CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, March 18, 1997

Appeal No. AP-95-238

IN THE MATTER OF an appeal heard on November 12, 1996, under section 81.19 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 30, 1995, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

RALPH ROBERTS **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-95-238

RALPH ROBERTS **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant carries on a greeting card business in Delta, British Columbia. 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* for the greeting cards, stationery and envelopes held in inventory as of January 1, 1991, which were to be used by the appellant in his greeting card business.

HELD: The appeal is allowed. The Tribunal is of the view that the evidence shows that the goods in issue were held for sale separately, for a price, in the ordinary course of the commercial activity of the appellant.

Places of Video Conference Hearing:	Hull, Quebec, and Vancouver, British Columbia
Date of Hearing:	November 12, 1996
Date of Decision:	March 18, 1997
Tribunal Member:	Charles A. Gracey, Presiding Member
Counsel for the Tribunal:	Hugh J. Cheetham
Clerks of the Tribunal:	Anne Jamieson and Margaret Fisher
Appearances:	Timothy W. Clarke, for the appellant Frederick B. Woyiwada, for the respondent

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Appeal No. AP-95-238

RALPH ROBERTS **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of a decision of the Minister of National Revenue dated August 30, 1995, that disallowed the appellant's application for a federal sales tax (FST) inventory rebate. The appeal was heard by one member of the Tribunal.[2]

The appellant carries on a greeting card business in Delta, British Columbia. On May 6, 1991, the appellant filed a rebate application in the amount of $5,115 for greeting cards, stationery and envelopes held in inventory on January 1, 1991. By notice of determination dated October 7, 1991, the respondent disallowed the application on the grounds that the goods in issue were not held for sale, lease or rental to customers. By notice of objection dated November 26, 1991, the appellant objected to the determination. By notice of decision dated August 30, 1995, the respondent disallowed the objection and confirmed the determination.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act for the greeting cards, stationery and envelopes held in inventory as of January 1, 1991, which were to be used by the appellant in his greeting card business.

As a result of recent amendments to the Act,[3] "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:

> (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.

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1. R.S.C. 1985, c. E-15.
2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to section 81.19 of the Act in respect of an application for a rebate under section 120 of the Act.
3. S.C. 1993, c. 27.

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The appellant appeared as a witness and was represented by counsel. The appellant first explained the process by which his cards are created. First, he makes a painting of the subject of the card. Though he occasionally paints other subjects, his specialty is flowers. Next, he takes one or more of his paintings to a lithographer who creates colour plates or photographic negatives from each painting. In doing so, the appellant retains ownership in the original paintings. The lithographer sells the plates to the appellant for a price which includes FST. The appellant then takes the plates to a printer who uses them to print greeting cards. Depending upon demand, the appellant has various quantities of different cards printed. They are printed either in a regular size format or as miniatures. In addition to having the cards themselves printed, the appellant also has a supply of tags printed, which serve to identify the type of flower or other subjects depicted in the painting. After folding the cards, the printer boxes them in quantities of 3,000 to 4,000 per box. These boxes are either picked up by the appellant or delivered to his house. The printer charges the appellant a price for the printing job which includes FST. The appellant stores the cards and his packaging materials in his basement. The packaging materials include plastic pouches and a supply of envelopes, on which the appellant paid FST.

The appellant testified that the next step involves packaging the cards. He indicated that, in the case of the regular size cards, he places either six or eight cards in a plastic pouch together with the requisite number of envelopes. In the case of the miniatures, these are packaged in different pouches. Normally, he puts units of 80, 120 or 140 pouches in a box and sends the box or boxes to his wholesaler. The wholesaler, in turn, arranges for the further distribution to retail outlets or for sales at craft shows. The appellant confirmed that, after receipt of the cards from the printer, he does nothing further to them except to package them for delivery to his wholesaler. He conceded that a very small number might occasionally be used by his wife as greeting cards. Finally, the appellant testified that the quantum claimed was in respect of the greeting cards only and did not include anything for the envelopes or packaging materials.

Counsel for the appellant submitted that one's status as a manufacturer is irrelevant to determining whether or not the appellant is entitled to the rebate. He argued that what was relevant was that the goods in issue were tax-paid goods, held separately in the appellant's inventory, and that the appellant had not altered the form, properties or qualities of these goods. With respect to the requirement that the goods be held separately, he pointed out that, when GST-Memorandum 900[4] was amended, the words "held ... for taxable supply" were changed to "held ... for sale ... separately." This amendment, he argued, was introduced to clarify that components, even tax-paid components, that were to be further manufactured or assembled prior to sale, did not qualify for the rebate. In this regard, counsel sought to distinguish this appeal from several Tribunal decisions[5] made before the amendments to the Act. He pointed out that, in these previous cases, separate parts were assembled together to form the completed product which was then sold. In the present appeal, however, all that was done to the finished cards was to package them for distribution and sale. In support of this position, counsel drew attention to a technical note published by the Department of Finance explaining the amendments and, in particular, the amendment to the definition of "inventory."[6] The note states that "the FST rebate does not apply to such things as packaging material or incidental supplies which

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4. *Federal Sales Tax Inventory Rebates*, Department of National Revenue, Customs and Excise, March 25, 1991.

5. For example, *Techtouch Business Systems Ltd.* v. *The Minister of National Revenue*, Appeal No. AP-91-206, September 18, 1992; *A.J.V. Tools Ltd.* v. *The Minister of National Revenue*, Appeal No. AP-91-229, December 16, 1992; and *J. & D. Trophies & Engraving* v. *The Minister of National Revenue*, Appeal No. AP-91-213, January 26, 1993.

6. Appellant's Book of Authorities, Tab 7.

are not sold separately for a price." He pointed out that the appellant had respected that limitation in that he had not claimed the rebate in respect of his packaging materials. He submitted that the appellant was, therefore, entitled to a rebate in respect of the essential goods that he was selling, that is, the greeting cards.

Counsel for the respondent submitted that, contrary to the submissions of counsel for the appellant, the respondent was not contending that the fact that a person was a "manufacturer" did not entitle that person to the rebate. Rather, he submitted that, if a manufacturer further manufactures tax-paid goods, then these further manufactured goods do not qualify for a rebate. He submitted that, in this case, the goods in issue had been "manufactured" by the appellant. In support of this position, he referred the Tribunal to paragraph (*b*) of the definition of "manufacturer or producer" in section 2 of the Act, which states, in part: "any person ... that owns, holds, claims or uses any patent, proprietary, sales or other right to goods being manufactured, whether by them, in their name or for or on their behalf by others." He submitted that the evidence shows that the appellant retained ownership in the goods that were manufactured on his behalf and, thus, qualified as a "manufacturer."

Counsel for the respondent submitted that, even if the appellant was not found to be a manufacturer, the evidence shows that the greeting cards, as well as the envelopes, labels and pouches, were not held for sale "separately," but rather were held in inventory to be subsequently packaged for sale to wholesalers and, thus, were held for the production of articles. As such, they were to be further "manufactured" within the meaning of paragraph (*f*) of the definition of "manufacturer or producer," which states, in part, that a manufacturer or producer includes one who "by himself ... prepares goods for sale by ... packaging or repackaging the goods."

In coming to a decision in this matter, the Tribunal first notes that there is no dispute as to whether the goods in issue are tax-paid goods that were described in the appellant's inventory at the relevant time. Therefore, the issue before the Tribunal is whether the goods in issue were held separately, for a price, in the ordinary course of the commercial activity of the appellant. Central to this issue is whether the appellant manufactures the goods in issue or, rephrasing the submission of counsel for the respondent, whether the appellant further manufactures tax-paid goods.

The Tribunal agrees with counsel for the respondent that the appellant is deemed to be a manufacturer by virtue of paragraph (*f*) of the definition of "manufacturer or producer." Having said this, the Tribunal need not consider whether the degree of control exercised by the appellant over the production process would also have rendered him a manufacturer. The Tribunal also agrees that, when a manufacturing activity imparts new forms, properties or qualities to tax-paid goods, the manufacturer of such goods is not entitled to the rebate in respect of the components of such goods. That is not, however, the circumstances before the Tribunal in this case. It is not apparent that the mere packaging of the cards and envelopes lent to the cards themselves new forms, properties or qualities or, in other words, constitutes manufacture or production as described by the Supreme Court of Canada in *Her Majesty the Queen* v. *York Marble, Tile and Terrazzo Limited*.[7] It is one thing to submit that manufacture, by definition, gives goods new forms, qualities and properties. It is quite another to submit that, when manufacture is deemed to have occurred, as in the case of packaging or repackaging of goods, the goods that were packaged themselves acquired new forms, properties or qualities. Packaging may be said to be manufacture, but, in this case, there is no indication or evidence that the goods in issue themselves acquired new forms, qualities or properties.

7. [1968] S.C.R. 140.

Counsel for the respondent referred to the decision of the Federal Court of Canada in *ECG Canada Inc.* v. *The Queen*[8] in support of the proposition that, if tax-paid goods are purchased and subsequently packaged by the taxpayer, i.e. the taxpayer holds those goods for manufacture and does not sell them as is, those goods cannot be said to be held for sale separately and, thus, do not qualify for the rebate. In fact, the issue before the Federal Court of Canada in *ECG* was more precise and had to do with whether or not the packaging or repackaging of receiving tubes for the television industry constituted manufacture within the definition of "manufacturer or producer." The Federal Court of Canada held that it did. More specifically, the issue in that case was not whether or not the television tubes themselves were further manufactured, which they clearly were not, but whether the applicant was liable for FST in respect of this "marginal manufacturing" activity. As such, the decision does not speak directly to the issue of whether the mere packaging of goods would disqualify a taxpayer from claiming the rebate in respect of certain goods simply because the taxpayer packaged those goods.

For the reasons given above, the Tribunal is of the view that the evidence shows that the goods in issue were held for sale separately, for a price, in the ordinary course of the commercial activity of the appellant and, accordingly, that the appeal should be allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

8. [1987] 2 F.C. 415.