CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, May 10, 1996

Appeal No. AP-95-178

IN THE MATTER OF an appeal heard on February 5, 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 July 18, 1995, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

SHARP DESIGN PRODUCTS INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-95-178

SHARP DESIGN PRODUCTS INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the Excise Tax Act of a determination dated April 2, 1991, in which it was found that the appellant was entitled to $6,576.62 of the total amount of the $14,479.00 that it had claimed as a federal sales tax (FST) inventory rebate in respect of inventory held on January 1, 1991. The issue in this appeal is whether the appellant is also entitled to the balance of the amount claimed in its FST inventory rebate application.

***HELD**: The appeal is dismissed. The appellant's witnesses testified that the material inputs, which were held in the appellant's inventory and for which the appellant claimed an FST inventory rebate, were held for incorporation into finished vertical blinds. In the Tribunal's view, these material inputs were held for consumption or use by the appellant and not for sale, lease or rental separately in the ordinary course of the appellant's commercial activities. The Tribunal is, therefore, of the view that the respondent correctly determined that the appellant was not entitled to the balance of the amount claimed in its FST inventory rebate application.*

Place of Hearing:	*Vancouver, British Columbia*
Date of Hearing:	*February 5, 1996*
Date of Decision:	*May 10, 1996*
Tribunal Members:	*Raynald Guay, Presiding Member* *Arthur B. Trudeau, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Shelley Rowe*
Clerk of the Tribunal:	*Anne Jamieson*
Appearances:	*Joseph S. Sharples and Gordon Thompson, for the appellant* *Josephine A.L. Palumbo, for the respondent*

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Appeal No. AP-95-178

SHARP DESIGN PRODUCTS INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

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

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of a determination dated April 2, 1991, in which it was found that the appellant was entitled to $6,576.62 of the total amount of the $14,479.00 that it had claimed as a federal sales tax (FST) inventory rebate in respect of inventory held on January 1, 1991.

On May 5, 1992, the Tribunal ordered that the time for the appellant to object to this determination be extended to July 6, 1992.[2] The appellant served a notice of objection and, in a decision dated July 18, 1995, the respondent disallowed the appellant's objection and vacated the determination. In the decision, the respondent stated that the goods in issue were held for further manufacture into vertical blinds and drapery tracks and were not, therefore, goods held for sale, lease or rental separately for a price. Rather, the goods in issue were consumed or used by the appellant.

In the respondent's brief and at the outset of the hearing, counsel for the respondent raised, as an issue, the Tribunal's jurisdiction to hear and decide an appeal of a vacated determination. The Tribunal notes that, pursuant to section 81.19 of the Act, a person who has served a notice of objection under section 81.15 or 81.17 of the Act may, within 90 days after which the notice of decision on the objection is sent to him, appeal the assessment or determination. In the context of the facts of this appeal, this provision means that the appellant may appeal the determination. In the Tribunal's view, the vacation of the determination in the respondent's decision does not deny the appellant the right, pursuant to section 81.19 of the Act, to appeal the determination. However, the Tribunal agrees with counsel that, since the appellant was awarded part of the amount claimed, i.e. $6,576.62, in the determination, the amount at issue is the balance of the amount claimed in the appellant's FST inventory rebate application, that is, $7,902.38. Therefore, the issue in this appeal is whether the appellant is entitled to the balance of the amount claimed in its FST inventory rebate application.

On March 6, 1992, the respondent issued a notice of assessment to recover the amount of $7,366.04. The Tribunal observes that the appellant never objected to this assessment, as required by section 81.19 of the Act, and was not granted an extension of time to object to this assessment. Section 81.23

1. R.S.C. 1985, c. E-15.
2. Extension of Time, EP-91-114, May 5, 1992.

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of the Act does provide that a person may, in certain circumstances, appeal a varied assessment or reassessment without first serving a notice of objection. However, the circumstances required to rely on that provision are not present in this appeal. The Tribunal is, therefore, of the view that, since the appellant did not object to and appeal the assessment, it does not have the jurisdiction to consider whether or not the respondent correctly assessed the appellant.

The inventory in issue was comprised of materials, such as fabric rolls of aluminum and cotton, polyester, nylon, etc., for making vertical blinds and drapery tracks which are sold to retailers as complete assemblies. It was confirmed at the hearing during the testimony of Mr. Gordon Thompson, a former employee of Sharp Design Products Inc., that the appellant manufactures vertical blinds and that the FST inventory rebate application stated that it was in respect of "material and hardware used in the making of vertical blinds."

Counsel for the respondent argued that the goods held by the appellant were for use in the manufacture of vertical blinds and were not, therefore, held in inventory for sale, separately, as required by the definition of "inventory" under section 120 of the Act. Moreover, counsel submitted that FST was not paid by the appellant on the sale price of the vertical blinds and drapery tracks that it manufactured. Therefore, the vertical blinds and drapery tracks were not "tax-paid" goods.

Whether or not the appellant is entitled to an FST inventory rebate depends upon whether the goods held in inventory constituted "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[3] in order for goods to qualify for an FST inventory rebate. The following are the relevant provisions of section 120 of the Act for the purposes of this appeal:

> *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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3. S.C. 1990, c. 45, s. 12, as amended by *An Act to amend the Excise Tax Act, the Access to Information Act, the Canada Pension Plan, the Customs Act, the Federal Court Act, the Income Tax Act, the Tax Court of Canada Act, the Tax Rebate Discounting Act, the Unemployment Insurance Act and a related Act*, S.C. 1993, c. 27.

> *(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.*

Both Mr. Joseph S. Sharples, President of Sharp Design Products Inc., and Mr. Thompson testified that the material inputs, which were held in the appellant's inventory and for which the appellant claimed an FST inventory rebate, were held for incorporation into finished vertical blinds. In the Tribunal's view, these material inputs were held for consumption or use by the appellant and not for sale, lease or rental separately in the ordinary course of the appellant's commercial activities.[4] The Tribunal is, therefore, of the view that the respondent correctly determined that the appellant was not entitled to the balance of the amount claimed in its FST inventory rebate application.

Accordingly, the appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

4. See, for example, Canadian International Trade Tribunal, *Harry M. Gruenberg, Synoda Co. Reg'd v. The Minister of National Revenue*, Appeal No. AP-92-252, April 5, 1994*; Impressions Gallery Inc. v. The Minister of National Revenue*, Appeal No. AP-93-111, March 14, 1995; *Light Touch Stenographic Services Ltd. v. The Minister of National Revenue,* Appeal No. AP-91-182, March 8, 1994; *Technessen Ltd. v. The Minister of National Revenue*, Appeal No. AP-93-320, December 21, 1994*;* and *Barry Rodko Goldsmiths Ltd. v. The Minister of National Revenue,* Appeal No. AP-92-277, March 10, 1995.