

Ottawa, Tuesday, December 14, 1993

Appeal No. AP-92-086

IN THE MATTER OF an appeal heard on January 12, 1993,  
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 17, 1992, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**W.G. ABRAMS CONSTRUCTION SPECIALTIES LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

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

Desmond Hallissey  
Desmond Hallissey  
Member

Lise Bergeron  
Lise Bergeron  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-086**

**W.G. ABRAMS CONSTRUCTION SPECIALTIES LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant, which is involved in the business of refurbishing metal cabinets and office equipment, applied for a federal sales tax inventory rebate pursuant to section 120 of the Excise Tax Act. The goods held in inventory were various kinds of paints and chemical additives. The issue is whether these goods, used in painting the furniture and office equipment, are goods that qualify for a federal sales tax inventory rebate.*

**HELD:** *The appeal is dismissed. These goods were actually used for providing a service to the clientele. The Tribunal concludes that the goods in issue do not satisfy the conditions set out in section 120 of the Excise Tax Act to qualify for the federal sales tax inventory rebate.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: January 12, 1993*  
*Date of Decision: December 14, 1993*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member*  
*Desmond Hallissey, Member*  
*Lise Bergeron, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Janet Rumball*

**Appeal No. AP-92-086**

**W.G. ABRAMS CONSTRUCTION SPECIALTIES LTD.** **Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE** **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
DESMOND HALLISSEY, Member  
LISE BERGERON, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act).

In a decision dated June 17, 1992, the respondent disallowed the appellant's objection to the notice of determination dated September 30, 1991. The respondent disallowed the appellant's application for a federal sales tax (FST) inventory rebate in the amount of \$789.78.

The appellant is involved in the business of refurbishing metal cabinets and office equipment. The goods in issue, held in the appellant's inventory, were epoxy paints, tint paints, acrylic paint, paint catalyst and chemical additives.

The issue in this appeal is whether these goods, used in painting and refurbishing furniture and office equipment, are considered to be goods that are unused and held for taxable supply by way of sale, lease or rental in the ordinary course of the appellant's business and, therefore, qualify for an FST inventory rebate pursuant to section 120 of the Act.<sup>2</sup>

In light of the appellant's decision not to appear at the scheduled hearing, this case was decided on the basis of the written documentation.

In essence, the appellant claimed that it was misinformed by various officials in the Department of National Revenue (Revenue Canada) in relation to the matter at hand.

Counsel for the respondent submitted that the goods in issue do not qualify for the FST inventory rebate under section 120 of the Act and the relevant regulations. Section 120 of the Act provides for a rebate on any tax-paid inventory of goods held on January 1, 1991, where the goods are for "sale, lease or rental to others in the ordinary course of the person's business." Although acknowledging that the goods in issue were described in the appellant's inventory, counsel for the respondent contended that these goods were not held for taxable supply by way of sale, lease or rental, but were consumed in the performance of a service contract with various customers. He further argued that the appellant's contracts for refurbishing furniture are typically contracts for work and material, and there is no sale of goods. As to the issue of

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1. R.S.C. 1985, c. E-15.

2. S.C. 1990, c. 45, s. 12.

representations made to the appellant, counsel for the respondent contended that the respondent is not bound by interpretations given to taxpayers by officials of Revenue Canada, if such interpretations or representations are contrary to the clear provisions of the law.

Having reviewed the file, and taking into account the fact that the appellant did not adduce any evidence in support of its case, the Tribunal is of the view that the appeal must be dismissed. The Tribunal agrees with counsel for the respondent that the goods in issue, various kinds of paint, were not held for taxable supply by way of sale, lease or rental, but were rather consumed in the performance of a service contract with various customers. As put by the appellant in its notice of objection, these materials or goods are "used in a job." Thus, these goods were actually used for providing a service to the clientele. The Tribunal concludes that the goods in issue do not satisfy the conditions set out in section 120 of the Act to qualify for the FST inventory rebate. As to the alleged misinformation of the appellant, the Tribunal also agrees with the position stated by counsel for the respondent. Finally, the Tribunal wishes to point out that it does not have jurisdiction to apply principles of equity and that it must apply the law as it stands.

In light of the foregoing, the appeal is dismissed.

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

Desmond Hallissey  
Desmond Hallissey  
Member

Lise Bergeron  
Lise Bergeron  
Member