

Ottawa, Monday, October 7, 1996

Appeal No. AP-95-118

IN THE MATTER OF an appeal heard on February 2, 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 June 27, 1995, with respect to a notice of
objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

KING FRAMING

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Anita Szlazak
Anita Szlazak
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-118

KING FRAMING

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 that rejected an application for a federal sales tax inventory rebate filed by the appellant. The appellant is in the business of manufacturing and selling various art products, including picture frames and framed prints. On January 1, 1991, the appellant's inventory consisted of various framing supplies, such as moulding and matting material, and of some 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 allowed in part. The Tribunal finds that certain of the goods in the appellant's inventory were held by the appellant for sale, lease or rental separately and, thus, fall within the definition of "inventory" as found in the *Excise Tax Act*. The Tribunal is of the view that the appellant is entitled to a rebate in respect of those goods.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	February 2, 1996
Date of Decision:	October 7, 1996
Tribunal Members:	Lyle M. Russell, Presiding Member Arthur B. Trudeau, Member Anita Szlazak, Member
Counsel for the Tribunal:	John L. Syme
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Nick Sokolovic and Paul S. Snider, for the appellant Lyndsay Jeanes, for the respondent

Appeal No. AP-95-118

KING FRAMING

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
ANITA SZLAZAK, 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 that rejected an application for a federal sales tax (FST) inventory rebate filed by the appellant. The issue in this appeal is whether 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 appellant is in the business of manufacturing and selling various art products, including picture frames and framed prints. The appellant was represented by Mr. Nick Sokolovic, the sole proprietor of King Framing, at the hearing in this matter. Mr. Sokolovic's testimony indicated that the appellant's business could be divided into two broad categories:

- (1) the manufacture for sale of finished goods, including picture frames and framed prints, posters, documents and other items; and
- (2) the resale to the public of various goods such as frames, prints and a certain portion of framing materials — these items not having been further manufactured or altered by the appellant.

Counsel for the respondent cross-examined Mr. Sokolovic about the nature of the appellant's business. In the course of that cross-examination, the following exchange took place:

Q. When people buy frames from your store, do they ever buy anything else other than the frame?

A. Sometimes they buy matting; sometimes they buy just a frame; sometimes the glass. Sometimes they just bring in a needlepoint to be stretched to be used in their frame. I am there to make a living. Whatever comes my way I will do it for a price that is fair to the customer and myself.

Counsel for the respondent then led Mr. Sokolovic through the schedule of the appellant's inventory as at December 30, 1990, which had formed part of the appellant's original FST inventory rebate application. Mr. Sokolovic indicated the percentage of each item in inventory that the appellant typically resold, as opposed to used or consumed in manufacturing other goods. For example, he testified that, whereas most of the wood moulding that the appellant had in inventory at the relevant time would have been

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

used by the appellant in the manufacture of frames, approximately 15 percent of it was sold directly to customers without alteration.

In argument, Mr. Sokolovic submitted that large retailers with an inventory of goods similar to those held in inventory by the appellant would have been entitled to an FST inventory rebate in respect of such goods, whereas the appellant was not. He submitted that this was unfair.

Counsel for the respondent argued that the Act draws no distinction between large and small businesses for purposes of FST inventory rebates. She submitted that the appellant had been treated differently from a large retailer, not because of its size, but because it manufactures goods as opposed to merely reselling them. Counsel submitted that any materials that the appellant held in inventory for use in the manufacture of other goods were excluded from the definition of “inventory” in section 120² of the Act. In counsel’s submission, the appellant was, therefore, not entitled to an FST inventory rebate in respect of those materials.

As noted above, Mr. Sokolovic testified that certain goods and materials purchased by the appellant and held in inventory were, from time to time, resold by the appellant without further manufacture. With respect to those items, counsel for the respondent argued that the appellant had failed to produce any “substantive or documentary” evidence to establish that the goods and materials in issue had, in fact, been resold, without further manufacture, in the ordinary course of business.

Pursuant to the Act and subject to certain conditions, a person holding “inventory” at the relevant date could be entitled to an FST inventory rebate. Subsection 120(1) of the Act defines “inventory” 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.

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 business can be divided into two broad categories, namely (1) the manufacture and sale of certain items, and (2) the resale of certain goods and materials in the same condition as when purchased by the appellant. The Tribunal is of the view that goods held by the appellant to be used in the manufacture of other finished goods are not “inventory” within the meaning of subsections 120(1) and (2.1) of the Act. The Tribunal, therefore, finds that the appellant’s appeal in respect of that part of its inventory must fail.

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

The Tribunal is of the view that the part of the appeal relating to the goods held in inventory for resale should be allowed. Counsel for the respondent argued that this part of the appeal should not be allowed because the appellant had failed to produce any documentary or substantive evidence to substantiate its claim that it resold some goods in an unaltered state in the ordinary course of business. However, the Tribunal heard the evidence of Mr. Sokolovic on that issue. The Tribunal found him to be forthright and credible. The Tribunal accepts his evidence that the appellant resold some goods and a certain portion of its raw materials separately in the ordinary course of business. Based on that testimony, the Tribunal allows the appeal with respect to the items and in the percentages set out in the appendix to these reasons.

Consequently, the appeal is allowed in part.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Anita Szlajak
Anita Szlajak
Member

APPENDIX

Item	Value (\$)	Resold Without Further Manufacture (%)
Plate Frames	90.00	100
Oval Frames	5,400.00	100
Prints	3,200.00	100
Mats	1,880.00	15
Framed Posters	3,120.00	0
“Ready” Frames	2,738.00	100
Glass	795.00	20
Foam Core	350.00	15
Metal Moulding	866.00	15
Masonite	100.00	0
Plexiglass	423.50	100
ATG Tape	400.00	0
Wood Mouldings	460.00	15
Liner	352.50	5
Moulding	3,441.00	15
Dry Mounting Tissue	291.00	15
Masking Tape	60.00	0
Wood Corner Hardware	228.00	0
Metal Corners	600.00	0
Spring Clips	70.00	0
Staples	317.00	0