

Ottawa, Thursday, July 22, 1993

Appeal No. AP-92-133

IN THE MATTER OF an appeal heard on April 26, 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 August 21, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

CENTURY INTERNATIONAL ARMS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding member

John C. Coleman
John C. Coleman
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-133

CENTURY INTERNATIONAL ARMS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

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. The Tribunal must determine whether the tax-paid imported weapons which were used prior to their importation into Canada are, for purposes of this provision, tax-paid "new goods that are unused," as claimed by the appellant, or tax-paid "used goods," as claimed by the respondent.

***HELD:** The appeal is dismissed. The goods in issue are used goods. The tax-paid weapons imported by the appellant were entitled solely to the notional input tax credit under paragraph 120(3)(a) and section 176 of the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: April 26, 1993

Date of Decision: July 22, 1993

*Tribunal Members: W. Roy Hines, Presiding Member
John C. Coleman, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

*Appearances: Ralph Brookman, for the appellant
Stéphane Lilkoff, for the respondent*

Appeal No. AP-92-133

CENTURY INTERNATIONAL ARMS LTD.

Appellant

and

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TRIBUNAL: W. ROY HINES, Presiding Member
JOHN C. COLEMAN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act). 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.² More specifically, the Tribunal must determine whether the tax-paid imported weapons which were used prior to their importation into Canada are, for purposes of section 120 of the Act, tax-paid "new goods that are unused," as claimed by the appellant, or tax-paid "used goods," as claimed by the respondent.

Mr. Ralph Brookman, Comptroller for Century International Arms Ltd. (Century), first entered as exhibits A-1 and A-2 the English and French versions of the appellant's 1993 catalogue, respectively. He then described the activities of Century. The appellant is in the business of purchasing small arms, rifles and handguns. These weapons are purchased mostly from foreign governments (e.g. Russia, India) and are subsequently distributed to individuals and wholesalers throughout Canada. According to Mr. Brookman, most of the merchandise purchased was manufactured between the late 1800s and World War II. In essence, the appellant deals with used merchandise. Mr. Brookman was of the view that the appellant should be treated in the same way as companies which import or manufacture new merchandise never used in Canada. He argued that the imported merchandise was never "used in Canada;" consequently, this merchandise should qualify for the FST inventory rebate.

In essence, counsel for the respondent argued that, under section 120 of the Act, used goods do not qualify for the FST inventory rebate. Rather, such goods qualify for the notional input tax credit provided for in section 176 of the Act. The notional input tax credit is approximately 3.3 percent of the value of the inventory of used goods on January 1, 1991, as it would have been determined at that time for income tax purposes.

Having reviewed the file and considered the arguments, the Tribunal is of the view that the appeal must be dismissed. First, there is no doubt that the goods in issue are used goods. In such cases, paragraph 120(3)(a) of the Act is applicable. It must be noted that the legislation does not make any distinction between used goods, as to whether they have been used domestically or elsewhere in the world. Thus, the tax-paid weapons imported by the appellant

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

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

were entitled solely to the notional input tax credit under paragraph 120(3)(a) and section 176 of the Act. The Tribunal agrees with counsel for the respondent that the law is unambiguous. Although the Tribunal may sympathize with the appellant, it has no jurisdiction to decide on matters dealing with equity and must apply the law as it stands.

For the foregoing reasons, the appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding member

John C. Coleman
John C. Coleman
Member

Desmond Hallissey
Desmond Hallissey
Member