



Ottawa, Friday, April 23, 1993

Appeal No. AP-91-233

IN THE MATTER OF an appeal heard on November 6, 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 81.17 of the *Excise Tax Act*.

BETWEEN

AMBIENCE GALLERY & FRAMES

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

John C. Coleman

John C. Coleman
Member

Michèle Blouin

Michèle Blouin
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-233

AMBIENCE GALLERY & FRAMES

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act from a determination of the Minister of National Revenue. The issue is whether artwork and frame parts, on which federal sales tax has been paid and which are to be used in the production of framed artwork, are goods that are unused and held for taxable supply by way of sale, lease or rental in the ordinary course of business and, therefore, whether the goods qualify for a federal sales tax inventory rebate under section 120 of the Excise Tax Act. An ancillary issue is whether framed artwork and framing materials claimed by the appellant qualify for such a rebate.

HELD: *The appeal is allowed. Artwork and frame parts, on which federal sales tax has been paid and which are held for further assembly into framed artwork, constitute tax-paid goods held for taxable supply within the meaning of section 120 of the Excise Tax Act and, therefore, qualify for a federal sales tax inventory rebate. The Tribunal finds no objection to the inclusion in the said rebate of the framed artwork claimed by the appellant, on the basis of the consent of the respondent's counsel at the hearing.*

Place of Hearing: Vancouver, British Columbia
Date of Hearing: November 6, 1992
Date of Decision: April 23, 1993

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

Counsel for the Tribunal: Brenda C. Swick-Martin

Clerk of the Tribunal: Nicole Pelletier

Appearances: Lorne M. Zarazun, for the appellant
Wayne D. Garnons-Williams, for the respondent

Appeal No. AP-91-233

AMBIENCE GALLERY & FRAMES

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

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

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a determination of the Minister of National Revenue (the Minister) disallowing part of the appellant's claim for a federal sales tax (FST) inventory rebate under section 120 of the Act.² The issue is whether artwork and frame parts used in the provision of custom-framing services constitute goods that are held for taxable supply by way of sale, lease or rental in the ordinary course of business and, therefore, whether the goods qualify for an FST inventory rebate under section 120 of the Act. An ancillary issue is whether framed artwork and framing materials claimed by the appellant qualify for such a rebate.

On February 4, 1991, the appellant, a Goods and Services Tax registrant since January 1, 1991, applied for an FST inventory rebate under section 120 of the Act in respect of FST-paid inventory consisting of artwork and frame parts held as of January 1, 1991. By notice of determination dated May 7, 1991, an FST inventory rebate was allowed in part, following which the appellant served a notice of objection dated June 23, 1991, to appeal the determination and to request that the FST inventory rebate application be amended to include inventory, consisting of framed artwork and framing materials, that was omitted in the rebate application. In a notice of decision, the respondent confirmed the determination and did not consider the additional amount claimed in the notice of objection, since it had not been claimed in the appellant's FST inventory rebate application.

The appellant submitted that the goods in issue held in inventory were produced by assembling components on which tax had been paid and that, therefore, tax had been paid on the full value of the finished goods.

Counsel for the respondent submitted that the artwork and frame parts in issue were not held for sale, lease or rental to others in the ordinary course of the business and, thus, did not constitute "taxable supply" within the meaning of subsections 120(1) and 123(1) of the Act. Alternatively, the artwork and frame parts were used to produce framed artwork which, in turn, would be sold. Materials that are to be given new forms, qualities and properties or combinations, and that are thereby used in the production of articles are held for the purpose

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

2. S.C. 1990, c. 45, s. 12.

of manufacture and not for the purpose of sale, as was established in *The Queen v. York Marble, Tile and Terrazzo Limited*.³

Counsel for the respondent further submitted that the appellant was not entitled to the additional amount claimed for framed artwork in the notice of objection, since it can only claim a rebate by filing an application and, under section 81.19 of the Act, by lodging an appeal against a determination or assessment. The appellant did not file an application, and no determination was issued by the Minister in respect of the framed artwork.

For reasons similar to those set forth in *Techtouch Business Systems Ltd. v. The Minister of National Revenue*,⁴ the Tribunal finds that the artwork and frame parts enumerated in Schedule I to the FST inventory rebate application filed by the appellant on February 4, 1991, constitute "inventory" held for "sale" by the appellant on January 1, 1991, within the meaning of section 120 of the Act. That the FST-paid artwork and frame parts were held to be incorporated into framed artwork prior to being sold does not change the fact that FST was paid on such goods at the time of purchase and does not, in the Tribunal's view, affect the eligibility of such artwork and frame parts for an FST inventory rebate under the Act.

The Tribunal further takes note of the consent of the respondent's counsel at the hearing that the framed artwork claimed by the appellant be included in the FST inventory rebate.

Accordingly, the Tribunal allows the appeal for the total amount claimed by the appellant.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

John C. Coleman

John C. Coleman
Member

Michèle Blouin

Michèle Blouin
Member

3. [1968] S.C.R. 140.

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