Canadian International Trade Tribunal | Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-051

Transport Gilles Perreault Inc.

v.

Minister of National Revenue

Decision and reasons issued
Tuesday, March 28, 2006

Canada

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IN THE MATTER OF an appeal heard on January 31, 2006, 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 November 25, 2004, with respect to an objection to a determination of the Minister of National Revenue under section 81.17 of the *Excise Tax Act*.

BETWEEN

TRANSPORT GILLES PERREAULT INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Elaine Feldman
Elaine Feldman
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	January 31, 2006
Tribunal Members:	Pierre Gosselin, Presiding Member Meriel V. M. Bradford, Member Elaine Feldman, Member
Counsel for the Tribunal:	Duane Schippers Eric Wildhaber
Clerk of the Tribunal:	Valérie Cannavino
Appearances:	Gilles Perreault, for the appellant Yannick Landry, for the respondent

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: (613) 993-3595
Fax: (613) 990-2439
E-mail: secretary@citt-tcce.gc.ca

REASONS FOR DECISION

1. This is an appeal pursuant to section 81.19 of the *Excise Tax Act*[1] from a decision of the Minister of National Revenue (the Minister) dated November 25, 2004, with respect to an objection to a determination of the Minister under section 81.17 of the *Act*.

2. The issue in this appeal is whether Transport Gilles Perreault Inc. (Perreault) is entitled to a refund of excise tax paid on the portion of diesel fuel purchased in Canada and transported outside of Canada in the fuel tank of a vehicle, but consumed in the United States, for the period from March 1, 2001, to February 28, 2003.

3. This is one of a series of appeals under the *Act* that have arisen as a result of the Government's decision to respond legislatively to the decision of the Federal Court of Appeal in *Penner International Inc. v. Canada*.[2]

4. Following the decision in *Penner*, the Government announced in the Federal Budget of February 18, 2003, its intention to amend Part VII of the *Excise Tax Act* to clarify that diesel fuel taken out of the country in the fuel tank of a vehicle does not qualify as an export and that no rebate of tax is payable in respect of that fuel. The Government also announced that the amendment would apply to rebate applications received by the Canada Customs and Revenue Agency (CCRA) (now the Canada Revenue Agency [CRA]) after February 17, 2003.

5. Bill C-28, the *Budget Implementation Act, 2003*, received royal assent on June 19, 2003.

6. Section 63 of the *Budget Implementation Act, 2003* reads as follows:

63. (1) Section 68.1 of the Act is amended by adding the following after subsection (2):	63. (1) L'article 68.1 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :
(3) For greater certainty, no amount is payable to a person under subsection (1) in respect of tax paid on gasoline or diesel fuel transported out of Canada in the fuel tank of the vehicle that is used for that transportation.	(3) Il est entendu qu'aucun montant n'est à payer à une personne aux termes du paragraphe (1) au titre de la taxe payée sur l'essence ou le combustible diesel qui est transporté en dehors du Canada dans le réservoir à combustible du véhicule qui sert à ce transport.
(2) Subsection (1) applies in respect of any application for a payment under section 68.1 of the Act received by the Minister of National Revenue after February 17, 2003.	(2) Le paragraphe (1) s'applique à toute demande de paiement, prévue à l'article 68.1 de la même loi, reçue par le ministre du Revenu national après le 17 février 2003.

EVIDENCE

7. In its brief, Perreault alleged that it mailed its refund application to the Minister on February 21, 2003, or three days after the federal budget of February 18, 2003. The Minister alleged that the refund application was received at the offices of the CCRA Taxation Centre in Summerside, Prince Edward Island, on

1. R.S.C. 1985, c. E-15 [*Act*].
2. [2003] 2 F.C. 581 (C.A.) [*Penner*].

March 4, 2003. Neither of the parties contests these allegations. The parties agree that the refund application was not mailed to or received by the Minister until after February 17, 2003.

8. The Tribunal decided to hold a hearing by way of written submissions pursuant to Rules 25, 25.1 and 36.1 of the *Canadian International Trade Tribunal Rules*,[3] since there were no material facts in dispute. The Tribunal gave notice of this decision to the parties on November 29, 2005, and published a notice to this effect in the January 14, 2006, edition of the *Canada Gazette*.[4] The Tribunal invited Perreault to submit a reply brief by January 3, 2006. By letter dated November 30, 2005, Perreault indicated that it would not be submitting a reply brief.

ARGUMENT

9. Perreault argued that, at the time it had formed an intention to apply for a refund, there was no limitation period for filing a refund application.

10. Perreault further argued that it was unjust to deny it a refund based upon an arbitrary limitation date which was determined without notice. Accordingly, it argued that the Tribunal should permit the filing of the refund claims.

11. The Minister argued that section 63 of the *Budget Implementation Act, 2003* was clear and that it was expressly intended to have retroactive effect.

12. The Minister further submitted that it was also clear that any applications for refunds *received* by the Minister after February 17, 2003, were not eligible for a refund; it was not sufficient for an application to have been mailed on or before February 17, 2003, it must actually have been received by February 17, 2003.

13. Finally, the Minister argued that the Tribunal has no jurisdiction to decide cases on the basis of principles of equity.

DECISION

14. Although a statute is presumed to have only prospective effect, it is a rebuttable presumption.[5] In *Sullivan and Dreidger on the Construction of Statutes*, one can read: "Retroactive legislation often states that it is deemed to come into force or to take effect on a date prior to the date of enactment . . . ."[6] In *Gustavson Drilling (1964) Ltd. v. M.N.R.*,[7] the Supreme Court of Canada stated:

> . . .
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> . . . The general rule is that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to

3. S.O.R./91-499.
4. C. Gaz. 2006.I.110.
5. See Ruth Sullivan, *Sullivan and Dreidger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002).
6. *Ibid.* at 562.
7. [1977] 1 S.C.R. 271, Dickson J.

> its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances, the statute operates retrospectively . . . .[8]

15. The Supreme Court has reaffirmed, on several occasions, that the presumption against retroactivity or interference with vested rights can be rebutted by the express words of the statute or by necessary implication.[9] If the intended application of a statute is not clear from a plain reading of the words of the statute, it is necessary to ascertain the intent of the legislature to determine if the statute was intended to operate retroactively or interfere with vested rights.[10]

16. In construing a statute, the Tribunal must read the words in their context and in their ordinary and grammatical sense in a manner that is harmonious with the scheme of the act, the object of the act and the intention of Parliament.[11]

17. The intention of the government is expressed in clear terms in *The Budget Plan 2003*[12] released on February 18, 2003. The government explains that its past practice was not to rebate tax paid on fuel that is transported outside of Canada in the fuel tanks of a vehicle and similarly not to apply tax to fuel transported into Canada in the fuel tanks of a vehicle. Further, the government expressly states that it is clarifying its position as a result of the decision in *Penner*. Finally, the government states its intention to apply the amendment retroactively:

> The budget proposes to amend Part VII of the Excise Tax Act to clarify that fuel taken out of the country in the fuel tank of a vehicle being driven across the border does not qualify as an export and that no rebate of excise tax is payable in respect of that fuel. It is proposed that this amendment apply to rebate applications received by the Canada Customs and Revenue Agency on or after February 18, 2003.[13]

18. The *Budget Implementation Act, 2003*, which became effective on June 19, 2003, expressly amended section 68.1 of the *Excise Tax Act* and expressly stated that the amendment applied ". . . *in respect of any application* for a payment under section 68.1 of the Act *received by the Minister of National Revenue after February 17, 2003*." (Emphasis added). The legislation is not ambiguous. The legislation was intended to be retroactive to the date of the budget announcement and it was intended to affect expectations (or rights) to receive a refund if the application was *received* by the Minister after *February 17, 2003*. The Tribunal notes that retroactive application of taxing legislation to the date of its announcement is not unusual.

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8. *Ibid.* at 279. Subsequently, the term "retrospective" used by Dickson J. has been more appropriately referred to as "retroactive". See Ruth Sullivan, *Sullivan and Dreidger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002) at 562.
9. *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880 at paras 81 and 97-101; *Dikranian v. Quebec (Attorney General)*, [2005] S.C.J. No. 75 (QL) at paras 30-36; *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] S.C.J. No. 50 (QL) at paras 69-72 and 74-75; see also *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161 at 1192; and *Grand Rapids (Town) v. Graham*, [2004] M.J. No. 342 (Man. C.A.) (QL) at paras 14 and 23-28.
10. *Quebec (Attorney General) v. Healey*, [1987] 1 S.C.R. 158 at 165-67.
11. *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 at 580-81.
12. Department of Finance Canada, *The Budget Plan 2003* (Ottawa: Canada, 2003) at 343.
13. *Ibid.* at 344.

19. The Tribunal has not previously interpreted the meaning of the words "received by the Minister".[14] The date on which the application was received by the Minister is not in issue in this appeal.

20. In the present case, the Tribunal notes that Perreault admitted having mailed its application to the Minister after February 17, 2003. Accordingly, the Tribunal finds that the application for a refund was received by the Minister after February 17, 2003, and therefore is ineligible for a refund pursuant to subsection 63(2) of the *Budget Implementation Act, 2003.*

21. Finally, the Tribunal has held in several decisions that it does not have jurisdiction to order equitable relief.[15] The Tribunal is obliged to respect statutory limitation periods even, for example, if there was no prior notice of a tax change.[16] The Tribunal is limited to making findings within its express statutory mandate. The Tribunal is therefore unable to grant the equitable relief requested by the appellant.

22. For the foregoing reasons, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Elaine Feldman
Elaine Feldman
Member

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14. The Tribunal has previously interpreted the term "filed with the Minister" as meaning that an application for a rebate is filed at the time that it is mailed and that the postmark is evidence of that date. Seee.g. *Vern Glass Company (1976) Limited v. M.N.R*. (13 December 1993), AP-92-221 (CITT); *Lakhani Gift Store v. M.N.R.* (15 November 1993), AP-92-167 (CITT); *Super Générateur Inc. v. M.N.R.* (6 March 1996), AP-94-265 (CITT); *Jorwalt Building Designers Ltd. v. M.N.R.* (4 September 1997), AP-96-012 (CITT); *The Satellite Station v. M.N.R.* (15 July 1994), AP-93-279 (CITT); *BDR Sportsnutrition Laboratories Ltd. v. M.N.R.* (6 March 1996), AP-95-050 (CITT); *Hergert Electric Ltd. v. M.N.R.* (7 June 1994), AP-93-089 (CITT); *Wood v. M.N.R.* (28 February 1994), AP-93-050 (CITT); and *Ryerson Polytechnical Institute v. M.N.R.* (24 November 1994), AP-93-303 (CITT).
15. See e.g. *Walbern Agri-Systems Ltd. v. M.N.R.* (21 December 1989), AP 3000 (CITT); *Peniston Interiors (1980) Inc. v. M.N.R.* (22 July 1991), AP-89-225 (CITT); *Sturdy Truck Body (1972) Limited v. M.N.R.* (23 June 1989), AP 2979 (CITT); *A.G. Green Co. Limited v. M.N.R.* (9 August 1990), AP-89-134 (CITT).
16. *Aerotec Sales and Leasing Ltd. v. M.N.R.* (25 January 1996), AP-94-114 (CITT); *Power's Produce Ltd. v. M.N.R.* (1 February 1993), AP-90-011 (CITT).