

Ottawa, Wednesday, April 17, 1996

Appeal No. AP-92-199

IN THE MATTER OF an appeal heard on February 5, 1996,
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 December 24, 1991, with respect to a
notice of objection served under section 81.17 of the *Excise Tax
Act*.

BETWEEN

CODISPOTI'S CREATIVE JEWELRY CO. LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-199

CODISPOTT'S CREATIVE JEWELRY CO. LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of a determination dated March 1, 1991, in which it was found that the appellant was not entitled to a federal sales tax (FST) inventory rebate in the amount of \$2,333.53 in respect of inventory held on January 1, 1991. The inventory was comprised of jewellery and jewellery inputs. The appellant was given a rebate in the amount of \$233.39 in respect of that portion of the inventory which represented finished jewellery held for sale in the same condition. However, that portion of the rebate application relating to jewellery inputs used by the appellant to manufacture jewellery, as well as the finished jewellery that had been manufactured by the appellant, was rejected. The issue in this appeal is whether the appellant is entitled to the full rebate claimed.

***HELD:** The appeal is dismissed. The Tribunal observes that it is undisputed, based on the submissions in the appellant's brief and the evidence of the appellant's witness, that the appellant's business is comprised of sales, repairs and the manufacture of jewellery. In the Tribunal's view, only the jewellery that was held for sale in the same condition as acquired was held for sale, separately, in the ordinary course of the appellant's commercial activities and, therefore, qualifies for an FST inventory rebate. The jewellery inputs held in inventory by the appellant for the purpose of repairing or manufacturing jewellery were held for consumption or use by the appellant and were not, therefore, held for sale, lease or rental, separately. Moreover, the jewellery inputs that had already been consumed or used by the appellant to manufacture finished jewellery and which were held in inventory as finished jewellery do not qualify for an FST inventory rebate, as they were also not held for sale, separately. In addition, the appellant had not paid FST on the sale price or the volume sold of the finished jewellery.*

Having determined that only the jewellery held in the appellant's inventory for sale in the same condition as acquired qualifies for an FST inventory rebate, the Tribunal must further determine what portion of the inventory in issue was comprised of jewellery held for sale in this manner. The Tribunal accepts the results of the audit that show that 10 percent of the jewellery held in the appellant's inventory was held for sale in this manner and finds that the respondent correctly determined that the appellant was only entitled to 10 percent of the total amount claimed in its FST inventory rebate application, which amount was paid to the appellant.

*Place of Hearing: Vancouver, British Columbia
Date of Hearing: February 5, 1996
Date of Decision: April 17, 1996*

Tribunal Members: *Raynald Guay, Presiding Member*
 Arthur B. Trudeau, Member
 Desmond Hallissey, Member

Counsel for the Tribunal: *Shelley Rowe*

Clerk of the Tribunal: *Anne Jamieson*

Parties: *Stanley J. Dosman, for the appellant*
 Josephine A.L. Palumbo, for the respondent

Appeal No. AP-92-199

CODISPOTI'S CREATIVE JEWELRY CO. LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding Member
ARTHUR B. TRUDEAU, 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 dated March 1, 1991, in which it was found that the appellant was not entitled to a federal sales tax (FST) inventory rebate in the amount of \$2,333.53 in respect of inventory held on January 1, 1991. The inventory was comprised of jewellery and jewellery inputs. The appellant was given a rebate in the amount of \$233.39 in respect of that portion of the inventory which represented finished jewellery held for sale in the same condition. However, that portion of the rebate application relating to jewellery inputs used by the appellant to manufacture jewellery, as well as the finished jewellery that had been manufactured by the appellant, was rejected. The issue in this appeal is whether the appellant is entitled to the full rebate claimed.

The appellant's representative did not appear at the hearing, but did file a brief with the Tribunal. The Tribunal, therefore, proceeded to consider the submissions in the brief and to give them the appropriate weight in accordance with rule 22 of the *Canadian International Trade Tribunal Rules*.²

The appellant's brief provides that the appellant is a small manufacturer carrying on the business of repairing, manufacturing and selling jewellery. The respondent's brief provides further that the appellant purchases finished goods and partly manufactured goods, consisting of rings, ring casings, stones, necklaces, unfinished bracelets and chains, earrings and other assorted jewellery, further manufactures the partly manufactured goods into new goods and sells these new goods.

The dispute between the appellant and the respondent is whether the inventory constitutes "tax-paid goods" held "at that time for sale, lease or rental separately ... to others in the ordinary course of a commercial activity of the person," as required under section 120 of the Act,³ in order for goods to qualify for an FST inventory rebate. The following are the relevant provisions of section 120 of the Act for the purposes of this appeal:

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1. R.S.C. 1985, c. E-15.
 2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.
 3. S.C. 1990, c. 45, s. 12, as amended by *An Act to amend the Excise Tax Act, the Access to Information Act, the Canada Pension Plan, the Customs Act, the Federal Court Act, the Income Tax Act, the Tax Court of Canada Act, the Tax Rebate Discounting Act, the Unemployment Insurance Act and a related Act*, S.C. 1993, c. 27.

120.(1) In this section,

“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 sale, lease or rental separately, for a price or rent in money, to others in the ordinary course of a commercial activity of the person.

“tax-paid goods” means goods, acquired before 1991 by a person, that have not been previously written off in the accounting records of the person’s business for the purposes of the Income Tax Act and that are, as of the beginning of January 1, 1991,

(a) new goods that are unused,

(b) remanufactured or rebuilt goods that are unused in their condition as remanufactured or rebuilt goods, or

(c) used goods

and on the sale price or on the volume sold of which tax (other than tax payable in accordance with subparagraph 50(1)(a)(ii)) was imposed under subsection 50(1), was paid and is not, but for this section, recoverable.

(2.1) For the purposes of paragraph (a) of the definition “inventory” in subsection (1), that portion of the tax-paid goods that are described in a person’s inventory in Canada at any time that can reasonably be expected to be consumed or used by the person shall be deemed not to be held at that time for sale, lease or rental.

In the appellant’s brief, it is contended that the inventory in issue meets the requirements of section 120 of the Act, as it was: (1) acquired before 1991 and not previously written off for income tax purposes; (2) described in the appellant’s inventory; (3) new and unused; (4) inventory in respect of which FST had been paid; (5) held for “taxable supply”; and (6) not capital property. The brief provides that the appellant specifically valued the inventory in issue at the tax-paid cost of its raw materials and did not include an allowance for labour or overhead in the value.

At the hearing, Mr. Glenn Hendrickson, the Department of National Revenue auditor who performed the telephone audit of the appellant, testified that, based on the information received during his audit and his review of the appellant’s advertisements in the 1991, 1992 and 1995 editions of the yellow pages of the Kelowna, British Columbia, telephone directory, he concluded that 90 percent of the goods that the appellant held in inventory were held for further manufacture and that 10 percent were held for sale in the same condition as when they were purchased. Mr. Hendrickson confirmed that the appellant received a rebate in the amount of \$233.39 in respect of the 10 percent of the inventory in issue which was held for sale in the same condition as when it was purchased.

Counsel for the respondent argued that the raw materials were held by the appellant for further manufacture and were not, therefore, held for the purpose of sale. With respect to the goods that had been manufactured by the appellant and then held in inventory, counsel argued that these are not tax-paid goods. Moreover, these finished goods were not acquired for sale, lease or rental. Rather, the raw materials were acquired for the manufacture of jewellery and were, in fact, used for such manufacture by the appellant.

Subsection 120(1) of the Act provides, in part, that, in order for goods held in inventory to qualify for an FST inventory rebate, FST must have been paid on the sale price or on the volume sold of the goods, and the goods must be described in the person’s inventory in Canada and held for sale, lease or rental separately, for a price or rent in money, to others in the ordinary course of a commercial activity of the person. Subsection 120(2.1) of the Act further provides that tax-paid goods that can reasonably be expected to be consumed or used by the person shall be deemed not to be held at that time for sale, lease or rental.

The Tribunal observes that it is undisputed, based on the submissions in the appellant's brief and the evidence of Mr. Hendrickson, that the appellant's business is comprised of sales, repairs and the manufacture of jewellery. In the Tribunal's view, only the jewellery that was held for sale in the same condition as acquired was held for sale, separately, in the ordinary course of the appellant's commercial activities and, therefore, qualifies for an FST inventory rebate. The jewellery inputs held in inventory by the appellant for the purpose of repairing or manufacturing jewellery were held for consumption or use by the appellant and were not, therefore, held for sale, lease or rental, separately.⁴ Moreover, the jewellery inputs that had already been consumed or used by the appellant to manufacture finished jewellery and which were held in inventory as finished jewellery do not qualify for an FST inventory rebate, as they were also not held for sale, separately.⁵ In addition, the appellant had not paid FST on the sale price or the volume sold of the finished jewellery.⁶

Having determined that only the jewellery held in the appellant's inventory for sale in the same condition as acquired qualifies for an FST inventory rebate, the Tribunal must further determine what portion of the inventory in issue was comprised of jewellery held for sale in this manner. The only evidence that the Tribunal has before it in this regard is the testimony of Mr. Hendrickson that, based on his telephone audit of the appellant, he concluded that 10 percent of the inventory in issue was comprised of jewellery sold in the same condition as acquired. Without any evidence to the contrary from the appellant, the Tribunal accepts the results of Mr. Hendrickson's audit and finds that the respondent correctly determined that the appellant was only entitled to 10 percent of the total amount claimed in its FST inventory rebate application, which amount was paid to the appellant.

Accordingly, the appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

4. *Barry Rodko Goldsmiths Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-92-277, March 10, 1995.

5. *Technessen Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-93-320, December 21, 1994.

6. *Impressions Gallery Inc. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-93-111, March 14, 1995.