CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, March 19, 1993

Appeal No. AP-92-002

IN THE MATTER OF an appeal heard on October 19, 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 March 20, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

P.R.E.P. CONSULTING LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-92-002

P.R.E.P. CONSULTING LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the appellant is entitled, under subsection 120(3) of the Excise Tax Act, to a federal sales tax inventory rebate in respect of the components of golf clubs, including heads, shafts and grips, and finished golf clubs made from tax-paid components. Specifically, the Tribunal must determine whether the goods 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.

HELD: *The Tribunal believes that the goods held by the appellant, which may be subject to further manufacture or which represent inputs into the manufacture of goods, still constitute "taxable supply" and that the rebate should be allowed in respect of these goods. Similarly, with regard to any finished goods in inventory, a majority of the Tribunal recognizes that they constitute "tax-paid goods" insofar as tax was paid on the components that comprise them. Consequently, the appellant is entitled to a rebate of the tax paid on finished goods held in inventory for sale, which were produced from tax-paid components.*

Subsection 120(3) of the Excise Tax Act refers to the status of the goods on January 1, 1991. The respondent denied the appellant part of the rebate for which it applied on the grounds that the goods did not meet the definition of the word "inventory" in that they were not "held ... for taxable supply ... by way of sale, lease or rental." However, the uncontroverted evidence of the appellant was that on January 1, 1991, it held the goods for purposes of sale. Accordingly, such goods can be viewed as being in inventory on January 1, 1991. The appellant is eligible for a rebate in respect of these goods.

Place of Hearing:	*Edmonton, Alberta*
Date of Hearing:	*October 19, 1992*
Date of Decision:	*March 19, 1993*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Sidney A. Fraleigh, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*Richard S. McKenzie, for the appellant* *Linda J. Wall, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-002

P.R.E.P. CONSULTING LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
SIDNEY A. FRALEIGH, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of a determination of the Minister of National Revenue (the Minister) disallowing, in part, the appellant's application for a federal sales tax (FST) inventory rebate in the amount of $2,034.72. The respondent paid the appellant a rebate of $610.42 plus interest of $4.25 in respect of goods such as golf balls and golf bags. The remaining amount of $1,424.30, which was claimed in respect of components of golf clubs, including heads, shafts and grips, was disallowed. In response to the appellant's objection, the Minister's decision indicated that the rebate was denied as those goods did "not come within the rebate program because they are seen to be held for further manufacture into golf clubs, and not for 'taxable supply by way of sale'."

The appellant's business is comprised of several activities. It provides golf lessons, makes and repairs golf clubs, as well as sells golf paraphernalia such as golf balls, bags and the components of golf clubs, including heads, shafts and grips. As a small manufacturer under the Act, the appellant was not required to hold a licence for purposes of Part VI of the Act, being the consumption or sales tax provisions. Accordingly, it had to pay tax on its purchases or imports of material inputs, but was exempt from the payment of consumption or sales tax on the goods it manufactured or produced. The appellant's witness, Mr. Richard S. McKenzie, who is President of the appellant company, testified that the goods in issue, being golf heads, shafts and grips, were imported, at which time tax under section 50 of the Act was paid.

The issue in this appeal is whether the appellant is entitled, under subsection 120(3) of the Act,[2] to a FST inventory rebate in respect of the goods in issue. Specifically, the Tribunal must determine whether the goods 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.

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

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For purposes of this appeal, the relevant rebate provisions of the Act are found in paragraph 120(3)(*a*), which states:

> *(3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,*
>
> *(a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8).*

Mr. McKenzie testified that all the goods in issue were held in inventory for sale as individual items. He acknowledged that while some of the components were sold as is, others were manufactured into golf clubs for sale or used in the repair of golf clubs owned by customers.

Counsel for the respondent argued that the Minister shall pay a rebate to any person who, as of January 1, 1991, had any new, unused tax-paid goods in inventory. To be considered inventory, goods must be held for the purpose of sale, lease or rental to others in the ordinary course of business. Goods that are to be used in the performance of contracts for work, labour and materials, such as those involving the repair or replacement of component parts, are held for the purpose of providing a service, and not for the purpose of sale. Counsel argued that as the golf club heads, shafts and grips were used by the appellant either as materials for the production of articles or for the performance of service contracts, they were not held for the purpose of being sold to others in the ordinary course of the appellant's business. Counsel clarified that if the appellant could establish that the goods were sold as goods, albeit as part of a service contract, it would be eligible for the rebate. At the hearing, it was acknowledged that tax was paid on the goods and that they were being held in inventory by the appellant on January 1, 1991.

At the hearing, counsel for the respondent acknowledged that her other arguments in opposition to the appellant's eligibility to the rebate were similar to those expressed in a recent appeal,[3] which were rejected by the Tribunal. As such, she instructed the Tribunal that the respondent, without consenting, was not opposing the appeal on these grounds.

In the *Techtouch* appeal, counsel for the respondent admitted that the components in issue were tax-paid goods within the meaning of section 120 of the Act. However, relying upon the definition of the word "inventory" in section 120, which refers to "tax-paid goods that are described in the person's inventory in Canada at that time and that are ... held at that time for taxable supply ... by way of sale, lease or rental," counsel contended that components for which the rebate was claimed were used in the manufacture or production of finished goods rather than for the provision of a taxable supply.

Contrary to the position of the respondent, the Tribunal believes that goods held by the appellant, which may be subject to further manufacture or which represent inputs into the manufacture of goods, still constitute "taxable supply" and that the rebate should be allowed in respect of these goods. Similarly, with regard to any finished goods in inventory, a majority of

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3. *Techtouch Business Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.

the Tribunal recognizes that they constitute "tax-paid goods" insofar as tax was paid on the components that comprise them. Consequently, the appellant is entitled to a rebate of the tax paid on finished goods held in inventory for sale, which were produced from tax-paid goods.[4]

Nor can the Tribunal accept that the appellant is not entitled to the rebate in respect of goods that might ultimately be sold as part of a contract in which services were provided. To paraphrase subsection 120(3) of the Act for purposes of this argument, the Minister shall pay a person a rebate of tax where that person, as of January 1, 1991, has any tax-paid goods in inventory at the beginning of that day. Section 120 of the Act refers to the status of the goods in issue on January 1, 1991. The respondent denied the appellant part of the rebate for which it applied on the grounds that the goods did not meet the definition of the word "inventory" in that they were not "held ... for taxable supply ... by way of sale, lease or rental." However, the uncontroverted evidence of the appellant was that on January 1, 1991, it held the goods for purposes of sale, be they ultimately sold as is or as part of a contract in which services were also provided. Accordingly, such goods can be viewed as being in inventory on January 1, 1991. The appellant is entitled to a rebate in respect of these goods.

For the foregoing reasons, the appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

PARTIAL DISSENT OF MEMBER FRALEIGH

I am in complete agreement with the majority except that I would only have allowed a rebate of tax based on the value of the tax-paid components of the finished products held in inventory, and not on the value of the finished products themselves.[5]

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

4. *Ibid.* and *J. & D. Trophies & Engraving v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-213, January 26, 1993.
5. *A.J.V. Tools Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-229, December 16, 1992.