



Ottawa, Tuesday, August 14, 1990

Appeal No. AP-89-257

IN THE MATTER OF an application heard April 26, 1990,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15, as amended;

AND IN THE MATTER OF a determination of the Minister of
National Revenue dated April 7, 1989, regarding a notice of
objection filed under section 81.17 of the *Excise Tax Act*.

BETWEEN

THE CITY OF KAMLOOPS

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the appellant, the city of Kamloops, has no standing to appeal Notice of Determination Number PAC 42719 under section 81.19 of the *Excise Tax Act*.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Michèle Blouin

Michèle Blouin
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-257

THE CITY OF KAMLOOPS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Refund of sales tax - Standing of appellant - Expiry of limitation period.

This is an appeal under section 81.19 of the Excise Tax Act (the Act) from a decision of the Minister of National Revenue (the Minister) denying a refund of federal sales tax paid on goods purchased for use in the construction of a water main for the city of Kamloops (the city). Construction of the water main was undertaken by Speers Construction Ltd. (Speers) and Action Construction Ltd. The system was transferred to the city in September 1986. On May 6, 1987, the city of Kamloops submitted a refund application in the amount of \$5,356.97 in respect of these purchases. The application was rejected for the reason that the city was not an eligible claimant. On March 7, 1989, refund applications were filed by the two construction companies. These claims were denied because they were filed outside the two-year time limit. Speers filed a notice of objection to the determination that was later confirmed by a decision of the Minister. On December 19, 1989, the city of Kamloops appealed the determination to the Tribunal.

The appellant seeks a declaration that it is entitled to a refund of federal sales tax paid on exempt purchases for the water main project under section 68.23 of the Act. The respondent argues that the city of Kamloops does not have the status to appeal Notice of Determination Number PAC 42719 and that the refund application is statute barred as it was filed after the two-year limitation period prescribed by subsection 68.23(2) of the Act.

Held: *The appeal is dismissed. The Tribunal finds that the appellant has no standing to appeal Notice of Determination Number PAC 42719 under section 81.19 of the Act. Section 81.19 allows a person who has served a notice of objection under section 81.17 to appeal an adverse decision to the Tribunal within 90 days after a notice of decision is sent to that person. As Speers filed the notice of objection against the determination, only Speers can further appeal the determination to the Tribunal.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: April 26, 1990

Date of Decision: August 14, 1990

*Tribunal Members: Sidney A. Fraleigh, Presiding Member
Arthur B. Trudeau, Member
Michèle Blouin, Member*

Clerk of the Tribunal: Nicole Pelletier

*Appearances: Wayne Ridgway, for the appellant
Mitchell R. Taylor, for the respondent*

Statute Cited: *Excise Tax Act, R.S.C., 1985 (as amended), c. E-15, ss. 68.23 and 81.19.*

Appeal No. AP-89-257

THE CITY OF KAMLOOPS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ARTHUR B. TRUDEAU, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act* (the Act) from a decision of the Minister of National Revenue (the Minister) denying a refund of federal sales tax paid on goods purchased for use in the construction of a water main. The appellant, the city of Kamloops (the city), seeks a declaration from the Tribunal that it is entitled to the refund under section 68.23 of the Act.

FACTS

The appellant is a municipality in the Province of British Columbia. In 1986, the city tendered a capital project to extend a water main on Tranquille Road. Construction of the project was undertaken by Speers Construction Ltd. (Speers) and Action Construction Ltd. (Action). The water main was transferred to the appellant by Speers and Action in September 1986. According to the appellant, it was part of the agreement between the parties that the refund of federal sales tax on exempt purchases for the project be paid to the city.

On May 6, 1987, the city submitted a refund application for \$5,356.97 regarding those purchases. This represented \$4,907.19 from purchases by Speers and \$449.78 from purchases by Action. Included with the application was a signed power of attorney from Action authorizing payment of the sales tax refund to the city. The application was subsequently rejected for the reason that the city was not an eligible claimant, and the city was advised that the claim should be refiled by Action. The appellant did not object to or appeal this determination.

No further action was taken until early 1989. Claims were refiled on March 7, 1989, under the names of the two construction companies. These claims were again denied; this time because they were filed outside the two-year time limit. By a notice of objection dated May 15, 1989, Speers objected to Notice of Determination Number PAC 42719. Action apparently did not pursue its claim further. By Notice of Decision Number 90184RE, dated October 20, 1989, the Minister confirmed the determination made regarding the Speers claim. On December 19, 1989, the city appealed that determination to the Tribunal.

ISSUE

The issue in this appeal is whether the city is entitled to a refund of federal sales tax paid on

exempt purchases for the Tranquille Road water main project. The parties to this appeal both agree that the goods, for which a refund of sales tax is claimed, are goods for which an exemption is available under section 68.23 of the Act and that the amount of the refund is not in dispute.

LEGISLATION

For the purpose of this appeal, the relevant statutory provisions are as follows:

Excise Tax Act, R.S.C., 1985, c. E-15 (as amended).

68.23(1) In this section, "system goods" means

(a) goods purchased for use directly in a water distribution, sewerage or drainage system, and

(b) goods used in the construction of a building, or that part of a building, used exclusively to house machinery and apparatus for use directly in a water distribution, sewerage or drainage system,

but does not include chemicals purchased for use or used in the treatment of water or sewage in any such system.

(2) Where tax under Part VI has been paid in respect of any system goods and the purchaser of the goods has, within three years after the completion of the system for which the goods were purchased or in which the goods were used, as the case may be, transferred the system without charge to a municipality pursuant to a by-law of or an agreement with that municipality, an amount equal to the amount of that tax shall, subject to this Part, be paid to that purchaser if he applies therefor within two years after that transfer of the system.

(3) For the purposes of subsection (2), the Minister may declare any agency operating a water distribution, sewerage or drainage system for or on behalf of a municipality to be a municipality.

81.19 Any person who has served a notice of objection under section 81.15 or 81.17, other than a notice in respect of Part I, may, within ninety days after the day on which the notice of decision on the objection is sent to him, appeal the assessment or determination to the Board.

ARGUMENTS

The appellant argues that the limitation period prescribed by subsection 68.23(2) does not bar the claim for a refund of federal sales tax because the first application was filed within the two-year time limit. The appellant asserts that when the first application was filed, Revenue Canada was put on notice that a refund claim for \$5,356.97 was pending. The appellant further claims that the first application was filed correctly, notwithstanding its rejection by Revenue Canada, as it contained a power of attorney from Action authorizing payment of the refund to the city.

The respondent argues that the city does not have the status, under section 81.19 of the Act, to appeal Notice of Determination Number PAC 42719, as it is only the person who served the notice of objection to the determination who may appeal to the Tribunal. As the notice of objection was served

by Speers, Speers is the only person with standing to appeal the determination to the Tribunal. The respondent further argues that, in any event, the refund application resulting in this appeal is statute barred, as it was filed after the two-year limitation period prescribed by subsection 68.23(2) of the Act.

FINDING OF THE TRIBUNAL

Section 81.19 of the Act allows a person who has served a notice of objection under section 81.17 to appeal an adverse decision to the Tribunal within 90 days after a notice of decision is sent to that person. Refund Claim Number 115880 was submitted by Speers and Notice of Determination Number PAC 42719 in response to that claim was sent to Speers. Speers filed the notice of objection against the determination and, thus, the only person who can further appeal the determination to the Tribunal is Speers.

In the result, the Tribunal finds that the city has no status to bring this appeal against Notice of Determination Number PAC 42719. In light of this finding, it is not necessary to consider the other issues raised by the parties.

CONCLUSION

The appeal should be dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Michèle Blouin

Michèle Blouin
Member