CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, May 10, 1993

Appeal No. AP-92-101

IN THE MATTER OF an appeal heard on February 24, 1993, 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 24, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

ALTERNATE SOLUTIONS **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-92-101

ALTERNATE SOLUTIONS **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant, Alternate Solutions, is a manufacturer of two electronic fuel management systems known as "The Attendant" and "The Fuel Sentry." Generally, the systems are designed to provide a vehicle fleet operator with management and control over the use of fuel. The appellant applied for a federal sales tax (FST) inventory rebate of $2,704.28 in respect of the parts used to manufacture the fuel management systems. However, the application was disallowed, and the appellant appealed the determination to the Canadian International Trade Tribunal.

***HELD**: The appeal is allowed. The Tribunal finds that the unassembled components held in inventory and destined to be assembled into a finished product are held at that time for taxable supply within the meaning of section 120 of the Excise Tax Act. As such, the appellant is entitled to an FST inventory rebate in respect of these goods. Also, the Tribunal recognizes that the finished products in stock do not constitute "tax-paid goods" under the Excise Tax Act. Tax was not paid on the assembled fuel management systems, rather, only on the components that comprise them. However, tax was paid on the components, and it is the Tribunal's opinion that such tax-paid components are held in inventory for taxable supply when incorporated into a finished product. Consequently, the appellant is entitled to a rebate of the FST paid on the materials incorporated into a finished product held in inventory for sale, but not on the entire value of the finished product.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*February 24, 1993*
Date of Decision:	*May 10, 1993*
Tribunal Members:	*Charles A. Gracey, Presiding Member* *John C. Coleman, Member* *Kathleen E. Macmillan, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-101

ALTERNATE SOLUTIONS **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
JOHN C. COLEMAN, Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) on the basis of an agreed statement of facts and the Tribunal's record as supplemented by briefs submitted by the parties. The issue in this appeal is whether the appellant is entitled to a federal sales tax (FST) inventory rebate in accordance with section 120[2] of the Act. Specifically, the Tribunal must determine: (1) whether certain goods held in inventory for purposes of further manufacture or production and assembly into finished products qualify for the rebate; and (2) whether the finished goods held in inventory that incorporated tax-paid materials qualify for the rebate.

The appellant, Alternate Solutions, is a manufacturer of two electronic fuel management systems known as "The Attendant" and "The Fuel Sentry." The two products were designed by the appellant and manufactured in Hamilton, Ontario. Generally, the systems are designed to provide a vehicle fleet operator with management and control over the use of fuel. As indicated in the brochures on the two products, they provide the owner with such things as security against theft of fuel, a comprehensive accounting and reporting of dispensed fuel, and inventory control of fuel storage.

The appellant applied for an FST inventory rebate of $2,704.28 in respect of the parts used to manufacture the fuel management systems. The application was disallowed on the basis that the appellant's "inventory of raw materials to be used ... in the manufacturing of goods does not qualify for a rebate since those goods are not for sale, lease or rental to customers." Also, the "inventory of finished goods ... does not qualify for a rebate because federal sales tax was not paid on the full value of these goods and these goods were not acquired for sale, lease or rental." It is this determination that was appealed to the Tribunal.

For purposes of this appeal, the relevant rebate provisions of the Act are as follows:

> *120. (3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,*
> *(a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8).*

1. R.S.C. 1985, c. E-15.
2. S.C. 1990, c. 45, s. 12.

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In her brief, counsel for the respondent simply reiterated the conditions that must be met by the appellant under paragraph 120(3)(*a*) of the Act in order for the goods in issue to qualify for the rebate. In supplementary submissions, counsel acknowledged that the goods in issue were all tax-paid parts or components of two fuel management systems. It was submitted that, once the components were manufactured into a system, they lost their individual identity and comprised new products.[3] The new products are not "tax-paid goods." Nor were the components held for taxable supply by way of sale, lease or rental as of January 1, 1991. It was further argued that, if Parliament had intended to include in inventory all tax-paid goods held for incorporation into an entity which is then supplied, it would not have seen the need to make special provision for building materials in paragraph 120(1)(*b*) of the Act.

Counsel submitted that the intent of the inventory tax rebate scheme was not to avoid double taxation in all cases, rather, it was to provide limited relief to entitled taxpayers. In order to benefit from it, a taxpayer must establish entitlement. Counsel submitted that the definition of "inventory" in section 120 of the Act required a more restrictive interpretation than that given by the Tribunal in *Techtouch*,[4] which is the precedent appeal in this stream of Tribunal decisions.

In that case, counsel for the respondent admitted that the components in issue were 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 contended that components for which the rebate was claimed were used in the manufacture or production of finished goods rather than for the provision of a taxable supply. As such, they do not constitute "taxable supply.[5]"

In addition, counsel submitted that the finished goods did not constitute "tax-paid goods.[6]" The finished goods do not represent goods on which FST was paid. Rather, they incorporate components or parts on which FST was paid. As such, they do not qualify for the rebate.

The Tribunal recognizes that the issues in this case are similar to those in *Techtouch* and decides this case in a similar manner. First, the Tribunal finds that the unassembled components held in inventory and destined to be assembled into a finished product are, nonetheless, held

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3. In support of this proposition, counsel cited: *W. T. Hawkins Limited v. The Deputy Minister of National Revenue For Customs and Excise*, [1957] Ex. C.R. 152; *Gaston Charbonneau v. Her Majesty the Queen* (1978), 79 D.T.C. 5008, unreported, Federal Court of Appeal, Appeal No. 2512-75, November 29, 1978; *Walt Disney Music of Canada Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1984), 85 D.T.C. 5022, unreported, Federal Court of Appeal, Appeal No. A434-84, December 18, 1984.

4. *Techtouch Business Systems Ltd. v. The Minister of National Revenue*, Appeal No. AP-91-206, September 18, 1992.

5. "Taxable supply" is defined in subsection 123(1) of the Act to mean "a supply that is made in the course of a commercial activity, but does not include an exempt supply." "Supply" is defined to mean "the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition."

6. "Tax-paid goods" is defined in subsection 120(1) of the Act and, for purposes of this appeal, includes "goods, acquired before 1991 ... that are ... new goods ... in respect of which tax imposed under subsection 50(1) [of the Act] ... has been paid."

at that time for taxable supply within the meaning of section 120 of the Act. As such, the appellant is entitled to an FST inventory rebate in respect of these goods. Second, the Tribunal recognizes that the finished products in stock do not constitute "tax-paid goods" under the Act. Tax was not paid on the assembled fuel management systems, rather, only on the components that comprise them. However, tax was paid on the components, and it is the Tribunal's opinion that such tax-paid components are held in inventory for taxable supply when incorporated into a finished product. Consequently, the appellant is entitled to a rebate of the FST paid on the materials incorporated into a finished product held in inventory for sale, but not on the entire value of the finished product.

For the above reasons, the appeal is allowed.

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