball*

**Appeal No. AP-91-229**

**A.J.V. TOOLS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
JOHN C. COLEMAN, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal made pursuant to section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue (the Minister) who disallowed, in part, a federal sales tax (FST) inventory rebate. The appellant claimed a rebate of \$23,105.65, but was allowed only \$16,900.26 on the basis that "some goods included in the rebate are not goods for sale, lease or rental to customers in [the appellant's] ordinary course of business."

The appellant did not file a brief with the Tribunal for purposes of the appeal. Nor was it represented at the hearing that proceeded on the basis of the documents contained in the file which included a brief submitted on behalf of the respondent.

The goods in issue are floats and trowels and the components of same awaiting further assembly into the finished products. A trowel is a small, hand-held tool with a flat pointed blade. It is used to apply and spread mortar. A float is a tool for smoothing plaster.

The issue in this appeal is whether the appellant is eligible for the FST inventory rebate under section 120 of the Act<sup>2</sup> for its inventory of raw materials used to manufacture finished trowels and floats, as well as its inventory of finished trowels and floats. No facts were at issue between the parties.

For purposes of this appeal, the relevant rebate provisions of the Act are found at subsection 120(3) of the Act, which states that:

*(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).*

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

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.

The only representations by the appellant are contained in the letter filing the appeal with the Tribunal. It is stated that the goods in issue should be eligible for the rebate because, although they may be further assembled and then sold, they may also be sold in their unassembled condition.

Counsel for the respondent argued that those goods held by the appellant for purposes of further manufacture or production of finished products do not constitute "taxable supply"<sup>3</sup> as defined in subsection 123(1) of the Act. These items were held by the appellant for use in the manufacture, production or assembly of new and completed goods which, in turn, would be sold by the appellant to its customers and were not for the provision of property in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition.

In addition, counsel submitted that the finished floats and trowels do not constitute "tax-paid goods"<sup>4</sup> as defined in subsection 120(1) of the Act and, thus, do not qualify for the FST inventory rebate. The appellant was not required to pay FST on the sale price of the finished goods since it was exempt from paying that tax pursuant to subsection 54(2) of the Act and the *Small Manufacturers or Producers Exemption Regulations*.<sup>5</sup> Therefore, the appellant's goods were not goods "in respect of which tax imposed under subsection 50(1) ... has been paid."

The issues raised in this appeal are not unique, having been addressed in a recent decision of the Tribunal.<sup>6</sup> In this decision, the Tribunal found that raw materials held for purposes of further manufacture, production or assembly of finished products, that will subsequently be sold, are "held at that time for taxable supply ... by way of sale." Such raw materials constitute tax-paid goods held in inventory within the meaning of subsection 120(3) of the Act and, thus, the appellant is eligible for the FST inventory rebate in respect of these goods. Similarly, though the finished products do not constitute "tax-paid goods," it is the Tribunal's opinion that the components of such products on which tax was paid are also held in inventory for taxable supply by way of sale. Thus, the appellant is entitled to a rebate of tax based on the value of the tax-paid components of the finished products and not on the value of the finished products themselves. In rendering this decision, the Tribunal is not persuaded by the appellant's representations that the goods could have been sold in their unassembled condition and that they therefore qualified for the rebate. Rather, the Tribunal reaches its decision on the basis of its own interpretation of the relevant provisions of the Act.

In its approach to interpret the rebate provisions of the Act, the Tribunal is cognizant of section 12 of the *Interpretation Act*,<sup>7</sup> which states that:

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

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3. "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. "Tax-paid goods," for purposes of this appeal, includes "new goods ... in respect of which tax imposed under subsection 50(1) [of the Act] ... has been paid."

5. SOR/82-498, Canada Gazette Part II, Vol. 116, No. 10, May 13, 1982, p. 1869.

6. See *Techtouch Business Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.

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

The Tribunal recognizes that the object of the FST inventory rebate provisions is to avoid double taxation, and it gave these provisions a "fair, large and liberal construction and interpretation" in concluding that the appellant is eligible for the rebate for the raw materials and tax-paid components of the finished products, thus avoiding the double taxation that would otherwise result. The Tribunal could not interpret the rebate provisions as restrictively as the Department of National Revenue (the Department).

In his brief, counsel for the respondent cited the Department's GST Memorandum 900<sup>8</sup> (the Memorandum), which sets out its interpretation of the FST inventory rebate provisions. The Minister's determination that was appealed and counsel for the respondent's arguments were both consistent with the views expressed in the Memorandum. However, the Tribunal observes that the Memorandum has no force of law and is not determinative as a guide to interpreting section 120 of the Act. The Tribunal sees the Memorandum as being motivated by administrative convenience. The Memorandum does not reflect the fact that the wording, content and spirit of section 120 are clearly aimed at avoiding double taxation in the transition from the FST to the Goods and Services Tax.

Accordingly, the appeal is allowed.

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

John C. Coleman  
John C. Coleman  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

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8. Federal Sales Tax Inventory Rebates, Ottawa, May 31, 1990.