

Ottawa, Tuesday, August 8, 1995

Appeal No. AP-93-265

IN THE MATTER OF an appeal heard on March 20, 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 19, 1993, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

RICHMOND DEVELOPMENT CORP.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-265

RICHMOND DEVELOPMENT CORP.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of an assessment of the Minister of National Revenue dated November 20, 1992. The appellant filed an application for a federal sales tax inventory rebate in the amount of \$2,668.88 in respect of tax-paid goods held in inventory as of January 1, 1991. The Minister of National Revenue approved the rebate in a notice of determination dated May 22, 1991. Subsequently, the Minister of National Revenue disallowed the rebate in a notice of assessment. The issue in this appeal is whether the goods in issue, drywall, fibreglass insulation, ceiling tiles, steel studs and carpet enertex, constitute "inventory" for the purposes of section 120 of the Excise Tax Act and, as such, whether the appellant is entitled to a federal sales tax inventory rebate. More particularly, the Tribunal must determine whether the goods in issue were delivered to "a construction, renovation or improvement job site."

HELD: *The appeal is allowed. The Tribunal is of the view that the evidence shows that, on January 1, 1991, the goods in issue had been delivered to a "storage site" and not a "construction ... or improvement job site." At that time, construction had ceased, and there would have been no more construction unless tenants had been found to occupy the available space. The evidence shows that the appellant's intention was to sell the goods in issue to potential tenants of the building. Therefore, the Tribunal finds that the goods in issue were being held for sale and that, as such, they constitute "inventory" for the purposes of section 120 of the Excise Tax Act.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: March 20, 1995

Date of Decision: August 8, 1995

Tribunal Members: Arthur B. Trudeau, Presiding Member

Robert C. Coates, Q.C., Member

Lyle M. Russell, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Ralph C. Yapp and Martin Schwartzwald, for the appellant
Anne M. Turley, for the respondent

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RICHMOND DEVELOPMENT CORP.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of an assessment of the Minister of National Revenue (the Minister) dated November 20, 1992. The appellant filed an application for a federal sales tax (FST) inventory rebate pursuant to section 120² of the Act in the amount of \$2,668.88 in respect of tax-paid goods held in inventory as of January 1, 1991. The application was dated April 24, 1991. The Minister approved the rebate in a notice of determination dated May 22, 1991. Subsequently, the Minister disallowed the rebate in a notice of assessment. The appellant served a notice of objection dated December 8, 1992, that was disallowed by the Minister in a decision dated August 19, 1993.

The appellant is in the real estate development and construction business. Mr. Ralph C. Yapp, President of Richmond Development Corp., testified on behalf of the appellant. He explained that, as of January 1, 1991, the appellant held certain construction materials, i.e. drywall, fibreglass insulation, ceiling tiles, steel studs and carpet enertex, in inventory. On January 1, 1991, the goods in issue were stored in a building that was constructed and owned by the appellant. At that time, there were no construction activities. The interior of the building was unfinished. However, it did have lighting, heating and some walls. The decision was, therefore, made to store the goods in issue in that particular building, as proper storage space was available. Mr. Yapp explained that they could easily have been stored in another location. The goods in issue were subsequently sold in 1992 to tenants that were renting space in the building, and the Goods and Services Tax was collected on the sale. The purchased goods were used to partition and finish the interior. The appellant performed the work. Mr. Yapp testified that it was the appellant's intention that the goods in issue be sold to tenants for their use in completing the construction of the rented space.

The issue in this appeal is whether the goods in issue constitute "inventory" for the purposes of section 120 of the Act and, as such, whether the appellant is entitled to an FST inventory rebate. More particularly, the Tribunal must determine whether the goods in issue were delivered to "a construction, renovation or improvement job site."

The appellant's representatives argued that the appellant should be granted the FST inventory rebate to avoid double taxation. Furthermore, they argued that the goods in issue constituted

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

2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27, s. 6.

“inventory” for the purposes of section 120 of the Act, as they were located at a “storage site” and not a “job site.”

Counsel for the respondent argued that the appellant is not entitled to the FST inventory rebate because, on January 1, 1991, the goods in issue had been delivered to a construction site. Therefore, the goods in issue did not constitute “inventory” for the purposes of section 120 of the Act. Counsel noted that the goods in issue were purchased specifically to be used in completing the construction of the building. As such, the appeal should fail.

For the purposes of this appeal, the relevant rebate provision of the Act is found at subsection 120(1), which provides, 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,
or
(b) building materials held at that time for use by the person in a business of constructing, renovating or improving buildings or structures carried on by the person, but not including any such goods that before that time have been incorporated into new construction or a renovation or improvement or have otherwise been delivered to a construction, renovation or improvement job site.

The Tribunal is of the view that the evidence shows that, on January 1, 1991, the goods in issue had been delivered to a “storage site” and not a “construction ... or improvement job site.” At that time, construction had ceased, and there would have been no more construction unless tenants had been found to occupy the available space. The evidence shows that the appellant’s intention was to sell the goods in issue to potential tenants of the building. Therefore, the Tribunal finds that the goods in issue were being held for sale and that, as such, they constitute “inventory” for the purposes of section 120 of the Act.

Accordingly, the appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member