CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, November 14, 2002

Appeal No. AP-2001-005

IN THE MATTER OF an appeal heard on October 25, 2001, 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 February 3, 2000, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

DOUG PATERSON **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
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-2001-005

DOUG PATERSON **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of an assessment of the Minister of National Revenue dated December 24, 1996, of a sales tax inventory rebate payment in respect of various furniture frames and cigarette lighter vending machines. On February 18, 1991, the appellant submitted an application for federal sales tax inventory rebate on tax-paid goods held in inventory. On December 24, 1996, after conducting an audit for the period from January 1 to June 30, 1991, the respondent issued a notice of assessment. The appellant served the respondent with a notice of objection on December 15, 1999. On January 18, 2000, the respondent issued a notice of late filing to the appellant. The issues in this appeal are: (1) whether the appellant is prevented by the statutory time limits from filing a notice of objection; and (2) whether the appellant is entitled to a sales tax inventory rebate under section 120 of the *Excise Tax Act* on tax-paid goods held in inventory as of January 1, 1991.

HELD: The Tribunal concludes that the notice of objection was not filed within the statutorily prescribed time limit. Consequently, the appeal is dismissed.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 25, 2001
Date of Decision:	November 14, 2002
Tribunal Members:	Ellen Fry, Presiding Member Patricia M. Close, Member James A. Ogilvy, Member
Counsel for the Tribunal:	Eric Wildhaber Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Doug Paterson, for the appellant Ritu Banerjee, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-2001-005

DOUG PATERSON **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ELLEN FRY, Presiding Member
PATRICIA M. CLOSE, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] of a notice of assessment of the Minister of National Revenue dated December 24, 1996, concerning a sales tax inventory rebate payment in respect of various furniture frames and cigarette lighter vending machines. The appellant has been a Goods and Services Tax (GST) registrant since January 1, 1991. On February 18, 1991, the appellant submitted an application for federal sales tax inventory rebate on tax-paid goods held in inventory. On December 24, 1996, after conducting an audit for the period from January 1 to June 30, 1991, the respondent issued a notice of assessment in relation to the rebate claimed. On December 24, 1996, the respondent also issued a reminder notice indicating an unpaid balance on the appellant's GST account. On February 6, 1997, the appellant received a statement of arrears indicating an unpaid balance in his GST account. The appellant served the respondent with a notice of objection on December 15, 1999. On January 18, 2000, the respondent issued a notice of late filing to the appellant and, on February 3, 2000, the respondent sent a letter to the appellant indicating that the respondent was not accepting the notice of objection, as it was not filed within the prescribed time limit. By letter dated January 10, 2001, the appellant commenced an appeal to the Tribunal pursuant to section 81.19.

The legislative provision concerning federal sales tax inventory rebates is found in Part VIII of the Act. This is a transitional measure enacted in view of the coming into force of the GST. Briefly summarized, it establishes, for a one-year period, a sales tax rebate program on tax-paid goods held in inventory as of January 1, 1991.

The substantive issue in this appeal is whether the appellant is entitled to a sales tax inventory rebate under section 120 of the Act on tax-paid goods held in inventory as of January 1, 1991. However, before addressing this issue, the Tribunal must first determine if it has jurisdiction to hear this case, in light of the respondent's argument that the appellant is prevented by the statutory time limits from filing a notice of objection.

1. R.S.C. 1985, c. E-15 [hereinafter Act].

EVIDENCE

The appellant explained the circumstances of the late filing of his notice of objection to the respondent's assessment. He stated that he was first notified of an amount owing by the Tax Services Office of the Department of National Revenue (now Canada Customs and Revenue Agency (CCRA)) in London, Ontario, in late 1997, when it gave him a copy of a notice of assessment.[2] The appellant testified that, in order to be able to respond adequately to the assessment, he needed his records, but that they were still in CCRA's possession after being picked up in April 1995. He also testified that he made numerous attempts to retrieve his documents, but that his efforts were unsuccessful. Some records pertaining to another account were returned to him around December 15, 1999. The appellant assumed that the relevant records were lost or misplaced in the London office, an assumption that, he testified, was later confirmed by CCRA.

The appellant stated that the address on the notice of assessment, i.e. 425 First Street, London, Ontario, was a business address that he had vacated on or around February 26, 1995. The reminder notice, also dated December 24, 1996, was sent to his home address, i.e. 14 Locust Crescent, but the appellant testified that he had never received it by mail and was given a copy only in late 1997.[3] He stated that, in order to protect his right to do so, he filed an appeal before he received all his records, but was told by CCRA officials that he should not be concerned about the assessment until all his documents were returned to him.

In cross-examination, the appellant confirmed that he had first received notification of an amount owing from CCRA when it gave him a copy of the notice of assessment in late 1997.[4] He acknowledged that he had not notified CCRA that he was vacating 425 First Street and that he had not left a forwarding address.[5] The appellant further acknowledged that he received a document entitled Statement of Arrears, dated February 6, 1997, showing a large GST account in arrears and that he was aware of a debt owing to CCRA, as his wages were garnisheed for a certain period of time.[6]

In answer to questions from the Tribunal, the appellant confirmed that he did receive notification of an assessment in 1997 and that he first applied for an extension of time to file an appeal on December 15, 1999.[7] He also testified that, starting in 1997, CCRA had told him that he had 90 days from the time the audit was completed to file an appeal.

Mr. Timothy A. Hord, Appeals Officer, London Appeals Division, CCRA, testified on behalf of the respondent. He testified that some documents were taken from 425 First Street for photocopying purposes on April 25, 1995, but were returned either the same day or the next day. He stated that all the other documents retained by CCRA were in relation to the appellant's other account, i.e. account No. 138. Mr. Hord explained that the audit for the assessment in issue, i.e. account No. 127, was undertaken after he realized that there had been very little activity in account No. 138, yet a large federal sales tax inventory rebate was being claimed for the previous year. The two accounts, although under different names, i.e. Douglas J. Paterson and James D. Paterson, bore the same social insurance number. The audit concerning account No. 127, the one at issue before the Tribunal, was completed by mid-1995 and the notice of assessment was sent in December 1996 to the appellant's last known business address. He further explained

2. *Transcript of Public Hearing*, 25 October 2001, at 12.
3. *Ibid.* at 15.
4. *Ibid.* at 18.
5. *Ibid.* at 20.
6. *Ibid.* at 25.
7. *Ibid.* at 26, 28-29.

that he arranged to have the notice of assessment sent to that address because that was the place where the audit had taken place and where all the records were located and picked up; the notice of assessment was never returned to CCRA. He testified that the second notice dated December 24, 1996, which was a computer-generated reminder notice sent by a different section of the London CCRA office, and the statement of arrears were sent to 14 Locust Crescent, the appellant's home address. When the notice of assessment was sent, Mr. Hord was aware that it was being sent to a business address that was no longer valid, but thought that it might be forwarded to the appellant.[8] At that time, he was not aware that another section of the London CCRA office had a home address (14 Locust Crescent) that was still valid.[9]

Mr. Hord went through some of the documents[10] filed by the respondent, which showed all the notices that were sent to the appellant, and stated that, if the reminder notice had been returned undelivered by Canada Post Corporation, CCRA would not have sent out the next three statements of arrears dated February 6, 1997, May 26, 1997, and July 2, 1997. Finally, he stated that, following the audit conducted in April 1995, the appellant never contacted him in order to retrieve his documents and that, at all times, the documents not returned to the appellant, which did not relate to the assessment in issue, were left in the audit office of CCRA, since they could not be returned to a vacated address.

In answer to a question from the Tribunal, Mr. Hord testified that, while there was nothing on the notice of assessment to indicate to the appellant that this notice related to his claim for sales tax inventory rebate, the account number and the amount involved were sufficient to indicate that the assessment related to that claim. He also explained that the methods to appeal the assessment are set out on the back of the notice of assessment.

ARGUMENT

The appellant argued that, because of the numerous delays involved in conducting the audit and his inability to retrieve his records, he was not in a position to file an appeal or an objection. Despite not being in possession of his documents, the appellant decided to file a notice of appeal in an attempt to stop the collection action against him by the respondent.

The respondent submitted that the appellant is statute-barred from filing a notice of objection to the assessment in issue. The respondent argued that, pursuant to subsection 81.15(1) of the Act, a notice of objection must be filed within 90 days after the day on which the notice of assessment is sent to the appellant.

The respondent submitted that the evidence shows that the notice of assessment was sent to the appellant on December 24, 1996. The respondent further submitted that, in accordance with office policy and in the general course of business, the presumption is that, since there is no evidence to suggest that a stop mail order was issued or any indication that something was returned, the notice of assessment was mailed that day. Furthermore, the respondent argued that, according to the appellant's testimony, he knew at some point in 1997 that an assessment had been issued and that he had received the reminder notices and statements of arrears at his Locust Crescent address. These notices were dated February 6, 1997, May 26, 1997, and July 2, 1997. The respondent argued that, according to the evidence, the appellant filed a notice of objection outside the 90-day period set by law.

8. *Transcript of Public Hearing*, 25 October 2001, at 91.
9. *Ibid.* at 99.
10. Respondent's Brief, Tabs 6 and 7; Respondent's Book of Supplemental Documents, Tab 4.

The respondent also argued that, pursuant to subsection 81.32(7) of the Act, the appellant is out of time to request that the Tribunal grant an extension of time to file a notice of objection, since this must be done within a one-year period. The respondent further argued that such a request must be made under the conditions set by law, for example, the condition that the application must be brought as soon as circumstances permit.

In this case, the respondent contends that the appellant knew about the circumstances surrounding the assessment in 1997, had numerous contacts with CCRA during that year, had received some notices by mail and knew about the 90-day appeal period. Therefore, the respondent argued, the request for an extension of time cannot be considered to have been filed in a timely manner.

DECISION

The relevant provisions of the Act read as follows:

81.15 (1) Any person who has been assessed, otherwise than pursuant to subsection (4) or 81.38(1), and who objects to the assessment may, within ninety days after the day on which the notice of assessment is sent to him, serve on the Minister a notice of objection in the prescribed form setting out the reasons for the objection and all relevant facts on which that person relies.

81.32 (1) Subject to subsection (6), any person entitled to serve a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, or to appeal to the Tribunal under section 81.19 may, at any time before or after the expiration of the time limited by that section for so objecting or appealing, apply to the Tribunal for an order extending that time.

81.32 (6) No application may be made pursuant to subsection (1) or (3) more than one year after the expiration of the time limited.

81.32 (7) On application pursuant to subsection (1) or (3), the Tribunal or Court may grant an order extending the time limited if

(*a*) it has nor previously made an order extending that time; and

(*b*) it is satisfied that

(i) the circumstances are such that it is just and equitable to extend the time,

(ii) but for the circumstances referred to in subparagraph (i), an objection would have been made or an appeal would have been instituted, as the case may be, within that time,

(iii) the application was brought as soon as circumstances permitted, and

(iv) there are reasonable grounds for the objection or appeal.

104. (1) Except as otherwise provided in this Act, where a notice or other document is required or authorized by this Act to be sent to a person, other than the Minister or the Deputy Minister or the Tribunal, the notice or document shall be sent to that person by prepaid mail addressed to him at his latest known address or by being served personally on that person.

On December 24, 1996, the respondent issued a notice of assessment in relation to the rebate claimed. Although the appellant denies having received that notice at that time, the Tribunal accepts the respondent's position that the notice of assessment was sent and that it was sent to the appellant's last

known business address, 425 First Street.[11] It further accepts Mr. Hord's evidence that the appellant refused to provide Mr. Hord with a home address and did not provide Mr. Hord with a forwarding business address.[12] Under the circumstances, it was reasonable for Mr. Hord to conclude that 425 First Street was the appellant's last known address. Accordingly, the notice was sent to the proper address as required by subsection 104(1) of the Act. The appellant did not file his notice of objection with CCRA until November or December 1999 and, therefore, did so more than 90 days after the notice of assessment was sent.

Consequently, the appellant would be out of time in filing his notice of objection unless he requested and received from the Tribunal an extension of time to file an appeal under subsection 81.32(6) of the Act. To seek such an extension within the timeframe set by law, he needed to make the request to the Tribunal within one year of the deadline for filing his notice of objection with CCRA (i.e. within one year plus 90 days from December 24, 1996, when the notice of assessment was sent). The appellant filed this appeal with the Tribunal, together with a request for an extension of time to appeal, on January 10, 2001. Accordingly, he filed his request too late to be able to seek from the Tribunal an extension of time to file his notice of objection.

Consequently, because the appellant was out of time in filing his notice of objection, the appeal is dismissed.

The Tribunal notes that, even if it were to determine that the notice of assessment had not been properly sent to the appellant's last known address, this would not change its conclusion that the appeal be dismissed.

Section 81.19 of the Act provides that the appellant would have had 90 days to appeal the assessment to the Tribunal from the date that the respondent sent him the notice of decision concerning his objection. The Tribunal would also have had jurisdiction under section 81.32 to extend the time period to appeal if the appellant had applied to the Tribunal within one year of the expiry of the original 90 days. Under this scenario, the Tribunal would have considered CCRA's initial letter rejecting the appellant's notice of objection, sent in January 2000,[13] to be the respondent's notice of decision. Based on this premise, given that the appellant applied to the Tribunal on January 10, 2001, within one year and 90 days of this communication from CCRA, he would have applied soon enough to permit the Tribunal to consider extending his time to appeal the respondent's decision, under section 81.32.

However, in order to grant the appellant an extension of time to appeal under subsection 81.32(7) of the Act, the Tribunal must determine, among other things, that the circumstances are such that it is just and equitable to extend the time. In the view of the Tribunal, no such circumstances exist. Even if the Tribunal accepted the appellant's evidence that he did not receive the notice of assessment when it was mailed in December 1996, the appellant, by his own admission, was fully aware of the assessment by some point in 1997, yet waited at least two years, until December 1999, to challenge it. Furthermore, the Tribunal was not convinced by the appellant's evidence that he waited this long to file his appeal because CCRA had not returned his business records. The Tribunal accepts the evidence of the respondent that the records retained by CCRA were not relevant because they were records relating to the appellant's other account with CCRA.

11. *Transcript of Public Hearing*, 25 October 2001, at 91-92.
12. *Ibid.* at 93-94.
13. Respondent's Brief, Tab 9.

Based on the foregoing, the Tribunal would not have considered it just and equitable to extend the time for the appellant to appeal the respondent's decision.

Ellen Fry
Ellen Fry
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member