



Ottawa, Tuesday, June 24, 1997

**Appeal No. AP-95-279**

IN THE MATTER OF an appeal heard on March 19, 1997, 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 11, 1995, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**HARDY BAY MACHINE WORKS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Member

Lyle M. Russell  
Lyle M. Russell  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-279**

**HARDY BAY MACHINE WORKS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of a determination of the Minister of National Revenue dated March 1, 1993, that rejected an application for a federal sales tax inventory rebate in respect of mild, alloy and stainless steel, aluminum, bronze, zinc aluminum and plastics held in the appellant's inventory on January 1, 1991. The issue in this appeal is whether the goods in issue are "inventory" within the meaning of section 120 of the *Excise Tax Act*.

**HELD:** The appeal is dismissed. The Tribunal is of the opinion that the goods in issue, held in inventory by the appellant for the purpose of creating articles of metal or plastic different from the ones which were purchased by the appellant, were to be consumed or used by the appellant and were not, therefore, held separately "as is" for sale, lease or rental within the meaning of section 120 of the *Excise Tax Act*.

Place of Hearing: Vancouver, British Columbia  
Date of Hearing: March 19, 1997  
Date of Decision: June 24, 1997

Tribunal Members: Patricia M. Close, Presiding Member  
Robert C. Coates, Q.C., Member  
Lyle M. Russell, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Susanne Grimes

Appearances: Ronald W. Minish, for the appellant  
Janet Ozembloski, for the respondent

Appeal No. AP-95-279

**HARDY BAY MACHINE WORKS**

**Appellant**

and

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member  
ROBERT C. COATES, Q.C., Member  
LYLE M. RUSSELL, 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 March 1, 1993, that rejected an application for a federal sales tax (FST) inventory rebate in the amount of \$534.56 in respect of mild, alloy and stainless steel, aluminum, bronze, zinc aluminum and plastics held in the appellant's inventory on January 1, 1991. The application was rejected on the basis that the goods in issue were not "tax-paid goods" held "for sale, lease or rental" to the appellant's customers in the ordinary course of its business. The appellant served a notice of objection dated May 22, 1993, which was allowed in part by the respondent in a decision dated August 11, 1995. The respondent allowed the appellant's objection with respect to the portion of the appellant's inventory which consisted of goods sold in the same condition as when they were purchased, which portion the respondent determined to be approximately 10 percent of the appellant's inventory.

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 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

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

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

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.

(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, the appellant was represented by its owner, Mr. Ronald W. Minish, who also testified on behalf of the appellant. Mr. Minish explained that he is a machinist by trade and that the appellant buys various metals and plastics, such as the goods in issue which were held in inventory on January 1, 1991, to make components or parts that are used to repair machines. In cross-examination, Mr. Minish testified that he recalled talking with an official of the Department of National Revenue to whom he said that approximately 10 percent of the appellant’s inventory was sold to its customers “as is.” Mr. Minish testified that the appellant subsequently received a refund for that portion of the inventory.

Mr. Minish argued that the goods in issue were held for sale “as is” to the appellant’s customers. He argued that the appellant should be granted the refund because 13 percent FST was paid on those goods when they were bought.

Counsel for the respondent argued that the unassembled materials 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.

Subsection 120(1) 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.

The Tribunal is of the opinion that the goods in issue, held in inventory by the appellant for the purpose of creating articles of metal or plastic different from the ones which were purchased by the appellant, were to be consumed or used by the appellant and were not, therefore, held separately “as is” for sale, lease or rental<sup>3</sup> within the meaning of section 120 of the Act.

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3. See, for example, *Light Touch Stenographic Services Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-182, March 8, 1994.

Accordingly, the appeal is dismissed.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Member

Lyle M. Russell  
Lyle M. Russell  
Member