

Ottawa, Wednesday, June 8, 1994

Appeal No. AP-93-125

IN THE MATTER OF an appeal heard on January 18, 1994,
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 May 6, 1992, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

ALL CANADIAN AWARDS & GIFT SALES LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

W. Roy Hines

W. Roy Hines
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-125

ALL CANADIAN AWARDS & GIFT SALES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant purchases parts and figures and assembles them into trophies and awards, applies crests onto sportswear and, subsequently, sells the trophies, awards and sportswear to its customers. 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. More specifically, the Tribunal must determine whether the goods in issue qualify as tax-paid goods held in inventory as of January 1, 1991, for taxable supply by way of sale to others in the ordinary course of the appellant's business.

***HELD:** The appeal is allowed in part. In the Tribunal's opinion, only those crests held for sale directly to the appellant's customers are held for sale separately to others in the ordinary course of the appellant's commercial activities and, thus, qualify for the federal sales tax inventory rebate. In coming to this conclusion, the Tribunal is cognizant that the relevant provisions of the Excise Tax Act have been amended since previous decisions of the Tribunal. Further, the Tribunal agrees with counsel for the respondent that the clothing portion of the appellant's rebate application should not be upheld since these items are exempt from federal sales tax under the provisions of the Excise Tax Act and the Clothing and Footwear Determination Regulations cited by counsel for the respondent. The Tribunal, therefore, allows the appeal in part and refers the matter back to the respondent to determine, by means of an audit of the appellant's operation, what portion of the crests held in inventory as of January 1, 1991, was held for sale to the appellant's customers.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: January 18, 1994

Date of Decision: June 8, 1994

*Tribunal Members: W. Roy Hines, Presiding Member
Kathleen E. Macmillan, Member
Robert C. Coates, Q.C. Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

*Parties: H. Howard Smith, for the appellant
Brian Tittimore, for the respondent*

Appeal No. AP-93-125

ALL CANADIAN AWARDS & GIFT SALES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
KATHLEEN E. MACMILLAN, Member
ROBERT C. COATES, Q.C., 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 Minister) that rejected the appellant's application for a federal sales tax (FST) inventory rebate under section 120 of the Act.² The appeal proceeded on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.³ In this regard, the parties submitted an agreed statement of facts, from which the facts herein are taken.

As part of its business, the appellant purchases parts and figures and assembles them into trophies and awards, applies crests onto sportswear and, subsequently, sells the trophies, awards and sportswear to its customers.

By application dated April 2, 1991, the appellant, a Goods and Services Tax registrant since January 1, 1991, applied for an FST inventory rebate in the amount of \$6,548.03 in respect of tax-paid goods held in inventory as of January 1, 1991. By notice of determination dated May 31, 1991, the Minister allowed the appellant's rebate application in the amount of \$1,518.51, but rejected the remainder on the basis that the goods in issue were not held for sale, lease or rental in the ordinary course of the appellant's business. The appellant objected to this determination. By notice of decision dated May 6, 1992, the Minister confirmed the determination.

Prior to the hearing of this appeal, the Tribunal asked the parties to clarify certain facts relating to the clothing and crests that are part of the goods in issue. As a result of this request, the Tribunal was advised that the appellant's rebate application, in this regard, involved some clothing and crests that the appellant held in inventory as of January 1, 1991. The crests were not applied to items of clothing at that time. The Tribunal was also advised that some of the crests were held to be sold directly to customers and that some were held to be applied to clothing which, in turn, would be sold to the appellant's customers. The appellant was not able to provide an estimate of the portion of crests held for each of these purposes. The appellant

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

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

3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

was also unable to estimate the value of the clothing in issue. The parties suggested that these amounts could be determined through an audit following disposition of the appeal.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate with respect to the goods in issue. More specifically, the Tribunal must determine whether the goods in issue qualify as tax-paid goods held in inventory as of January 1, 1991, for taxable supply by way of sale to others in the ordinary course of the appellant's business.

As a result of recent amendments to the Act,⁴ "inventory" is defined, in part, 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.

In addition, subsection 120(2.1) of the Act further qualifies the definition of "inventory" as follows:

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 appellant's representative submitted that the goods in issue are "tax-paid goods," as they were acquired with FST included in the purchase price paid by the appellant. The representative also submitted that the goods in issue were all held for sale to the appellant's customers. In support of these submissions, the representative referred to numerous recent decisions of the Tribunal, in particular, its decisions in *J. & D. Trophies & Engraving v. The Minister of National Revenue*⁵ and *Archer's Signs & Trophies v. The Minister of National Revenue*.⁶ The representative argued that the appellants in both those cases operated businesses virtually identical to that of the appellant in this case and that the arguments that they made in those appeals were basically identical to the appellant's arguments in this case.

Counsel for the respondent submitted that the goods in issue were not in the appellant's "inventory" because they were not held for sale separately to others in the ordinary course of the appellant's commercial activities, but were held to be used as components of finished goods or as components to be incorporated into finished goods, which would then be sold to the appellant's customers. Further, counsel argued that, as the goods in issue were being held by the appellant for consumption or use in the manufacture or production of other goods, they were expressly excluded from the definition of "inventory" under subsection 120(2.1) of the Act.

With respect to the question of whether the goods in issue were "tax-paid goods," counsel for the respondent submitted that the goods could not be considered "tax-paid goods" because tax under section 50 of the Act was not paid on the sale price or on the volume sold of the

4. *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.

5. Appeal No. AP-91-213, January 26, 1993.

6. Appeal No. AP-91-261, February 1, 1993.

finished goods into which the goods in issue were incorporated in the manufacturing or production process. Finally, regarding the clothing portion of the appellant's rebate application, counsel submitted that these goods were exempt from FST by virtue of sections 1 and 2 of Part XV of Schedule III to the Act, section 2 of the *Clothing and Footwear Determination Regulations*⁷ (the Regulations) and section 51 of the Act and, therefore, were not "tax-paid goods" within the meaning of subsection 120(1) of the Act.

The Tribunal agrees with counsel for the respondent that only those goods in issue which are held for sale separately to others in the ordinary course of the appellant's commercial activities fall within the amended definition of "inventory" under section 120 of the Act. In the Tribunal's opinion, only those crests held for sale directly to the appellant's customers are held for sale separately to others in the ordinary course of the appellant's commercial activities and, thus, qualify for the FST inventory rebate. In coming to this conclusion, the Tribunal is cognizant that the relevant provisions of the Act have been amended since previous decisions of the Tribunal cited by the appellant's representative. Further, the Tribunal agrees with counsel for the respondent that the clothing portion of the appellant's rebate application should not be upheld since these items are exempt from FST under the provisions of the Act and the Regulations.

The Tribunal, therefore, allows the appeal in part and refers the matter back to the respondent to determine, by means of an audit of the appellant's operation, what portion of the crests held in inventory as of January 1, 1991, was held for sale to the appellant's customers.

W. Roy Hines

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Presiding Member

Kathleen E. Macmillan

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Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

7. SOR/84-247, March 22, 1984, Canada Gazette Part II, Vol. 118, No. 7 at 1232.