CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, February 1, 1993

Appeal No. AP-91-261

IN THE MATTER OF an appeal heard on August 20, 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 February 7, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

ARCHER'S SIGNS & TROPHIES **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.

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-91-261

ARCHER'S SIGNS & TROPHIES **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 in accordance with section 120 of the Excise Tax Act. Specifically, the Tribunal has to determine: (1) whether certain goods held in inventory for purposes of further manufacturing or production and assembly into finished products qualify for the rebate; (2) whether the finished goods held in inventory that incorporated tax-paid materials qualify for the rebate; and (3) whether certain goods sold "as is," though in low volume and frequency, can be considered to be sold in the ordinary course of the appellant's business, thus qualifying for the rebate.

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

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*August 20, 1992*
Date of Decision:	*February 1, 1993*
Tribunal Members:	*Robert C. Coates, Q.C., Presiding Member* *Kathleen E. Macmillan, Member* *Michèle Blouin, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*William Avis, for the appellant* *Wayne D. Garnons-Williams, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-261

ARCHER'S SIGNS & TROPHIES **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal made pursuant to section 81.19 of the *Excise Tax Act*[1] (the Act) on the basis of the documentation contained in the Tribunal's file as supplemented by briefs submitted by the parties. The issue in this appeal is whether the appellant is entitled to the federal sales tax (FST) inventory rebate in accordance with section 120[2] of the Act. Specifically, the Tribunal has to determine: (1) whether certain goods held in inventory for purposes of further manufacturing or production and assembly into finished products qualify for the rebate; (2) whether the finished goods held in inventory that incorporated tax-paid materials qualify for the rebate; and (3) whether certain goods sold "as is," though in low volume and frequency, can be considered to be sold in the ordinary course of the appellant's business, thus qualifying for the rebate.

Archer's Signs & Trophies is in the business of supplying vinyl graphics and signage, trophies, awards, gifts and jewellery engraving services. The appellant purchased parts and assembled them into trophies that were subsequently sold to consumers. It is these parts that constitute the bulk of the inventory in question.

By virtue of its sales being less than $50,000 per year, the appellant was considered a small manufacturer for purposes of the Act and was not required to hold a licence for purposes of Part VI, being the consumption or sales tax provisions, of the Act. Accordingly, the appellant had to pay tax on its purchases of material inputs, but was exempt from the payment of consumption or sales tax on the goods that it manufactured or produced.

On March 12, 1991, the appellant applied for an FST inventory rebate, pursuant to section 120 of the Act, in the amount of $1,550.98 in respect of its tax-paid inventory held as of January 1, 1991. In its notice of determination issued on July 12, 1991, the Department of National Revenue, Customs and Excise (Revenue Canada), allowed the application in the amount of $480.49, but disallowed the balance of $1,070.49. Certain goods were determined not to qualify for the rebate because they were held for further manufacturing and were, therefore, not held for sale, lease or rental. Others did not qualify because FST had not been paid on the full value of the goods held in inventory. Archer's Signs & Trophies appealed this determination to the Tribunal.

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1. R.S.C. 1985, c. E-15.
2. S.C. 1990, c. 45, s. 12.

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

> *(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).*

The appellant's representative noted that the goods for which the rebate was disallowed had already had FST paid on them. He considered it unreasonable for the federal government to take 13.5 percent as FST and another 7 percent as Goods and Services Tax (GST) on the same product. He argued, by analogy, that when a trophy retailer was forced to become licensed, it was given an 8-percent rebate for the taxes paid on the inventory that it had on hand. He could see no difference between this situation and the one at issue.

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."[3] These items were held by the appellant as prepared materials 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 not for the provision of property by way of sale, lease or rental.

In addition, counsel submitted that the finished trophies do not constitute "tax-paid goods."[4] The finished products do not represent goods on which FST was paid. Rather, they incorporate components or parts on which FST was paid. As such, they do not qualify for the rebate. Counsel further submitted that the new trophies were not "acquired" by the appellant before 1991, but were assembled or produced by the appellant on or before that date.

Counsel for the respondent indicated that there were certain unfinished items in the appellant's inventory destined to be sold "as is," without any work being performed on them by the appellant, that were determined not to qualify for the rebate. Counsel submitted that there is no evidence that the sales are of such volume and of such frequency as to constitute sales in the ordinary course of the appellant's business. As such, the goods do not qualify as inventory.[5] Counsel noted, however, that if the Tribunal were to determine that they were sold in the ordinary course of the appellant's business, such items would likely qualify for the rebate as

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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 "goods, acquired before 1991 ... that are ... new goods ... in respect of which tax imposed under subsection 50(1) [of the Act] ... has been paid."

5. The "inventory" of a person as of any time is described in subsection 120(1) of the Act 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" [Emphasis added].

tax-paid goods in inventory. The exact value of such a rebate should be determined through an audit.

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*[6] 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,[7] and it gives these provisions a "fair, large and liberal construction and interpretation" in concluding that these goods qualify for the rebate.

The rebate was denied by the respondent on the basis that the FST-paid goods were not held for the provision of property or a service by way of sale, lease or rental to others in the ordinary course of the appellant's business. Rather, they were held for use in the manufacture, production or assembly of new and completed goods which, in turn, would be sold by the appellant. However, the Tribunal believes that such goods, though destined for further workings were, 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*.[8]

Consistent with the *Techtouch* decision, the Tribunal recognizes that the finished goods in inventory do not constitute "tax-paid goods" under the Act. Tax was not paid on the assembled trophies, but only on the components that comprise them. However, tax was paid on the components, or some of them, and it is the Tribunal's opinion that such tax-paid components are held in inventory for taxable supply when incorporated into a finished product. Consequently, the appellant is entitled to a rebate of the tax paid on the materials incorporated into the finished products held in inventory for sale, but not on the entire value of the finished goods in inventory.

Counsel for the respondent also argued that the "new trophies were not 'acquired' by the Appellant before 1991, but rather were assembled or produced by the Appellant on or before that date." In light of the Tribunal's conclusion that the components which were incorporated into the finished goods constituted tax-paid goods held in inventory, the Tribunal believes that it is not necessary to further address this argument.

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

7. 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.

8. Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.

With regard to the goods sold "as is," the Tribunal is of the opinion that the volume or frequency with which a commodity is sold is not determinative of whether it is sold "in the ordinary course of the person's business."[9] In *British Columbia Telephone Company v. Minister of National Revenue*,[10] the Tax Court of Canada reviewed several judicial pronouncements on what constitutes a transaction made in the ordinary course of business. To repeat but one, the High Court of Australia, per Rich, J., wrote that for a transaction to be considered in the ordinary course of business, it "must fall into place as part of the undistinguished common flow of business done; that it should form part of the ordinary business as carried on, calling for no remark and arising out of no special or particular situation."[11] It is the Tribunal's opinion that, if the commodity is held for the purpose of sale that will form part of the undistinguished common flow of the business done by the appellant, then, regardless of the volume or frequency with which such sales are made, they are made within the ordinary course of business. As such, they would qualify for the rebate which was denied.

Accordingly, the appeal is allowed. The Tribunal finds that all components held in the appellant's inventory either "as is" or as components of a finished product 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.

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member

9. *Supra*, note 5.
10. [1986] 1 C.T.C. 2410.
11. *Downs Distributing Co. Pty., Ltd. v. Associated Blue Star Stores Pty., Ltd. (In Liquidation)* (1948), 76 C.L.R. 463 at 477.