CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, October 31, 1996

Appeal No. AP-95-045

IN THE MATTER OF an appeal heard on February 9, 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 February 17, 1995, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

SIDEWINDER CONVERSIONS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed in part. The Tribunal refers the matter back to the respondent to determine the percentage of the appellant's goods that were held in its inventory on January 1, 1991, for sale separately "as is," for a price or rent in money, to others in the ordinary course of the appellant's commercial activity.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Raynald Guay
Raynald Guay
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-95-045

SIDEWINDER CONVERSIONS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of an assessment dated June 24, 1992. The assessment followed a determination of the Minister of National Revenue that allowed an application for a federal sales tax inventory rebate filed by the appellant in January 1991. The issue in this appeal is whether the goods in issue described as various furnishings, parts and accessories for passenger vans are "inventory" within the meaning of section 120 of the *Excise Tax Act*. More specifically, the Tribunal must determine 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 *Excise Tax Act*.

HELD: The appeal is allowed in part. The evidence shows that the appellant is in the business of converting empty vans to passenger vans by assembling or installing furnishings, parts or accessories to meet customers' specifications. The evidence also shows that the appellant's business is comprised of some sales of furnishings, parts and accessories for vans. In the Tribunal's view, only the goods in issue that were held for sale separately "as is" in the same condition as acquired were held for sale separately, in the ordinary course of the appellant's commercial activity and, therefore, qualify for a federal sales tax inventory rebate. The Tribunal is of the opinion that the goods in issue held in inventory by the appellant for the purpose of assembly or installation in passenger vans were held for consumption or use by the appellant and were not, therefore, held for sale, lease or rental separately. In the present case, the Tribunal is unable to determine the percentage of the appellant's goods that were held by it for sale separately "as is." The Tribunal, therefore, refers the matter back to the respondent to determine the percentage of the appellant's goods that could "reasonably be expected to be consumed or used" in this way.

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	February 9, 1996
Date of Decision:	October 31, 1996
Tribunal Members:	Desmond Hallissey, Presiding Member Arthur B. Trudeau, Member Raynald Guay, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Robert W.G. Copping, for the appellant Josephine A.L. Palumbo, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-95-045

SIDEWINDER CONVERSIONS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
ARTHUR B. TRUDEAU, Member
RAYNALD GUAY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of an assessment dated June 24, 1992, in which it was determined that the appellant owed $26,407.06 (representing $22,569.26 in unpaid taxes, $2,254.21 in interest and $1,583.59 in penalty). The assessment followed a determination of the Minister of National Revenue that allowed an application for a federal sales tax (FST) inventory rebate in the amount of $22,569.26 filed by the appellant in January 1991.

The issue in this appeal is whether the goods in issue described as various furnishings, parts and accessories[2] for passenger vans are "inventory" within the meaning of section 120 of the Act.[3] More specifically, the Tribunal must determine 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, in order for the goods to qualify for an FST inventory rebate. For purposes of this appeal, the relevant provisions of the Act read as follows:

> 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.

1. R.S.C. 1985, c. E-15.
2. For a list of the goods in issue, see Exhibit C of the appellant's brief.
3. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27.

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> (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.

At the hearing, Mr. Robert W.G. Copping, President of Sidewinder Conversions Ltd., appeared and testified on behalf of the appellant. He explained that the appellant sells and installs in passenger vans furnishings, parts and accessories such as seats, fibreglass running boards, carpets, stereos, sofas, venetian blinds and windows. Mr. Copping explained that, in most cases, the cost to the customer is the retail price of the parts and the labour to install them. He testified that the appellant does not manufacture vehicles and does not, at any time, become the owner of the vehicles on which the work is performed. In Mr. Copping's view, by adding accessories to the vehicles, the appellant does not change their intended use. He testified that the full 13.5 percent FST was paid on the goods which the appellant held in inventory on January 1, 1991. Another 7.0 percent Goods and Services Tax was collected when these goods were sold. During cross-examination, Mr. Copping testified that the appellant never applied for a manufacturer's FST licence under the Act. In response to questions from the Tribunal, Mr. Copping stated that the appellant also sold, and presently sells, furnishings, parts and accessories for passenger vans separately "as is" without installing them for the customer. Mr. Copping reviewed invoices that were introduced into evidence. Certain of these invoices indicated that the appellant sold a portion of the goods that it held in inventory on December 31, 1990, separately "as is."

Mr. Robert J. Yunker, an appeals officer with the Department of National Revenue, who dealt with the appellant's notice of objection to the assessment, testified on behalf of the respondent. He explained that the evidence indicated that the goods in the appellant's inventory on January 1, 1991, were held for further manufacture in van conversion processes. He said that he had visited the appellant's premises and observed empty vans in which the appellant said that it would be installing the goods that were held in inventory. More specifically, the appellant told him that it was in the van conversion business, i.e. the appellant took empty vans and assembled or installed different types of interior accessories such as sofas, chairs, lighting, stereos, speakers, special steering wheels and seats, and exterior accessories such as running lights, skylights, rooftops and running boards.

The appellant's representative argued that the appellant was not and is not a manufacturer and that the government is trying to retroactively deem it as such. If this is the case, then he argued that the appellant is entitled to a refund of the full 13.5 percent FST paid to the government on the goods held in its inventory on December 31, 1990. He also argued that, if the appellant is not entitled to the rebate with respect to the goods in issue, then it will have been taxed twice on the same products. He stressed that double taxation should not be allowed. The representative noted that, although the FST inventory rebate arrived at was 8.1 percent, the appellant's actual burden was 13.5 percent. He, therefore, estimated that the appellant was owed approximately $29,000 or more. He asked the Tribunal to grant the appellant the 13.5 percent refund on its December 31, 1990, inventory, or the allowable 8.1 percent FST inventory rebate. He said that the appellant was entitled to one or the other.

Counsel for the respondent argued that the goods in issue are not "inventory" within the meaning of section 120 of the Act and that the appellant was rightfully denied the refund claimed in respect of those goods. She argued that the evidence showed that the appellant is in the business of manufacturing recreational vehicles. Accordingly, the goods in issue were held for the purpose of further manufacture and were to be used or consumed in the ordinary course of the appellant's business. Counsel argued that the goods in issue were not being held for sale, lease or rental separately for a price or rent in money within the meaning of section 120 of the Act.

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 that 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 evidence shows that the appellant is in the business of converting empty vans to passenger vans by assembling or installing furnishings, parts or accessories to meet customers' specifications. The evidence also shows that the appellant's business is comprised of some sales of furnishings, parts and accessories for vans. In the Tribunal's view, only the goods in issue that were held for sale separately "as is" in the same condition as acquired were held for sale separately in the ordinary course of the appellant's commercial activity and, therefore, qualify for an FST inventory rebate. The Tribunal is of the opinion that the goods in issue held in inventory by the appellant for the purpose of assembly or installation in passenger vans were held for consumption or use by the appellant and were not, therefore, held for sale, lease or rental separately.[4] In the present case, the Tribunal is unable to determine the percentage of the appellant's goods that were held by it for sale separately "as is." The Tribunal, therefore, refers the matter back to the respondent to determine the percentage of the appellant's goods that could "reasonably be expected to be consumed or used" in this way.

The Tribunal believes that, if there was double taxation of the goods in issue, it is as a result of the appellant not claiming an FST exemption when it purchased these goods. It is a well-established principle that the Tribunal lacks jurisdiction to grant equitable remedies in determining appeals.[5] As such, it cannot grant the appellant a refund of the 13.5 percent FST remitted when it purchased the goods in issue.

Accordingly, the appeal is allowed in part. The Tribunal refers the matter back to the respondent to determine the percentage of the appellant's goods that were held in its inventory on January 1, 1991, for sale separately "as is," for a price or rent in money, to others in the ordinary course of the appellant's commercial activity.

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4. See, for example, *Light Touch Stenographic Services Ltd.* v. *The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-182, March 8, 1994.

5. See, for example, *Joseph Granger* v. *Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.