



Ottawa, Monday, May 10, 1993

Appeal No. AP-92-050

IN THE MATTER OF an appeal heard on
November 30, 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 June 12, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

C.M.C.A. LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

John C. Coleman
John C. Coleman
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-050

C.M.C.A. LIMITED

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. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate under section 120 of the Excise Tax Act in respect of photocopy supplies and consumable parts. In particular, it must be determined whether the goods for which the federal sales tax inventory rebate is claimed were held in inventory and whether they were held for sale within the meaning of section 120 of the Excise Tax Act.

HELD: *The appeal is allowed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 30, 1992
Date of Decision: May 10, 1993

Tribunal Members: John C. Coleman, Presiding Member
Kathleen E. Macmillan, Member
Sidney A. Fraleigh, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Janet Rumball

Appearance: Malcolm Bayne, for the appellant

Appeal No. AP-92-050

C.M.C.A. LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, 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 (the Minister). The issue in this appeal is whether the appellant is entitled to a federal sales tax (FST) inventory rebate under section 120 of the Act in respect of photocopy supplies and consumable parts. In particular, it must be determined whether the goods for which the FST inventory rebate is claimed were held in inventory and whether they were held for sale within the meaning of section 120 of the Act.²

The appellant filed its application for an FST inventory rebate on April 9, 1991, in the amount of \$23,670.00. By notice of determination dated April 23, 1991, the respondent disallowed \$22,486.50 of the FST inventory rebate claimed, which the appellant appealed in its notice of objection dated May 24, 1991. In a notice of decision confirming the determination, the Minister focussed on the requirement that, in order to qualify for the FST inventory rebate, the goods in inventory must be held "for taxable supply ... by way of sale, lease or rental to others in the ordinary course of the person's business." In the Minister's view, the goods held in inventory were not held for sale, lease or rental, rather, they were held for use in the provision of a photocopier repair and maintenance service.

Since the respondent did not file a brief and did not appear at the hearing, the Tribunal proceeded to hear the appellant's evidence and argument as presented by Mr. Malcolm Bayne, Chief Executive Officer of C.M.C.A. Limited.

Mr. Bayne explained that, of the total amount of the FST inventory rebate claimed, the Minister had allowed only \$1,183.50, plus interest of \$22.83, for a total of \$1,206.33. Mr. Bayne suggested that this amount was the Minister's estimate of the value of sales made by the appellant directly from its premises or over the counter. He described the goods in issue as being consumables relating to photocopiers excluding paper, for example, fluids, toner, developer, heat rollers and drums (supplies). These supplies were recorded as being held in the appellant's inventory, although their physical location was at any one of three places, namely, in-house, at the customer's office or in the customer's machine.

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

Mr. Bayne described the procedure for removal of the supplies from inventory and the form of payment. The supplies are removed from inventory when required by the customer, and payment is based upon meter readings. The appellant contacts the customer at various intervals, depending on the customer's level of use, to determine how many copies the customer has made. The customer is then billed on a per-copy basis, which is a pre-determined rate intended to take into account the projected use of supplies, use of other parts and labour. The parts and labour components of this cost-per-copy charge are not the subject of this appeal.

Focussing on the inventory, Mr. Bayne explained that, for income tax purposes, the appellant's calculation of inventory included the unused supplies held in customers' machines and at customers' premises, as well as the unused supplies held in-house. The amount of \$23,670.00 requested in the application for an FST inventory rebate was equal to the figure for supplies in inventory recorded in the appellant's financial statements for the purpose of filing income tax returns.

The Tribunal notes the word "inventory" is defined as follows in subsection 120(1) of the Act:

"inventory" of a person as of any time means items of tax-paid goods that are described in the person's inventory in Canada at that time and that are
(a) held at that time for taxable supply (within the meaning assigned by subsection 123(1)) by way of sale, lease or rental to others in the ordinary course of the person's business.

The Tribunal must decide, therefore, whether the goods are: (1) tax-paid goods; (2) described in inventory; and (3) held for taxable supply by way of sale, lease or rental.

With respect to the first criterion, the Tribunal finds, based on the appellant's evidence, that the supplies were tax-paid goods acquired before 1991, not previously written off, and that they were new goods in respect of which FST imposed under subsection 50(1) of the Act had been paid.

The Tribunal also finds that the supplies were described in the appellant's inventory. In his testimony, Mr. Bayne explained that the value of the inventory on which the FST inventory rebate was based was taken from the appellant's financial statements. The figure for supplies in the financial statements included the inventory held in customers' machines, at customers' premises and at the appellant's own premises, and had been reported and accepted for income tax purposes.

The Tribunal is satisfied that the FST inventory rebate claimed by the appellant excludes any claims for labour, services or replacement parts. Rather, it is based on a calculation of inventory done in preparing the appellant's financial statements for income tax purposes. It was the appellant's contention that, in dealing with its tax return, the Department of National Revenue made no distinction between inventory located at the appellant's premises and inventory located at its customers' premises. Accordingly, and for the reasons explained above, the Tribunal accepts that inventory can be located at both the appellant's and its customers' premises.

Finally, the Tribunal finds that the appellant held the goods in inventory for taxable supply by way of sale. It is true that much of the appellant's inventory was located at its customers' premises and in its customers' photocopiers. It is also true that individual sales of

particular supplies cannot be precisely identified. Rather, the appellant periodically billed its customers on a per-copy basis. According to the testimony of the appellant's representative, which the Tribunal finds reliable, it is common industry practice for a photocopy supply firm to structure its inventory and billing in the manner followed by the appellant. Under such arrangements, the consumable supplies remain under the control and ownership of the photocopy supply firm until they are used by the client and paid at a later date.

Accordingly, the appeal is allowed, and the appellant is entitled to an FST inventory rebate in respect of the supplies.

John C. Coleman

John C. Coleman
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member