



Ottawa, Thursday, November 19, 1992

Appeal No. AP-91-260

IN THE MATTER OF an appeal heard on
November 4, 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 81.17 of the
Excise Tax Act.

BETWEEN

QUEENSBURY VIDEO

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

John C. Coleman
John C. Coleman
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-260

QUEENSBURY VIDEO

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant owns and operates a video rental business. At issue is whether the appellant is entitled to a federal sales tax inventory rebate under section 120 of the Excise Tax Act in respect of tax-paid goods held in inventory on January 1, 1991.

HELD: *The appeal is allowed in part.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: November 4, 1992

Date of Decision: November 19, 1992

*Tribunal Members: John C. Coleman, Presiding Member
Michèle Blouin, Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: Brenda Swick-Martin

Clerk of the Tribunal: Nicole Pelletier

*Appearances: Alexis Gail Erikson, for the appellant
Wayne D. Garnons-Williams, for the respondent*

Appeal No. AP-91-260

QUEENSBURY VIDEO

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
MICHÈLE BLOUIN, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) with respect to a federal sales tax (FST) inventory rebate.

The appellant owns and operates a video rental business. The bulk of its business involves the rental of video films and video equipment, primarily VCRs. It also sells a small number of blank video tapes, unused pre-recorded tapes and previously rented video tapes, and cigarettes, snack foods and non-alcoholic beverages.

The appellant was never licensed for FST purposes, but has been a registrant of the Goods and Services Tax since January 1, 1991.

On May 2, 1991, the appellant applied for an FST inventory rebate of \$9,720.02 based on the value of the tax-paid goods held in inventory on January 1, 1991. On June 14, 1991, the respondent disallowed that portion of the application which relates to the video tapes and equipment held for rental. The amount in dispute is \$9,587.62. On August 13, 1991, the appellant objected to the determination, which was subsequently confirmed by the respondent on December 20, 1991. The respondent's reason was that the video tapes and video equipment were used goods and that the appellant was, therefore, ineligible for an FST inventory rebate under the Act.

The issue in this case is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act in respect of tax-paid goods held in inventory on January 1, 1991.

Paragraph 120(3)(a) of the Act provides for a rebate on tax-paid goods held in inventory on January 1, 1991, where the goods are "other than used goods." Paragraph 120(3)(b) of the Act provides for a less generous rebate on tax-paid "used goods" held in inventory on January 1, 1991. Subsection 120(1) of the Act defines "inventory" as tax-paid goods that are held in inventory on January 1, 1991, for taxable supply by way of sale, lease or rental to others in the ordinary course of business.

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

The appellant argued that its rental video tapes and equipment were not used because they performed well after many rentals and because many of them held their original value, as the prices of new tapes increased. It sought a full FST inventory rebate on the basis of paragraph 120(3)(a) of the Act in respect of the rental video tapes and equipment, as well as for all new goods held in inventory for sale on January 1, 1991.

Counsel for the respondent argued that the rental video tapes and equipment had been rented before January 1, 1991, and were therefore used goods. As such, the appellant was not eligible for an FST inventory rebate under paragraph 120(3)(a) of the Act.

With respect to unused blank video tapes, pre-recorded tapes and other unused items sold by the appellant, counsel for the respondent agreed that the appellant was eligible for an FST inventory rebate in respect of those goods under paragraph 120(3)(a) of the Act, provided the appellant could supply evidence of the quantities and values involved.

The Tribunal finds that the appellant's rental video tapes and equipment held in inventory on January 1, 1991, are used goods and that the appellant is therefore eligible for an FST inventory rebate under paragraph 120(3)(b) of the Act. On January 1, 1991, such goods were not new because, prior to that time, they had been rented out to one or more customers for viewing purposes.

Used goods held in inventory are deemed, under paragraph 120(3)(b) of the Act, to be "used tangible personal property" supplied in Canada by way of sale for the purposes of section 176 of the Act and therefore qualify for an input tax credit in accordance with section 169 of the Act.

Indeed, the eligibility of tax-paid goods held in inventory that are used goods for an input tax credit was pointed out in the Minister of National Revenue's decision of December 20, 1991, in which it was stated:

[T]ax-paid goods held in a registrant's inventory as of January 1, 1991, that are used goods for resale are treated as though they were acquired by the registrant under circumstances which would give rise to a notional input tax credit entitlement under paragraph 120(3)(b) and section 176 of the Act. Accordingly, a registrant is able to claim an input tax credit on the regular GST return for such qualifying goods.

With respect to the appellant's tax-paid inventory of unused blank tapes, pre-recorded tapes and sundries held for sale on January 1, 1991, the appellant is entitled to an FST inventory rebate under paragraph 120(3)(a) of the Act, provided the appellant furnishes sufficient information on the quantities and values involved. The FST inventory rebate payable in respect of such inventory is the amount determined by the method prescribed in the *Federal Sales Tax Inventory Rebate Regulations*.²

2. SOR/91-52, Canada Gazette Part II, Vol. 125, No. 2, December 18, 1990.

The appeal is allowed in part, as outlined above. The Tribunal observes that the appellant has until December 31, 1992, to present revised FST inventory rebate claims under subsection 120(3) of the Act. The Tribunal urges the respondent to take early action to assist the appellant in making complete and appropriate rebate claims before the December 31, 1992, deadline.

John C. Coleman

John C. Coleman
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member