

Ottawa, Wednesday, September 29, 1999

Appeal No. AP-95-139

IN THE MATTER OF an appeal heard on June 28, 1999, 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 July 20, 1995, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

ADVANCE BUILDING PRODUCTS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-139

ADVANCE BUILDING PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the *Excise Tax Act* of a determination made by the Minister of National Revenue that partly rejected an application for a federal sales tax inventory rebate made under section 120 of the *Excise Tax Act*. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate in respect of the pre-fabricated houses and garden sheds and, more particularly, 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 within the meaning set out in section 120 of the *Excise Tax Act*.

HELD: The appeal is dismissed. The Tribunal is of the view that the pre-fabricated houses and garden sheds were not “tax-paid goods” 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.

Places of Videoconference

Hearing: Hull, Quebec, and Regina, Saskatchewan
Date of Hearing: June 28, 1999
Date of Decision: September 29, 1999

Tribunal Member: Arthur B. Trudeau, Presiding Member

Counsel for the Tribunal: Marie-France Dagenais

Clerks of the Tribunal: Anne Turcotte and Margaret Fisher

Appearances: Val Schmegelsky, for the appellant
Susanne Pereira, for the respondent

Appeal No. AP-95-139

ADVANCE BUILDING PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: Arthur B. Trudeau, Presiding Member

REASONS FOR DECISION

This is an appeal, under section 81.19 of the *Excise Tax Act*¹, of a determination made by the Minister of National Revenue that partly rejected an application for a federal sales tax (FST) inventory rebate made under section 120² of the *Act*. This appeal was heard by way of videoconference in Hull, Quebec, and Regina, Saskatchewan

On March 30, 1991, the appellant filed an application for an FST inventory rebate in the amount of \$43,749.04 in respect of goods held in inventory as of January 1, 1991. By a notice of determination dated May 14, 1991, the respondent partly approved the application for an amount of \$41,754.78. The remaining sum of \$1,994.26 was disallowed on the ground that the finished goods, manufactured by the appellant and held in inventory, did not qualify for a rebate, since FST had not been paid on the full value of these goods. The appellant objected to that determination. By notice of decision dated July 20, 1995, the respondent confirmed the determination.

The appeal raises the issue as to whether “ready-to-move” houses and garden sheds, the goods in issue, qualify as “tax-paid goods” for the purposes of section 120 of the *Act* and, as such, whether the appellant is entitled to an FST inventory rebate.

As a preliminary matter, counsel for the respondent conceded certain facts in order to expedite the hearing and eliminate the need for cross-examination. It was agreed by both the appellant’s representative and counsel for the respondent that the appellant operates a retail lumber yard which ordinarily sells building products and that, during the off-peak season, the appellant manufactures pre-fabricated houses and garden sheds using the construction materials held in inventory, as well as its own labour and its own employees. Further, it was agreed that FST had been paid by the appellant on the construction materials used to build the pre-fabricated houses and garden sheds.

Mr. Val Schmegelsky appeared on behalf of the appellant. He stated that the pre-fabricated houses and garden sheds were held in inventory on January 1, 1991. He explained the difficulties of taxpayers in interpreting the changes that occurred as a result of the FST being replaced with the Goods and Services Tax and testified that he had been misinformed by officials of the Department of National Revenue vis-à-vis the appellant’s entitlement to a rebate with respect to the pre-fabricated houses and garden sheds. Further, he argued that the appellant should be entitled to a rebate of the FST paid on the goods to avoid double taxation

1. R.S.C. 1985, c. E-15 [hereinafter *Act*].
2. S.C. 1990, c. 45, s. 12.

and objected to the appellant being considered a small manufacturer. In response to questions from the Tribunal during his testimony, Mr. Schmegelsky confirmed that the amount claimed included the cost of materials and labour.

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 did not constitute “tax-paid goods”. The finished products do not represent goods on which FST was paid. Rather, they incorporate components on which FST was paid. As such, they do not qualify for the rebate. Counsel further submitted that the pre-fabricated houses and garden sheds were not “acquired” by the appellant before 1991, but were manufactured or produced by the appellant on or before that date.

Counsel for the respondent indicated that, by virtue of its sales being less than \$50,000 per year, the appellant was considered a small manufacturer for purposes of the *Act* and was not required to hold a licence for the purpose of Part VI, being the consumption or sales tax provisions, of the *Act*. Accordingly, counsel argued that the appellant had to pay tax on its purchases of material inputs, but was exempt from paying FST on the goods that it manufactured or produced pursuant to section 50 of the *Act*.

For purposes of this appeal, 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) defines “inventory” and “tax-paid goods” 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.

“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.

Moreover, subsection 120(2.1) of the *Act* was added and further qualifies the definition of “inventory” as follows:

(2.1) For the purposes of paragraph (a) of the definition of “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 Tribunal is of the view that the pre-fabricated houses and garden sheds 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 pre-fabricated houses and garden sheds are tax-paid goods, the Tribunal would have to be satisfied, among other things, that FST had been imposed under subsection 50(1) on the sale price or volume

sold of those goods. In the present case, FST was only paid on the raw materials used to build the pre-fabricated houses and garden sheds and not on the finished products. Subsection 120(2.1) of the Act expressly excludes from the definition of “inventory” raw materials that “can reasonably be expected to be consumed or used by the person” and provides that such goods are “deemed not to be held at that time for sale, lease or rental”, thus specifically excluding from the application for a rebate the raw materials used by the appellant to construct the goods in issue.

In the Tribunal’s view, there is a difference in kind between construction materials and the finished products that may be made from those raw materials. Whereas FST may have been paid by the appellant on the materials that it used to construct the pre-fabricated houses and garden sheds that it had in inventory on January 1, 1991, there is no evidence that FST was paid on the sale price of those pre-fabricated houses and garden sheds constructed from the 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.

Finally, the Tribunal notes Mr. Schmegelsky’s allegation that he received misleading or incomplete information with respect to the interpretation of the rebate provisions. However, this cannot detract the Tribunal from applying the law.

In light of the foregoing, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member