



Ottawa, Tuesday, March 2, 1993

Appeal No. AP-92-061

IN THE MATTER OF an appeal heard on  
December 7, 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 May 29, 1992, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**NIFTY WARE LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

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

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-061**

**NIFTY WARE LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the appellant is entitled, under section 120 of the Excise Tax Act, to a rebate of federal sales tax paid on certain parts or components that it uses in the making of cookware and that it held in inventory on January 1, 1991.*

**HELD:** *The appeal is allowed. The Tribunal is of the view that the goods on which tax was paid and which were held in inventory on the appropriate date constitute "taxable supply" and, thus, qualify for the rebate.*

*Place of Hearing: Vancouver, British Columbia*

*Date of Hearing: December 7, 1992*

*Date of Decision: March 2, 1993*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Arthur B. Trudeau, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: Hugh J. Cheetham*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Guy Boileau, for the appellant  
Linda J. Wall, for the respondent*

**Appeal No. AP-92-061**

**NIFTY WARE LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ARTHUR B. TRUDEAU, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal made pursuant to section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act). The appellant is in the business of manufacturing and selling cookware, namely, baking pans. The appellant purchases parts consisting of rivets, tin plate, clips, patterns and dies, tool steel, inserts and packing bags, assembles them into finished goods and sells these goods to its customers. The goods in issue are parts or components purchased by the appellant and held in its inventory on January 1, 1991. Markups representing the federal sales tax (the FST) paid by the appellant's suppliers were paid by the appellant when the parts were purchased. The appellant was not a licensed manufacturer for FST purposes and was, at all material times, considered a small manufacturer for purposes of the Act.

On August 22, 1991, the appellant applied for an FST inventory rebate (the Rebate) in the amount of \$1,171.35 with respect to its tax-paid inventory held on January 1, 1991. On October 25, 1991, the Minister of National Revenue (the Minister) issued a notice of determination disallowing the application on the basis that some of the goods were held for further manufacture and were therefore not held for sale, lease or rental. On December 5, 1991, the Excise Appeals Directorate received a notice of objection from the appellant. On May 29, 1992, the Minister issued a notice of decision disallowing the objection and confirming the determination. Nifty Ware Ltd. appealed the determination to the Tribunal.

The issue in this appeal is whether the appellant is entitled, under section 120<sup>2</sup> of the Act, to the rebate with respect to those parts used in the making of the appellant's baking pans. More specifically, the Tribunal must determine whether the goods in issue qualify as tax-paid goods held in inventory on January 1, 1991, for taxable supply by way of sale to others in the ordinary course of the appellant's business.

When Parliament adopted the legislation establishing the Goods and Services Tax (the GST), it provided provisions in order to effect an orderly transition to the new system. One of the main transitional provisions relates to the refunding of FST on tax-paid inventory. Briefly, and for purposes of this appeal, upon filing a claim, the rebate is paid to a GST registrant that had tax-paid goods in inventory on January 1, 1991. "Inventory" includes items of tax-paid goods held in Canada for taxable supply by way of sale, lease or rental to others in the ordinary course of the person's business. "Tax-paid goods" include new goods acquired before 1991 that have not been previously written off in the accounting records of the person's business and in respect of which tax imposed under subsection 50(1) of the Act has been paid and is not

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

recoverable except under section 120 of the Act. "Taxable supply" means a supply that is made in the course of a commercial activity, but does not include an exempt supply. Finally, "supply" means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition.

At the hearing, counsel for the respondent acknowledged that her arguments in opposition to the appellant's eligibility for the rebate are similar to those expressed in *Techtouch Business Systems Ltd. v. The Minister of National Revenue*,<sup>3</sup> which were rejected by the Tribunal. As such, she indicated to the Tribunal that her instructions are, without consenting, not to oppose the appeal if the appellant's evidence confirmed that the appellant's business is similar to the business carried on in *Techtouch*, referenced above. Counsel for the respondent subsequently indicated that, minus the two items that the appellant deleted from its claim (see below), the appellant's business appears to be similar to that in *Techtouch* and thus, without consenting, the respondent is not opposing the appeal.

Mr. Guy Boileau, President of Nifty Ware Ltd., appeared on its behalf at the hearing. During cross-examination, Mr. Boileau confirmed that the goods in issue are ultimately used in making the appellant's baking pans. Under further questioning by the Tribunal, however, he indicated that the "Pattern & Dies" and "Tool Steel" listed in the appellant's application for the rebate are not used in making the final product. Mr. Boileau agreed that these two items should not have been included in the application.

In the Tribunal's view, those items set out in the appellant's rebate application, other than the "Pattern & Dies" and "Tool Steel," constitute tax-paid goods that are held for taxable supply by way of sale. As explained in *Techtouch*, the Tribunal interprets the phrase "held ... for taxable supply ... by way of sale, lease or rental" broadly to include tax-paid goods, such as these parts, that are inputs into finished goods that are taxable under the GST.

Accordingly, the appeal is allowed, and the case is returned to the Minister so that the appropriate amount of the rebate owing to the appellant can be calculated after removing the value attributable to "Pattern & Dies" and "Tool Steel."

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

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

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