



Ottawa, Thursday, April 8, 1993

Appeal No. AP-92-060

IN THE MATTER OF an appeal heard on December 15, 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 April 10, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

RENAISSANCE JEWELLERY INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

John C. Coleman
John C. Coleman
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-060

RENAISSANCE JEWELLERY INC.

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, disallowing the appellant's application for a federal sales tax inventory rebate under section 120 of the Excise Tax Act. The issue in this appeal is whether the financial statements prepared by the appellant for income tax purposes, and the invoices submitted, contained adequate information to reconcile the inventory value on the rebate application.

HELD: *The appeal is dismissed. The financial information provided is insufficient to substantiate the appellant's federal sales tax inventory rebate application, and the appellant failed to further substantiate its application following the hearing.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 15, 1992
Date of Decision: April 8, 1993

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

Counsel for the Tribunal: Brenda C. Swick-Martin

Clerk of the Tribunal: Janet Rumball

Appearances: Stuart K. Kerr, for the appellant
Wayne D. Garnons-Williams, for the respondent

Appeal No. AP-92-060

RENAISSANCE JEWELLERY INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
ARTHUR B. TRUDEAU, Member
CHARLES A. GRACEY, 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, disallowing the appellant's application for a federal sales tax (FST) inventory rebate under section 120 of the Act² on the grounds that the financial statements prepared by the appellant for income tax purposes did not contain adequate information to reconcile the inventory value on its financial statements to the inventory value on the rebate application, and that the invoices submitted were not sufficient to substantiate the amounts claimed in the rebate application.

Mr. Stuart K. Kerr, appearing for the appellant, owned and operated a jewellery store in Nepean, Ontario, between 1986 and May 1991. The issue in this appeal is whether jewellery held in inventory by the appellant qualifies for an FST inventory rebate in accordance with section 120 of the Act.

An inventory list of items of jewellery on hand as of December 31, 1990, along with each item's retail value, was introduced as evidence during the hearing. Mr. Kerr directed the Tribunal's attention to several invoices, most of which originated from P & H Jewellery Limited, a jewellery wholesaler in Toronto, Ontario, which were dated 1986, with some exceptions. The invoices did not show deductions of FST, but Mr. Kerr testified that FST was included in the invoice price.

To show the correlation between the items listed in the inventory and the items recorded on the invoices, Mr. Kerr drew the Tribunal's attention to several examples where he doubled the wholesale price listed for an item on an invoice and compared it with the approximate equivalent retail price for an item listed in the inventory. Mr. Kerr testified that it was possible to correlate the items listed in the inventory with those listed on the invoices in this manner because the retail price of the jewellery was almost double its wholesale price shown on the invoices.

In response to a question by the Tribunal as to whether the inventory list as of December 31, 1990, could be supported with the records of sales and purchases since that date, together with a more recent inventory, Mr. Kerr responded that the remaining inventory was in his personal safety deposit box and could not be verified because he had been selling items from that source on a private basis and had kept no records of those sales.

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

Ms. Irene Peter, the excise officer assigned to the case, appeared as a witness for the respondent. She testified that, in response to her requests to the appellant for copies of recent financial statements used to file income tax returns and a more recent inventory list, Mr. Kerr indicated that he had no financial statements, but would provide some sale summaries and a more recent list of physical stock. The sales summaries provided by Mr. Kerr were those discussed in the preceding paragraphs. Ms. Peter stated that, although there was not much detail provided in the more recent list of physical stock provided by the appellant, it might be acceptable if there were additional invoices to support the list. Ms. Peter testified that she had received some additional information, which included the aforementioned invoices and a handwritten financial statement dated September 30, 1990. However, the financial statement did not break down the cost of goods sold, and it was, therefore, impossible to relate the sales figures to the inventory. Ms. Peter stated that her attempts to trace some of the inventory items to the inventory list proved unsuccessful because it was impossible to conclusively link any inventory item to the invoiced item and that the remaining inventory was not available for an audit. The witness further testified that the appellant was unable to demonstrate that it had, in fact, sent in financial statements to the Department of National Revenue (Revenue Canada) and that no sales invoices, cash register tapes or sales journals were produced that might have assisted in substantiating the appellant's application.

Ms. Peter completed her testimony by agreeing that she would be prepared to conduct a further investigation and appraisal, if the appellant still had inventory, and indicated that it is not unusual to offer partial settlements in respect of any portion of an application that can be verified.

In argument, Mr. Kerr submitted that the appellant's application for a rebate was disallowed due to misinformation and a misunderstanding with Revenue Canada's representative. In his view, the inventory list provided was adequate in light of his understanding that the practice in the jewellery industry was to provide a bare description of an item and a price, and not to report stock or inventory numbers.

Counsel for the respondent submitted that the onus rested with the appellant to establish its claim and that it had failed to do so. He argued that the appellant failed to use the same method to value inventories for FST rebate purposes as that used to value inventories for income tax purposes, as required by the legislation. For this reason, the appellant's inventory system was inadequate to permit the respondent to make a reasonable determination of the appellant's inventory as of January 1, 1991.

In rebuttal argument, Mr. Kerr insisted that the appellant had discharged its onus because, in his view, information had been submitted that satisfied the requirements under the *Income Tax Act*. This response, in turn, led the presiding member to ask Mr. Kerr whether relevant information from the appellant's income tax records could be released to the Tribunal and the respondent. The witness for the respondent agreed that such information would be useful and agreed to review such records. The presiding member, thereafter, asked the appellant to secure such records within one week from the adjournment of the hearing.

The Tribunal was subsequently advised by the appellant that the last corporate return filed with Revenue Canada was in 1987 and that, therefore, it was unable to comply with the Tribunal's request.

In order to claim an FST inventory rebate, the appellant must show that goods held in inventory as of January 1, 1991, were tax-paid goods held at that time for taxable supply by way of, *inter alia*, sale to others in the ordinary course of business. Paragraph 120(4)(c) of the Act provides that the inventory of a person may be determined before or after January 1, 1991, "where the Minister is satisfied that the inventory system of the person is adequate to permit a reasonable determination of the person's inventory as of January 1, 1991." Subsection 120(5)

of the Act goes on to provide that the rebate payable in respect of a person's inventory as of January 1, 1991, "is ... the amount determined by a prescribed method." Such a method is prescribed in subparagraph 4(a)(iii) of the *Federal Sales Tax Inventory Rebate Regulations*³ which provides that, for the purposes of subsection 120(5) of the Act, the rebate in respect of a person's inventory is the value of the inventory, as that inventory "would be required to be determined at the beginning of January 1, 1991 for the purpose of computing the person's income from a business for the purposes of the *Income Tax Act*."

Subsection 230(1) of the *Income Tax Act*,⁴ in turn, requires that every person carrying on a business "shall keep records and books of account (including an annual inventory kept in prescribed manner) ... in such form and containing such information as will enable the taxes payable under this Act ... to be determined." Paragraph 230(4)(a) of the *Income Tax Act*⁵ goes on to require the retention of "every account and voucher necessary to verify the information contained" in the records and books of account.

Upon a review of the evidence, and in consideration of the requirements under the law with respect to the keeping of an inventory system for purposes of claiming an FST inventory rebate, the Tribunal finds that the appellant failed to provide an inventory system that was adequate to permit a reasonable determination of that person's inventory as of January 1, 1991, within the meaning of subsection 120(4) of the Act. Even if the Tribunal were to accept that the goods acquired by the appellant were tax-paid goods, in spite of the inconclusiveness of the evidence on this issue, the Tribunal would be unable to reconcile the purchase invoices with the records of sales and the year-end inventory in a manner that would substantiate the appellant's rebate application in whole or in part.

The Tribunal further observes that the amount claimed in the appellant's application for a rebate is in significant excess of what might have been substantiated on the basis of the evidence provided. While offered an opportunity to further substantiate its claim following the hearing, the appellant failed to do so.

For the foregoing reasons, the appeal is dismissed.

John C. Coleman
John C. Coleman
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

3. SOR/91-52, December 18, 1990, Canada Gazette Part II, Vol. 125, No. 2 at 265.

4. S.C. 1970-71-72, c. 63.

5. S.C. 1980-81-82-83, c. 102, s. 5(1).