



Ottawa, Thursday, March 4, 1993

Appeal No. AP-91-268

IN THE MATTER OF an appeal heard on
December 17, 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 27, 1991, with respect to
a notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

ARTLAND GALLERY & FRAMING INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

John C. Coleman
John C. Coleman
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-268

ARTLAND GALLERY & FRAMING INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether materials, on which federal sales tax has been paid and which are used in the production of new goods, are considered to be new goods that are unused and held for taxable supply by way of sale, lease or rental in the ordinary course of the appellant's business and, therefore, qualify for a federal sales tax inventory rebate pursuant to section 120 of the Excise Tax Act.

HELD: *The appeal is allowed. As decided by the Tribunal in a number of recent cases, the components which are used in the production of finished goods qualify for the federal sales tax inventory rebate provided by section 120 of the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 17, 1992
Date of Decision: March 4, 1993

Tribunal Members: Charles A. Gracey, Presiding Member
John C. Coleman, Member
Arthur B. Trudeau, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-91-268

ARTLAND GALLERY & FRAMING INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
JOHN C. COLEMAN, Member
ARTHUR B. TRUDEAU, Member

REASONS FOR DECISION

This is an appeal pursuant to section 81.19 of the *Excise Tax Act*¹ (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 \$6,431.02, but was allowed only \$1,266.28.

Both parties agreed that the present case be disposed of on the basis of written submissions without an oral hearing. An agreed statement of facts was submitted by the parties on October 22, 1992. In brief, the appellant's claim for the FST rebate relates to parts used in the framing of pictures, including mouldings, mats and glass. The appellant's inventory held on January 1, 1991, consisted of these components, which had not yet been further assembled in the normal course of business.

As already mentioned, part of the appellant's application for the FST rebate was allowed, as the goods were sold in the same condition as when they were purchased. However, the respondent disallowed a major part of the claim on the basis that the goods in issue, by reason of the intended assembly or incorporation with other components, were not, in the condition as held in inventory, available for "taxable supply ... by way of sale."

The issue in this case, as jointly stated by both parties, is as follows: Are materials on which FST has been paid and which are to be used in the production of new goods considered to be goods that are unused and are held for taxable supply by way of sale, lease or rental in the ordinary course of a person's business and therefore eligible for an FST inventory rebate per section 120 of the *Excise Tax Act*?

The Tribunal is of the opinion that this question must be answered in the affirmative. In several recent decisions rendered, the Tribunal has clearly recognized that, pursuant to section 120 of the Act, the goods on which FST has been paid and that are held in inventory for taxable supply should qualify for an FST inventory rebate. In the case at hand, it is not in dispute that the goods in issue constitute component parts used in a picture-framing operation. Although these goods themselves are not for sale, since they are used as components in the production of finished goods, the Tribunal reads nothing in the relevant statutory provisions which would support the respondent's restrictive interpretation.

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

As noted in a letter dated November 27, 1992, sent to the Tribunal by counsel for the respondent, the facts of the present case bear similarity with the facts in *Techtouch Business Systems Ltd. v. The Minister of National Revenue*.² The Tribunal agrees and sees no reason why this precedent should not be followed in the present case. In the Tribunal's opinion, the goods in issue meet the conditions contained in section 120 of the Act and qualify for the FST inventory rebate.

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

John C. Coleman
John C. Coleman
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

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