



Ottawa, Thursday, April 15,

**Appeal No. AP-92-125**

IN THE MATTER OF an appeal heard on February 17, 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 May 29, 1992, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**ARTECAL EXHIBIT AND DISPLAYS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part. Those items held in inventory as components to be incorporated into the finished Isoframe structures qualify for the federal sales tax inventory rebate. Likewise, any tax-paid components incorporated into an assembled Isoframe structure that was held in inventory on January 1, 1991, also qualify for the rebate. Any finished goods held as demonstrator units on that date do not qualify for the rebate. However, if the appellant held used demonstrators for sale, lease or rental on January 1, 1991, the provisions of paragraph 120(3)(b) of the *Excise Tax Act* would be applicable.

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

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-125**

**ARTECAL EXHIBIT AND DISPLAYS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant, Artecal Exhibit and Displays, is a designer of geodesic-type structures which are assembled out of plastic tubes, connectors and rivets. These Isoframe structures are designed by the appellant, can take many forms and can fulfil several uses. They could be used as display modules for trade shows or ceiling covers, archways, domes, etc. The principal activity of the appellant is to design and assemble such units out of the materials which it purchases from manufacturers. Since the tubes are normally received in 12-ft. lengths, the production process often involves cutting the plastic tubes to length and drilling a small hole at either end to accept a rivet or screw so that the tubes can be fastened to the connectors in the intended configuration. The issue in this appeal is whether the components to be assembled into finished products and the finished products held for sale or for demonstration purposes qualify for a federal sales tax inventory rebate under section 120 of the Excise Tax Act.*

**HELD:** *The appeal is allowed in part. Those items held in inventory as components to be incorporated into the finished Isoframe structures qualify for the federal sales tax inventory rebate. Likewise, any tax-paid components incorporated into an assembled Isoframe structure that was held in inventory on January 1, 1991, also qualify for the rebate. Any finished goods held as demonstrator units on that date do not qualify for the rebate. However, if the appellant held used demonstrators for sale, lease or rental on January 1, 1991, the provisions of paragraph 120(3)(b) of the Excise Tax Act would be applicable.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 17, 1993  
Date of Decision: April 15, 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*

Appeal No. AP-92-125

ARTECAL EXHIBIT AND DISPLAYS

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*<sup>1</sup> (the Act) on the basis of the materials contained in the Tribunal's file 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 under section 120<sup>2</sup> 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, (2) whether the finished goods held in inventory that incorporated tax-paid materials qualify for the rebate, and (3) whether assembled goods used as demonstrators qualify for the rebate.

The appellant, Artecald Exhibit and Displays, is a designer of geodesic-type structures which are assembled out of plastic tubes, connectors and rivets. These "Isoframe" structures are designed by the appellant, can take many forms and fulfil several uses. They could be used as display modules for trade shows or ceiling covers, archways, domes, etc. The principal activity of the appellant is to design and assemble such units out of the materials which it purchases from manufacturers. Since the tubes are normally received in 12-ft. lengths, the production process often involves cutting the plastic tubes to length and drilling a small hole at either end to accept a rivet or screw so that the tubes can be fastened to the connectors in the intended configuration.

The appellant paid FST on all of the materials that it held in inventory at January 1, 1991. The total amount of the rebate claim was for \$22,005.40, of which the Department of National Revenue allowed \$11,255.33, plus interest. It is the disallowed portion that is the subject of this appeal.

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,*

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

(a) where 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).

In a letter to the Tribunal, counsel for the respondent acknowledged that her arguments in opposition to the appellant's entitlement to the rebate were similar to those which were rejected by the Tribunal in a recent appeal.<sup>3</sup> As such, she informed the Tribunal that the respondent, without consenting, would not oppose the appeal. Also, she requested that the appeal be disposed of on the basis of the written documentation before the Tribunal. The appellant agreed to this proposal and did not appear at the hearing.

In the *Techtouch* case, counsel for the respondent agreed 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 of the Act, 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."<sup>4</sup> As such, they did not constitute taxable supply.

In addition, counsel submitted that the finished goods did not constitute "tax-paid goods."<sup>5</sup> The finished products did not represent goods on which FST was paid. Rather, they incorporated components or parts on which FST was paid. As such, they did not qualify for the rebate.

As acknowledged by counsel for the respondent, her arguments were very similar to those submitted in the preceding case, i.e. *Techtouch*. Counsel claimed that the appellant's inventory of plastic tubes, connectors and any miscellaneous components that had not yet been manufactured into Isoframe structures did not constitute a taxable supply. She asserted that the goods that had been assembled into Isoframe structures for sale or to be used as demonstrators did not constitute "taxable supply" and, therefore, did not qualify for the FST inventory rebate.

The Tribunal agrees that the issues in this case are very similar to those in the *Techtouch* case and decides this case in a similar manner. First, the Tribunal finds that the unassembled tubes and other components held in inventory and destined to be assembled into a finished product are, nonetheless, held at that time for taxable supply within the meaning of section 120 of the Act. 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 Isoframe structures, 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

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

4. "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."

5. "Tax-paid goods," as 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."

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. Finally, the Tribunal agrees with counsel for the respondent that any such assembled goods that were held on January 1, 1991, for use as demonstrators do not qualify for an FST inventory rebate as they were not held for sale, lease or rental. However, if the appellant held used demonstrators on January 1, 1991, for sale, lease or rental, the provisions of paragraph 120(3)(b) of the Act would be applicable.

The appeal is allowed in part. Those items held in inventory as components to be incorporated into the finished Isoframe structures qualify for the FST inventory rebate. Likewise, any tax-paid components incorporated into an assembled Isoframe structure that was held in inventory on January 1, 1991, also qualify for the FST inventory rebate. However, any finished goods held as demonstrator units on that date do not qualify for the FST inventory rebate.

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