CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, September 18, 1992

Appeal No. AP-91-206

IN THE MATTER OF an appeal heard on June 2, 1992, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated December 27, 1991, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

TECHTOUCH BUSINESS SYSTEMS LTD. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-206

TECHTOUCH BUSINESS SYSTEMS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant manufactures and sells electronic devices. It purchases tax-paid goods such as transistors, resistors and circuit boards for use in the production of goods that it manufactures. The issue in this appeal is whether the appellant is entitled to a sales tax rebate under section 120 of the Excise Tax Act.

HELD: *The appeal is allowed in part. There is no question that the components in issue are "tax-paid goods" within the meaning of section 120 of the Excise Tax Act. Some of these components were also held in the appellant's inventory as of January 1, 1991. The rest of the components had been incorporated into goods manufactured by the appellant, which goods were also held in its inventory at that date. In the Tribunal's view, both types of components were held in the appellant's inventory for taxable supply. The Tribunal therefore finds that all components held in the appellant's inventory, either as is or as components of finished products, fall within the terms of section 120 of the Excise Tax Act. However, the prescribed tax factor set forth by the Federal Sales Tax Inventory Rebate Regulations established pursuant to subsection 120(5) of the Excise Tax Act is 8.1 percent, and the Tribunal has no jurisdiction to vary that factor.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*June 2, 1992*
Date of Decision:	*September 18, 1992*
Tribunal Members:	*Sidney A. Fraleigh, Presiding Member* *Charles A. Gracey, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Mark Ellwood, for the appellant* *Brian Tittemore, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-206

TECHTOUCH BUSINESS SYSTEMS LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
CHARLES A. GRACEY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act), following a decision made by the Minister of National Revenue confirming a determination that denied a request for tax rebate under the Act.

The appellant manufactures and sells electronic devices. The appellant was a small manufacturer and, therefore, purchased goods such as transistors, resistors and circuit boards that are used in the manufacturing of its TimeCorder Professional Time Tracking System on a sales-tax-included basis. On January 29, 1991, after the coming into force of the Goods and Services Tax (GST), the appellant filed an application for a federal sales tax (FST) inventory rebate under section 120 of the Act.[2] The application included components in their initial state and as elements of finished goods that were held in the appellant's inventory.

The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate pursuant to section 120 of the Act for the components it purchased sales tax included, which were held in its inventory on January 1, 1991, either as is or as components of finished goods. A second issue is related to the prescribed tax factor to be applied.

Mr. Mark Ellwood, President of TechTouch Business Systems Ltd., testified at the hearing. He explained that the appellant started its business in 1989. At that time, Mr. Ellwood requested information from the Department of National Revenue in order to know whether the appellant could be exempted from paying sales tax. There was discussion as to whether the appellant could be classified as a small manufacturer. Mr. Ellwood was told that the appellant could not obtain a federal sales tax exemption until its annual sales totalled $50,000. The result of these discussions was that the appellant did pay sales tax on the components it purchased.

The representative of the appellant argued that if the rebate is not granted, taxes will be collected twice on the same components since GST will be added to manufactured goods that will contain materials on which FST has been paid. In his view, that could not have been the

1. R.S.C., 1985, c. E-15, as amended.
2. See *An Act to amend the Excise Tax Act, the Criminal Code, the Customs Act, the Customs Tariff, the Excise Act, the Income Tax Act, the Statistics Act and the Tax Court of Canada Act*, S.C., 1990, c. 45, s. 12.

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intent underlying the enactment of the sales tax rebate provision. Moreover, such a situation would be unfair for the appellant as it would create a tax disadvantage in comparison with other manufacturers that bought components on a tax-exempt basis.

Counsel for the respondent admitted that the components in issue are tax-paid goods within the meaning of section 120 of the Act. However, relying upon the definition of "inventory" in section 120, which refers to "tax-paid goods that are described in the person's inventory in Canada at that time and that are ... held at that time for taxable supply ... by way of sale, lease or rental," counsel for the respondent contended that components for which the rebate is claimed were used in the manufacture or production of finished goods rather than for the provision of a taxable supply. Counsel submitted in this regard that the appellant has given "new forms, qualities and properties or combinations"[3] to materials and, therefore, new goods have been produced. Conversely, the manufactured goods are not entitled to a rebate because they were not acquired by the appellant and the sales tax has not been paid with respect to these goods. Counsel recognized that there is some element of double taxation in this case due to the timing of the appellant's purchase, but submitted that the law must be applied and that the Tribunal has no jurisdiction to grant equitable remedies.

At the hearing, counsel for the respondent also relied upon the definition of inventory in the *Income Tax Act*.[4] Paragraph 20(1)(*gg*) of that act, he said, encompasses the situation of goods that are held by a taxpayer "for sale or for the purposes of being processed, fabricated, manufactured, incorporated into, attached to, or otherwise converted into or used in the packaging." This provision, counsel concluded, suggests that had Parliament intended to cover a broader category of goods, it would have done so by using similar language in section 120 of the Act.

The Tribunal first observes that section 120 is found in the new Part VIII of the Act. It is a transitional measure enacted in view of the coming into force of the GST. Briefly summarized, it establishes for a period of one year an FST rebate program on tax-paid goods held in inventory as of January 1, 1991.

Second, the Tribunal cannot accept counsel for the respondent's invitation to rely upon the broad definition of "inventory" in paragraph 20(1)(*gg*) of the *Income Tax Act*, for purposes of interpreting the scope of inventory as used in section 120 of the Act. Paragraph 20(1)(*gg*), indeed, was repealed in 1986[5] and one should not rely on an earlier version of a different statute to interpret Parliament's intent in enacting a new provision several years later.

The Tribunal observes, as did counsel for the respondent at the hearing, that there are elements of double taxation in this case as the goods manufactured by the appellant will be subject to GST while incorporating FST-paid components. The Tribunal concurs with the Tax Review Board and "Double taxation can only be considered to exist where it is equitable and/or the language of the taxing Act is clear and unequivocable."[6] The Tribunal is of the view that this principle is not limited to income tax and that it also applies, as in this case, to the interpretation of the laws governing goods taxation.

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3. *The Queen v. York Marble, Tile and Terrazzo Limited*, [1968] S.C.R. 140.
4. R.S.C., 1952, c. 148, as amended by S.C., 1977-78, c. 1, s. 14.
5. S.C., 1986, c. 55, s. 5.
6. *Allfine Bowlerama Limited v. The Minister of National Revenue*, [1972] C.T.C. 2603, at 2604.

Having said that, the Tribunal finds that there is nothing in the definitions set forth in section 120 of the Act that authorizes the restrictive approach taken by the respondent. There is no question that the components in issue are "tax-paid goods" within the meaning of section 120. A large part of these components were also held in the appellant's inventory as of January 1, 1991. The rest of the components had been incorporated into goods manufactured by the appellant, which goods were also held in its inventory at that date. In the Tribunal's view, both types of components were held in the appellant's inventory for taxable supply or, using the French version of the definition of "inventory", were "*destinées à la fourniture taxable ... par vente ou location.*" The Tribunal notes that the word "*destinées*" in the French version indicates something that will happen in the future. Therefore, components intended for manufactured goods are not excluded from the scope of section 120 of the Act insofar as these goods will be intended for taxable supply. As to components already incorporated into finished goods, they were also held in the appellant's inventory for taxable supply as long as the finished goods were held in the appellant's inventory as of January 1, 1991. In sum, the Tribunal finds that the English version "held for taxable supply" and the somewhat clearer French version "*destinées à la fourniture taxable*" both permit the interpretation that items of inventory that are destined or intended for taxable supply should qualify for a refund of FST. Further, if there is any ambiguity, the Tribunal believes that the benefit of the ambiguity should go to the taxpayer, given the clear intent of the legislators to avoid double taxation.

In addition, the Tribunal notes that if it had been the intent to exclude inventory held by small manufacturers from the refund provisions, the legislation could have spelled it out very easily in straight forward language.

Finally, the Tribunal observes that the Parliament avoided double taxation in similar circumstances. Under section 68.18 of the Act, a person that paid sales tax with respect to goods held in his inventory on the day a licence is granted to him is entitled to a sales tax refund provided the person could have obtained the goods exempt from tax under subsection 50(5) of the Act. As for section 68.18, the Tribunal believes that Parliament never intended to subject to double taxation FST-paid components held in a person's inventory as of January 1, 1991, either as is or as elements incorporated in finished goods. On the contrary, such components are entitled to the sales tax relief set forth in that section.

Therefore, the Tribunal finds that all components held in the appellant's inventory either as is or as components of a finished product fall within the terms of section 120 of the Act. However, the prescribed tax factor set forth by the *Federal Sales Tax Inventory Rebate Regulations*[7] (the Regulations) established pursuant to subsection 120(5) of the Act is 8.1 percent, and the Tribunal has no jurisdiction to vary that factor.

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7. SOR/91-52, Canada Gazette Part II, Vol. 125, No. 2, p. 265, December 18, 1990.

For the foregoing reasons, the Tribunal allows the appeal in part and refers the matterback to the Minister so that he can apply the prescribed method of determining the rebate on the components in accordance with section 4 of the Regulations.

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