

Ottawa, Friday, January 7, 1994

**Appeal No. AP-92-301**

IN THE MATTER OF an appeal heard on July 7, 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 February 4, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**RUDOLPH FURNITURE LIMITED**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

W. Roy Hines

W. Roy Hines  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-301**

**RUDOLPH FURNITURE LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant, which imports and sells furniture and furnishings, applied for a federal sales tax inventory rebate pursuant to section 120 of the Excise Tax Act. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate of an amount greater than that allowed by the respondent, using the tax factor of 8.1 percent prescribed under the Federal Sales Tax Inventory Rebate Regulations.*

**HELD:** *The appeal is dismissed. The Tribunal does not have jurisdiction to vary the tax factors prescribed in section 3 of the Federal Sales Tax Inventory Rebate Regulations.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: July 7, 1993*

*Date of Decision: January 7, 1994*

*Tribunal Members: W. Roy Hines, Presiding Member  
Robert C. Coates, Q.C., Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Sam L. Rudolph, for the appellant  
Gilles Villeneuve, for the respondent*

**Appeal No. AP-92-301**

**RUDOLPH FURNITURE LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member  
ROBERT C. COATES, Q.C., Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue. The appellant applied for a federal sales tax (FST) inventory rebate in the amount of \$52,460.25 pursuant to section 120 of the Act<sup>2</sup> in respect of furniture. The respondent issued a notice of determination dated May 27, 1991, which allowed the FST inventory rebate application in part in the amount of \$51,020.65 plus interest. After being granted an extension of time, the appellant served a notice of objection to the respondent's determination. The appellant submitted that the prescribed tax factor of 8.1 percent, applied to determine the amount of the rebate, resulted in a shortfall of approximately \$23,000.00 in relation to the FST that it actually paid. A notice of decision confirming the determination was subsequently issued by the respondent.

There is no dispute between the parties as to the amounts involved in this appeal. The sole issue to be determined is whether the appellant is entitled to an FST inventory rebate of an amount greater than that allowed by the respondent, using the tax factor of 8.1 percent prescribed under the *Federal Sales Tax Inventory Rebate Regulations*<sup>3</sup> (the Regulations).

The President of Rudolph Furniture Limited, Mr. Sam L. Rudolph, gave evidence on behalf of the appellant and submitted arguments in support of its case. In response to a question raised by the Tribunal, Mr. Rudolph acknowledged that the FST inventory rebate form filed by the appellant, which he signed, used the 8.1-percent tax factor.

Mr. Rudolph contended that there is nothing in the Act or in the Regulations that permits double taxation. He also submitted that an exception to the prescribed tax factor of 8.1 percent was made in the case of motor vehicles designed for highway use and that it could not have been the intention of Parliament to discriminate against any other particular industry sector or firm. If the appellant had benefited from a tax factor similar to that applicable to the automotive industry, it would have received an FST inventory rebate equal to approximately all the FST paid on its inventory.

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

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

3. SOR/91-52, December 18, 1990, *Canada Gazette* Part II, Vol. 125, No. 2 at 265.

Counsel for the respondent argued that the Tribunal does not have jurisdiction to vary the prescribed tax factor; in other words, the Tribunal cannot alter the choice made by the legislator. Furthermore, the appeal should be dismissed, since the appellant failed to discharge the onus of showing that the determination was erroneous.

Having reviewed the evidence and carefully considered the arguments, the Tribunal concludes that this appeal should be dismissed. As stated in *Akos Development Corp. v. The Minister of National Revenue*,<sup>4</sup> the Tribunal does not have jurisdiction to vary the tax factors prescribed in section 3 of the Regulations. Therefore, the only tax factor applicable to the goods in issue is prescribed at paragraph 3(h) of the Regulations, i.e. 8.1 percent. The Tribunal agrees with counsel for the respondent that Parliament did not intend FST inventory rebates to be based upon the actual amounts of FST paid by applicants in respect of their inventory held on January 1, 1991.

While the Tribunal sympathizes with the appellant, it does not have jurisdiction to apply principles of equity. It must apply the law as it presently stands.

Accordingly, the appeal is dismissed.

W. Roy Hines

W. Roy Hines  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Desmond Hallissey

Desmond Hallissey  
Member

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4. Appeal No. AP-91-185, March 19, 1993.