

Ottawa, Tuesday, March 14, 1995

**Appeal No. AP-93-111**

IN THE MATTER OF an appeal heard on January 10, 1995,  
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 20, 1992, with respect to a notice  
of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**IMPRESSIONS GALLERY INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Lyle M. Russell

Lyle M. Russell  
Member

Nicole Pelletier  
Nicole Pelletier  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-111**

**IMPRESSIONS GALLERY INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This is an appeal under section 81.19 of the Excise Tax Act of a determination of the Minister of National Revenue that rejected, in part, an application for a federal sales tax inventory rebate filed by the appellant. The appellant is in the business of constructing and selling miscellaneous art products. On January 1, 1991, the appellant's inventory consisted, in part, of framing supplies, as well as of some partially finished and finished frames and framed prints. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate in respect of the framing supplies and the partially finished and finished frames and framed prints in its inventory on January 1, 1991.*

**HELD:** *The appeal is dismissed. With respect to the framing supplies and partially finished frames and framed prints in the appellant's inventory, the Tribunal concludes that those goods were not held by the appellant for sale, lease or rental separately and, thus, do not fall within the definition of "inventory" as found in the Excise Tax Act. They cannot, therefore, form the basis of a federal sales tax inventory rebate application. With respect to the finished frames and framed prints, the Excise Tax Act provides for a federal sales tax inventory rebate on "tax-paid goods" in inventory on January 1, 1991. The Tribunal is of the view that the finished goods in the appellant's inventory are not "tax-paid goods" and, therefore, cannot form the basis of a federal sales tax inventory rebate application.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: January 10, 1995*

*Date of Decision: March 14, 1995*

*Tribunal Members: Charles A. Gracey, Presiding Member*

*Raynald Guay, Member*

*Lyle M. Russell, Member*

*Counsel for the Tribunal: John L. Syme*

*Clerk of the Tribunal: Anne Jamieson*

*Parties: Gordon R. Simms, for the appellant*

*Brian Tittlemore, for the respondent*

**Appeal No. AP-93-111**

**IMPRESSIONS GALLERY INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
RAYNALD GUAY, Member  
LYLE M. RUSSELL, 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 that rejected, in part, an application for a federal sales tax (FST) inventory rebate filed by the appellant. The appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,<sup>2</sup> on the basis of the documentation before the Tribunal as supplemented by an agreed statement of facts and briefs filed by the parties.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate in respect of framing supplies and partially finished and finished frames and framed prints in its inventory on January 1, 1991.

The agreed statement of facts indicates that the appellant is in the business of constructing and selling miscellaneous art products. As part of its business, the appellant purchases prints and framing supplies, such as moulding, matboard and glass, from which it constructs frames and framed prints which it ultimately sells. On January 1, 1991, the appellant's inventory consisted, in part, of framing supplies, as well as of some partially finished and finished frames and framed prints.

In its brief, the appellant submits that it paid FST on the framing supplies that formed part of its inventory on January 1, 1991. The appellant further submits that the framing supplies and the partially finished and finished frames and framed prints all fall within the definition of "tax-paid goods" within the meaning of subsection 120(1) of the Act. Finally, the appellant contends that, based on the Tribunal's decisions in *Oasis Gallery v. The Minister of National Revenue*<sup>3</sup> and *Artland Gallery & Framing Inc. v. The Minister of National Revenue*,<sup>4</sup> the appellant is entitled to an FST inventory rebate in respect of the framing supplies and the partially finished and finished frames and framed prints in its inventory on January 1, 1991.

The Tribunal notes, at this stage, that the respondent's decision that rejected, in part, the appellant's application for an FST inventory rebate is dated August 20, 1992. The Tribunal also notes that the Act was amended on June 10, 1993; however, the amendments, some of which affect the provisions relevant to this

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. Appeal AP-91-211, February 8, 1993.
4. Appeal AP-91-268, March 4, 1993.

appeal, were deemed to have come into force on December 17, 1990. Finally, the Tribunal observes that the cases cited in the appellant's brief were decided before the amendments to the Act took effect.

The respondent, in his brief, first deals with that part of the appellant's rebate application that relates to its raw materials inventory. The respondent submits that, in light of the amendments to the Act, paragraph (a) of the definition of "inventory" under subsection 120(1) of the Act now provides as follows:

*"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.*

The respondent also notes that subsection 120(2.1) of the Act, another of the amendments, further qualifies the definition of "inventory" as follows:

*(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.*

The respondent submits that the framing supplies in the appellant's inventory on January 1, 1991, were not held for sale, lease or rental separately, but were intended to be combined and further manufactured to produce goods that could then be sold to the appellant's customers. The respondent further submits that, as these raw materials were to be consumed by the appellant in the manufacture or production of finished goods, pursuant to subsection 120(2.1) of the Act, they are expressly excluded from the definition of "inventory" under subsection 120(1) of the Act. On these two grounds, the respondent contends that the raw materials were not "inventory" within the meaning of subsection 120(1) of the Act and that the appellant is thus not entitled to an FST inventory rebate in respect of those goods.

The respondent affirms that the partially finished and finished frames and framed prints in the appellant's inventory do not constitute "tax-paid goods" within the meaning of subsection 120(1) of the Act, as tax under subsection 50(1) of the Act was not paid on the sale price or on the volume sold of those goods. The respondent submits that the construction of frames and framed prints out of raw materials constitutes manufacture or production. In support of this position, the respondent cites the Supreme Court of Canada's decision in *Her Majesty the Queen v. York Marble, Tile and Terrazzo Limited*.<sup>5</sup>

With respect to the framing supplies in the appellant's inventory, the Tribunal agrees with the respondent that those supplies were not held for sale, lease or rental separately, but were intended to be combined to produce goods that could be sold to the appellant's customers. As such, the supplies do not fall within the definition of "inventory" as found in the Act and, therefore, cannot form the basis of an application for an FST inventory rebate under subsection 120(3) of the Act. The Tribunal is also of the view that the partially finished frames and framed prints in the appellant's inventory on January 1, 1991, are also excluded from the definition of "inventory" on the ground that the appellant would not be expected to sell such goods in the ordinary course of its business.

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5. [1968] S.C.R. 140.

With respect to the finished frames and framed prints in the appellant's inventory, the Tribunal notes that subsection 120(3) of the Act provides for an FST inventory rebate on "tax-paid goods" in inventory on January 1, 1991. Subsection 120(1) of the Act defines "tax-paid goods" as follows:

*"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.*

The Tribunal is of the view that the finished frames and framed prints in the appellant's inventory are not "tax-paid goods" as defined by subsection 120(1) of the Act. In order to conclude that the appellant's finished frames and framed prints are tax-paid goods, the Tribunal would have to be satisfied, among other things, that tax had been imposed under subsection 50(1) of the Act on the sale price or volume sold of those goods.

In the Tribunal's view, there is a difference in kind between unassembled framing raw materials, such as glass, matboard and wood, and the finished product that may be made from those raw materials. Whereas FST may have been paid by the appellant on the raw materials that it used to construct the finished frames and framed prints that it had in inventory on January 1, 1991, there is no evidence that such tax was paid on the sale price or volume sold of the finished frames and framed prints constructed from those raw materials. In the Tribunal's view, those goods do not, therefore, meet one of the conditions necessary to qualify as "tax-paid goods" and cannot form the basis of an FST inventory rebate application.

In light of the foregoing, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey

Presiding Member

Raynald Guay

Raynald Guay

Member

Lyle M. Russell

Lyle M. Russell

Member