



Ottawa, Thursday, October 24, 1996

Appeal No. AP-95-196

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 August 10, 1995, with respect to a notice  
of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**DENMAN GRAPHICS LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Desmond Hallissey  
Desmond Hallissey  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Raynald Guay  
Raynald Guay  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-196**

**DENMAN GRAPHICS LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is whether paper and other raw materials used in the production of printed posters held in the appellant's inventory on January 1, 1991, 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*, in order for the goods to qualify for a federal sales tax inventory rebate.

**HELD:** The appeal is dismissed. In the Tribunal's view, although the paper and other raw materials that were used in the production of printed posters were not kept at the appellant's premises, they still formed part of its inventory. The evidence shows that federal sales tax was paid by the appellant on these goods and not on the printed posters. In the Tribunal's opinion, the paper and other raw materials were not held for sale, lease or rental separately, but were intended to be consumed or used to produce printed posters that could be sold to the appellant's customers. As such, they do not fall within the definition of "inventory" as found in the *Excise Tax Act* and, therefore, cannot form the basis of an application for a federal sales tax inventory rebate under subsection 120(3) of the *Excise Tax Act*. The Tribunal is also of the view that the goods are excluded from the definition of "inventory" on the ground that the appellant would not be expected to sell such products in the ordinary course of its business.

Place of Hearing: Vancouver, British Columbia  
Date of Hearing: February 9, 1996  
Date of Decision: October 24, 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 Checkwitch, for the appellant  
Josephine A.L. Palumbo, for the respondent

**Appeal No. AP-95-196**

**DENMAN GRAPHICS 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*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue dated April 20, 1993, that rejected an application for a federal sales tax (FST) inventory rebate in the amount of \$2,315.94 in respect of paper and other raw materials used in the production of printed posters held in the appellant's inventory on January 1, 1991. The appellant served an objection that was disallowed in a decision of the respondent dated August 10, 1995.

The issue in this appeal is whether the goods in issue are "inventory" within the meaning of section 120 of the Act.<sup>2</sup> 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 section 120 of the Act read, in part, 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.

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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.

(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 Checkwitch, President of Denman Graphics Ltd., testified on behalf of the appellant. He explained that the appellant is in the business of selling printed posters. More specifically, the appellant purchases paper and other raw materials from various distributors, which are sent directly to the printers for completion. The printed posters are then sent to the appellant, which sells them to its customers. The appellant does not keep any raw materials at its premises. Furthermore, it does not employ any manufacturing personnel. Mr. Checkwitch testified, in cross-examination, that FST was paid by the appellant on the price of the raw materials and the printing. He explained that the appellant was not able to claim a refund of FST, as it did not hold a manufacturer’s licence.

In argument, Mr. Checkwitch submitted that the appellant’s inventory on January 1, 1991, consisted of finished posters which were ready for sale. The appellant did not have any components or raw materials in its inventory on that date. As such, Mr. Checkwitch argued that the facts in this case were not similar to the facts in the Tribunal’s decision in *Impressions Gallery Inc. v. The Minister of National Revenue*<sup>3</sup> on which counsel for the respondent relied in support of her case. He argued that the appellant should not be deemed a manufacturer of printed posters simply on the basis that it purchases the raw materials that are used in their manufacture. According to Mr. Checkwitch, the goods in issue fell within the definition of “tax-paid goods” in subsection 120(1) of the Act, and, as such, the application for an FST inventory rebate should not have been rejected.

Counsel for the respondent argued that the goods in issue in the appellant’s inventory on January 1, 1991, were not held for sale, lease or rental separately, but were intended to be combined and further manufactured to produce goods that could then be sold to the appellant’s customers. As the goods in issue were to be consumed by the appellant in the manufacture or production of finished goods, counsel argued that they are expressly excluded from the definition of “inventory” under subsection 120(1) of the Act. Thus, the appellant should not be entitled to an FST inventory rebate in respect of those goods.

Section 120 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 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.

In the Tribunal’s view, although the paper and other raw materials that were used in the production of printed posters were not kept at the appellant’s premises, they still formed part of its inventory. The evidence shows that FST was paid by the appellant on these goods and not on the printed posters.<sup>4</sup> In the Tribunal’s opinion, the paper and other raw materials were not held for sale, lease or rental separately, but were intended to be consumed or used to produce printed posters that could be sold to the appellant’s

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3. Appeal No. AP-93-111, March 14, 1995.

4. See, for example, Exhibit A-1.

customers. As such, they do not fall within the definition of “inventory” as found in the Act and, therefore, cannot form the basis of an application for an FST inventory rebate under subsection 120(3) of the Act. The Tribunal is also of the view that the goods are excluded from the definition of “inventory” on the ground that the appellant would not be expected to sell such products in the ordinary course of its business.

Accordingly, the appeal is dismissed.

Desmond Hallissey

Desmond Hallissey  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Raynald Guay

Raynald Guay  
Member