



Ottawa, Friday, March 19, 1993

Appeal No. AP-92-067

IN THE MATTER OF an appeal heard on December 17, 1992, 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 April 6, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

HYPERTEC SYSTÈMES INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-067

HYPERTEC SYSTÈMES INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is a manufacturer of microcomputers. The respondent refused to allow the appellant a full rebate of the federal sales tax paid on the components used in the manufacture of the microcomputers on the ground that the conditions set forth in section 120 of the Excise Tax Act had not been met in this case. The issue in this appeal is whether the appellant is entitled to a full federal sales tax inventory rebate in accordance with section 120 of the Excise tax Act.

HELD: *The appeal is allowed. Relying on the decision rendered on September 18, 1992, in Techtouch Business Systems Ltd. v. The Minister of National Revenue, the Tribunal found that all the components in the appellant's inventory, either as is or as components of finished products, fell within the terms of section 120 of the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 17, 1992
Date of Decision: March 19, 1993

Tribunal Members: Arthur B. Trudeau, Presiding Member
John C. Coleman, Member
Desmond Hallissey, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

Appeal No. AP-92-067

HYPERTEC SYSTÈMES INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
JOHN C. COLEMAN, 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 of the Minister of National Revenue (the Minister). In a notice of decision dated April 6, 1992, the Minister disallowed the appellant's claim and confirmed the determination concerning the partial rebate of the federal sales tax (FST) paid on the goods in the appellant's inventory. The amount at issue is \$44,214.98.

The appellant is a manufacturer of microcomputers. The appellant uses a variety of components in manufacturing its microcomputers, including motherboards, housings and memory chips. The Minister refused to grant the FST rebate on the components, under section 120 of the Act,² on the ground that the components to be attached to, or incorporated in, the microcomputers were not covered by the rebate, since they were not, at the time of inventory, "for taxable supply." Moreover, components incorporated into, or assembled to, microcomputers are no longer tax-paid goods at the time of sale, within the meaning of subsection 120(1) of the Act.

The issue in this appeal is whether the appellant is entitled to the full FST inventory rebate under section 120 of the Act.

In a letter dated December 7, 1992, and addressed to the Tribunal, counsel for the respondent pointed out that the facts in this case appear to be similar to those in *Techtouch Business Systems Ltd. v. The Minister of National Revenue*,³ a decision on which the appellant relied in its brief. This letter also stated that the respondent, without consenting, would not oppose this appeal. In a subsequent letter to the Tribunal, dated December 16, 1992, counsel for the respondent informed the Tribunal that the Minister had no objection to this appeal being decided on the basis of the documents on record.

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

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.

3. Canadian International Trade Tribunal, Appeal No. AP-91-206, September 18, 1992.

Several recent decisions of the Tribunal have dealt with the issue raised in this appeal. In *Techtouch*, the Tribunal found 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 Act. Like counsel for the respondent, the Tribunal is of the opinion that the facts in this case are similar to those in *Techtouch*. For these reasons, and giving special consideration to the position of the respondent in this matter, the Tribunal finds that there is no reason to depart from that decision.

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

John C. Coleman

John C. Coleman
Member

Desmond Hallissey

Desmond Hallissey
Member