



Ottawa, Wednesday, November 10, 1993

Appeal No. AP-92-219

IN THE MATTER OF an appeal heard on April 27, 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 27, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

TRACOM LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey

Desmond Hallissey
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Charles A. Gracey

Charles A. Gracey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-219

TRACOM LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled to the benefit of a federal sales tax inventory rebate under section 120 of the Excise Tax Act in respect of various goods such as certain electronic parts, a yacht and motor vehicles.

HELD: *The appeal is dismissed. With respect to the electronic goods, the Tribunal agrees with counsel for the respondent that these goods do not come within the meaning of "tax-paid goods" as set out in subsection 120(1) of the Excise Tax Act. The used cars and the yacht do not qualify for the federal sales tax inventory rebate. The motor vehicles held in inventory were used goods. Used goods, under subsection 120(3) of the Excise Tax Act, qualify solely for a notional input tax credit under section 176 of the Excise Tax Act. As to the yacht, the Tribunal agrees with counsel for the respondent that it did not constitute tax-paid goods in inventory within the meaning of section 120 of the Excise Tax Act.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: April 27, 1993
Date of Decision: November 10, 1993*

*Tribunal Members: Desmond Hallissey, Presiding Member
W. Roy Hines, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

*Appearances: A.T. Peterson, for the appellant
Ann Turley, for the respondent*

Appeal No. AP-92-219

TRACOM LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, 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 appellant, a licensed wholesaler, applied for a federal sales tax (FST) inventory rebate in the amount of \$17,158.31 in respect of certain electronic parts, a yacht and motor vehicles. By notice of determination dated October 31, 1991, the respondent disallowed the application. This determination was subsequently confirmed by a notice of decision dated August 27, 1992.

The issue in this appeal is to determine whether the appellant is entitled to the benefit of an FST inventory rebate under section 120 of the Act² in respect of the goods in issue.

Mr. A.T. Peterson, who represented the appellant, gave evidence on its behalf. As he explained to the Tribunal, the appellant became involved in the business of selling diversified goods - electronic parts, vehicles (used cars and boats), men's clothing and, finally, oil and lubricants. He told the Tribunal that, when the appellant obtained the wholesaler licence, it was not advised by the Department of National Revenue that the goods could be bought tax-exempt. Mr. Peterson also contended that the appellant was never advised of the two-year limitation period imposed by the Act with respect to FST paid in error.

During cross-examination, Mr. Peterson reiterated that the appellant was never told that it could buy the goods FST-exempt. In his view, this beneficial treatment was solely applicable to the oil and lubricants. Mr. Peterson told the Tribunal that he had once mentioned the appellant's licence to a supplier, but that this was to no avail, given the necessary paperwork. With respect to the used yacht imported from the United States, Mr. Peterson characterized the transaction as a "one-shot deal." As to the cars in issue, he informed the Tribunal that the 1983 Cadillac and the 1984 Toyota were part of a shipment of used cars also imported from the United States.

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

In argument, Mr. Peterson essentially told the Tribunal that his lack of knowledge may have led him to commit an error vis-à-vis the tax legislation. However, he argued that, in his view, the appellant did not have to pay tax twice on the same goods.

With respect to the electronic goods, counsel for the respondent contended that these goods do not qualify for the FST inventory rebate since they do not meet the definitional criteria of "tax-paid goods" as set out in subsection 120(1) of the Act. To qualify as "tax-paid," they must, *inter alia*, be goods in respect of which the FST imposed under section 50 of the Act has been paid and, but for section 120 of the Act, is not recoverable. She argued that the electronic goods were not goods in respect of which the FST was imposed since, under subsection 50(5) of the Act, goods purchased by a licensed wholesaler for resale, whether imported or purchased domestically, were FST-exempt. In addition, if tax was paid in error by the appellant in respect of the electronic goods, such tax was recoverable under a provision other than section 120 of the Act, namely, under section 68. In her view, the requirements necessary for the application of section 120 have not been satisfied.

As to the yacht, counsel for the respondent argued that it did not constitute tax-paid goods in inventory. She pointed out that the definition given in section 120 of the Act specifically excludes capital properties. She submitted that the yacht was a capital property. In this connection, she underlined Mr. Peterson's statement, indicating that the yacht appeared on the appellant's balance sheet as a capital item. Counsel for the respondent further contended that the yacht does not fall within the definition of "inventory" because it was not held on January 1, 1991, for taxable supply by way of sale, lease or rental in the ordinary course of the appellant's business. As she noted, the yacht was a "one-shot deal." Finally, on the basis of subsection 120(3) of the Act, she argued that the yacht, since it constitutes used goods, does not qualify for the FST inventory rebate. This last point was also made with respect to the 1983 Cadillac and the 1984 Toyota.

Having reviewed the evidence and considered the arguments, the Tribunal is of the opinion that the appeal must be dismissed. With respect to the electronic goods, the Tribunal agrees with counsel for the respondent that these goods do not come within the meaning of "tax-paid goods" as set out in subsection 120(1) of the Act. These were not goods in respect of which FST was imposed under subsection 50(1) of the Act. Under subsection 50(5) of the Act, no FST should have been paid by the appellant in respect of these electronic goods. Given the fact that the FST was thus paid in error, the appellant could have availed itself of section 68 of the Act and asked to be refunded the monies paid.

The used cars and the yacht do not qualify for the FST rebate. The Cadillac and the Toyota held in inventory were used goods. Used goods, under subsection 120(3) of the Act, qualify solely for a notional input tax credit under section 176 of the Act. As to the yacht, the Tribunal agrees with counsel for the respondent that it did not constitute tax-paid goods in inventory within the meaning of section 120 of the Act. Bought in 1990, this yacht was considered by the appellant as a capital item and appeared as such on the appellant's balance sheet until it was finally sold. Mr. Peterson, President of Tracom Ltd., is a very experienced businessman, having been in the import business for more than 25 years. Therefore, the Tribunal has no reason to doubt that the accounting characterization of the yacht was the proper one. As underlined by counsel for the respondent, the Act provides that capital properties are not tax-paid goods in inventory. Since this is the case, the yacht does not qualify for the FST inventory rebate.

For the foregoing reasons, the appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member