CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, April 8, 1993

Appeal No. AP-91-240

IN THE MATTER OF an appeal heard on December 14, 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 January 10, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

NORTHWEST WHOLESALE CO. LTD. **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

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UNOFFICIAL SUMMARY

Appeal No. AP-91-240

NORTHWEST WHOLESALE CO. LTD. **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 dated April 19, 1991. The issue in this appeal is whether the appellant is eligible for a federal sales tax inventory rebate under section 120 of the Excise Tax Act in respect of "remanufactured golf carts" or, more specifically, whether the "remanufactured golf carts" constitute "tax-paid goods" held for taxable supply by way of sale, lease or rental within the meaning set out in section 120 of the Excise Tax Act.

HELD: *The appeal is allowed. The used golf carts and repair parts are "tax-paid goods" and, therefore, qualify for a federal sales tax inventory rebate under section 120 of the Excise Tax Act. Since the repair parts are new goods which are unused, the rebate with respect to these goods is to be calculated in accordance with subsection 120(5) of the Excise Tax Act and the prescribed tax factors set forth in section 3 of the Federal Sales Tax Inventory Rebate Regulations. The golf carts are used goods which are deemed, under paragraph 120(3)(b) of the Excise Tax Act, to be "used tangible personal property" supplied in Canada by way of sale for the purposes of section 176 of the Excise Tax Act and, therefore, qualify for an input tax credit in accordance with section 169 of the Excise Tax Act. (Member Trudeau also allows the appeal, but for different reasons, and concludes that the "remanufactured golf carts" made from "tax-paid goods" constitute tax-paid inventory held for taxable supply. Therefore, the goods in issue held in inventory on December 31, 1990, qualify for the federal sales tax inventory rebate.)*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*December 14, 1992*
Date of Decision:	*April 8, 1993*
Tribunal Members:	*Charles A. Gracey, Presiding Member* *John C. Coleman, Member* *Arthur B. Trudeau, Member*
Counsel for the Tribunal:	*Shelley Rowe*
Clerk of the Tribunal:	*Janet Rumball*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-240

NORTHWEST WHOLESALE CO. LTD. **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 under section 81.19 of the *Excise Tax Act*[1] (the Act) from a determination of the Minister of National Revenue dated April 19, 1991, disallowing $4,536 of the appellant's total claim for a federal sales tax (FST) inventory rebate under section 120 of the Act.[2] The issue in this appeal is whether the appellant is eligible for an FST inventory rebate under section 120 of the Act in respect of "remanufactured golf carts" or, more precisely, whether the "remanufactured golf carts" constitute "tax-paid goods" held for taxable supply by way of sale, lease or rental within the meaning set out in section 120 of the Act.

The Tribunal observes that the parties filed an agreed statement of facts on July 23, 1992, and asked the Tribunal to proceed on the basis of written documentation before it in accordance with Rule 25 of the *Canadian International Trade Tribunal Rules*.[3] As established in the agreed statement of facts, the goods in issue are "remanufactured golf carts" held in inventory by the appellant on January 1, 1991. The "remanufactured golf carts" are composed of used golf carts and repair parts which were purchased by the appellant and on which the appellant paid FST. The appellant subsequently reconditioned the used golf carts by repairing and replacing parts, thereby creating "remanufactured golf carts."

The appellant argued that the definition of "tax-paid goods" in the Act does not require that the goods qualifying for the FST inventory rebate have the same form, qualities or properties as they had at the time that they were purchased when the FST was imposed under subsection 50(1) of the Act. Therefore, even though the used golf carts and repair parts were used to produce "remanufactured golf carts," they continue to be "tax-paid goods," and, accordingly, the "remanufactured golf carts" are "tax-paid goods."

In the respondent's view, the "remanufactured golf carts" are not "tax-paid goods," as they are defined under section 120 of the Act, and do not, therefore, qualify for an FST inventory rebate. The respondent recognized the fact that FST had been paid in respect of the purchases of the used golf carts and repair parts. However, the respondent submitted that, when the used golf carts and repair parts and components were subsequently used to produce the "remanufactured golf carts," they were given new forms and qualities and, therefore, became distinct from the goods on which FST had been paid. Further, the respondent argued that the "remanufactured golf carts" were produced and not acquired by the appellant, and, as such, no tax had been imposed or paid on the "remanufactured golf carts."

The Tribunal has consistently dismissed, as being too narrow, the arguments of the

1. R.S.C. 1985, c. E-15.
2. S.C. 1990, c. 45, s. 12.
3. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

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Department of National Revenue that finished products, which are produced from FST-paid materials or components and held in inventory, do not qualify for an FST inventory rebate because the finished goods are not, themselves, "tax-paid goods." The Tribunal has determined that the fact that FST-paid components are used for further manufacture or production does not alter the fact that the original components or materials are FST-paid.

Having found that the FST-paid components or materials incorporated into finished products continue to be "tax-paid goods" within the meaning of section 120 of the Act and, therefore, qualify for the FST inventory rebate, it must be further determined whether the FST inventory rebate should be calculated on the value of the FST-paid components or materials, or on the value of the finished products. The majority of the Tribunal agrees[4] with the decision reached in *Archer's Signs & Trophies v. The Minister of National Revenue*[5] where it was stated that "finished goods in inventory do not constitute 'tax-paid goods' under the Act," that FST was not paid on the finished products, only on the components that comprise the finished products, and that an FST inventory rebate is not to be calculated on the value of such finished products.

In applying this approach to the goods in issue, the Tribunal finds that the "tax-paid goods" are the used golf carts and the repair parts, and not the "remanufactured golf carts." The FST inventory rebate should, therefore, be calculated on the value of the used golf carts and the repair parts, respectively. Since the repair parts are "new goods which are unused," the FST inventory rebate in respect of the repair parts should be calculated in accordance with subsection 120(5) of the Act, which provides that "the rebate payable to a person in respect of the person's inventory ... is ... the amount determined by a prescribed method using prescribed tax factors." The prescribed tax factors are set forth in section 3 of the *Federal Sales Tax Inventory Rebate Regulations*.[6] Since the golf carts are "used goods," the FST inventory rebate in respect of the golf carts should be calculated in accordance with paragraph 120(3)(*b*) of the Act, which deems that used goods held in inventory are "used tangible personal property" supplied in Canada by way of sale for the purposes of section 176 of the Act and, therefore, qualify for an input tax credit in accordance with section 169 of the Act.[7]

The appeal is allowed. The Tribunal returns the matter to the respondent to determine the value of the FST inventory rebate based upon the value of the FST-paid used golf carts and repair parts.

Charles A. Gracey
Charles A. Gracey
Presiding Member

John C. Coleman
John C. Coleman
Member

4. Member Trudeau does not share this view.
5. Appeal No. AP-91-261, February 1, 1993./
6. SOR/91-52, December 18, 1990, Canada Gazette Part II, Vol. 125, No. 2 at 265.
7. *Queensbury Video v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-260, November 19, 1992.

SEPARATE REASONS OF MEMBER TRUDEAU

I am in agreement with my colleagues that the appellant is eligible for an FST inventory rebate under section 120 of the Act. However, I arrive at this conclusion for different reasons. I consider the "remanufactured golf carts" to be "tax-paid goods" by virtue of the fact that they were made entirely from tax-paid components, namely, the used golf carts and the new repair parts. Therefore, the FST inventory rebate should be calculated on the appropriate inventory value of the "remanufactured golf carts."

The definition of "tax-paid goods" under subsection 120(1) of the Act reads as follows:

> *[G]oods, acquired before 1991 by a person, that have not been previously written off in the accounting records of the person's business for the purposes of the Income Tax Act and that are, as of the beginning of January 1, 1991,*
>
> *(a) new goods that are unused,*
>
> *(b) remanufactured or rebuilt goods that are unused in their condition as remanufactured or rebuilt goods, or*
>
> *(c) used goods*
>
> *and in respect of which tax imposed under subsection 50(1) (other than tax paid by the person under subparagraph 50(1)(a)(ii)) has been paid and is not, but for this section, recoverable.*

The "remanufactured golf carts" fall under paragraph (*b*) of the definition of "tax-paid goods." Since they were acquired before 1991, they were not previously written off for income tax purposes, and they were, as of January 1, 1991, "remanufactured golf carts" which were unused in their condition as remanufactured, as established in the agreed statement of facts.

I cannot agree with my colleagues that it is open to the Tribunal to disregard the fact (as agreed to by the parties) that on December 31, 1990, the goods in issue were "remanufactured golf carts." The goods were no longer used golf carts or repair parts thereof, as they had been transformed into something else, i.e. "remanufactured golf carts" which were held in inventory and ready for sale. Further, I rely on the reasoning in the recent decision of the Tribunal in *J. & D. Trophies & Engraving v. The Minister of National Revenue*[8] and find that, since FST was paid with respect to the purchases of the used golf carts and repair parts, the "remanufactured golf carts" which were made from the used golf carts and repair parts constitute "tax-paid goods" within the definition under section 120 of the Act. I would therefore allow the appeal and find that the appellant is eligible for an FST inventory rebate calculated on the value of the "remanufactured golf carts."

Arthur B. Trudeau
Arthur B. Trudeau
Member

8. Appeal No. AP-91-213, January 26, 1993.