



Ottawa, Tuesday, October 15, 1991

Appeal No. AP-89-274

IN THE MATTER OF an appeal heard on September 20, 1991, 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 10, 1989, relating to a notice of objection filed under section 81.15 of the *Excise Tax Act*.

BETWEEN

PELLETREX LTÉE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the appellant has filed its refund claim pertaining to transactions occurring between September 9 and November 29, 1986, outside the two-year time period set forth in section 68.2 of the *Excise Tax Act* and, accordingly, is not eligible for a refund of sales tax paid on these transactions.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

W. Roy Hines
W. Roy Hines
Member

Michel P. Granger
Michel P. Granger
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-274

PELLETREX LTÉE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue to be decided in this case is whether the Tribunal has the jurisdiction to extend the two-year time limit to file a refund claim prescribed under section 68.2 of the Excise Tax Act.

HELD: *The appeal is dismissed. The Tribunal declares that the appellant has filed its refund claim pertaining to transactions occurring between September 9 and November 29, 1986, outside the two-year time period set forth in section 68.2 of the Excise Tax Act and, accordingly, is not eligible for a refund of sales tax paid on these transactions.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 20, 1991

Date of Decision: October 15, 1991

Tribunal Members: Robert J. Bertrand, Q.C., Presiding Member
Charles A. Gracey, Member
W. Roy Hines, Member

Counsel for the Tribunal: Clifford Sosnow

Clerk of the Tribunal: Nicole Pelletier

Appearances: Gaston Pelletier, for the appellant
Ben Bierbrier, for the respondent

Cases Cited: *Pappa Geppetto's Wonderful Wooden Things Ltd. v. The Minister of National Revenue, Canadian International Trade Tribunal, Appeal No. 3105, June 27, 1991; Walbern Agri-Systems Ltd. v. The Minister of National Revenue, Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989; Kiliannan Raju v. The Deputy Minister of National Revenue for Customs and Excise, Canadian International Trade Tribunal, Appeal No. AP-89-026, October 18, 1989.*

Appeal No. AP-89-274

PELLETREX LTÉE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
CHARLES A. GRACEY, Member
W. ROY HINES, Member

REASONS FOR DECISION

The issue to be decided in this case is whether the Tribunal has the jurisdiction to extend the two-year time limit to file a refund claim prescribed under section 68.2 of the *Excise Tax Act*¹ (the Act).

Section 68.2 of the Act reads as follows:

68.2 Where tax under Part III or VI has been paid in respect of any goods and subsequently the goods are sold to a purchaser in circumstances that, by virtue of the nature of that purchaser or the use to which the goods are to be put or by virtue of both such nature and use, would have rendered the sale to that purchaser exempt or relieved from that tax under subsection 23(6), paragraph 23(8)(b) or subsection 50(5) or 51(1) had the goods been manufactured in Canada and sold to the purchaser by the manufacturer or producer thereof, an amount equal to the amount of that tax shall, subject to this Part, be paid to the person who sold the goods to that purchaser if the person who sold the goods applies therefor within two years after he sold the goods.
(Emphasis added)

The facts giving rise to this appeal are these. The appellant purchased motorized valves, thermostats and transformers used in heating equipment and subsequently sold to various users. Mr. G. Pelletier, sole proprietor of the appellant corporation, used his home basement and garage to house the appellant's office and warehouse.

On July 14, 1987, Mr. Pelletier's garage and basement were completely flooded by about 30 in. of water. The water damaged or destroyed many of the appellant's business documents, purchase and sales invoices, and the like.

On November 29, 1988, the appellant made a request to the Department of National Revenue for Customs and Excise (Revenue Canada) for a refund on taxes paid on heating equipment sold between the period September 9, 1986, and July 10, 1987. The appellant was advised by Revenue

1. R.S.C., 1985, c. E-15.

Canada that the request was being refused because, according to its officials, the statutory time limit to make such a request had expired for the transactions which took place between September 9 and November 29, 1986. The appellant acknowledged that it was outside the statutory time period for the transactions between September 9 and November 29, 1986, but said that the tardiness was caused by the flood. The appellant said that because much of the documentation it needed to support its claim had been destroyed, it had to get these documents from other sources, which took time. However, Revenue Canada officials advised the appellant to file a second refund request for taxes paid on transactions after November 29, 1986. The appellant did so and was granted a refund for these other transactions.

On January 23, 1989, the appellant asked the Minister of National Revenue (the respondent) to extend the statutorily imposed time limit for refund claims governing the transactions occurring between September 9 and November 29, 1986. The respondent refused. He said that the Act did not give him the discretionary power to extend the time limit; hence, this appeal to the Canadian International Trade Tribunal (the Tribunal) on February 2, 1990.

At the hearing, Mr. Pelletier, on behalf of the appellant, acknowledged that the company had filed its refund request after the two-year statutory time limit. However, Mr. Pelletier again repeated the difficulties involved in filing the appellant's refund request on time. The appellant thus asked the Tribunal, on humanitarian grounds and in the interest of justice, to extend the statutory time limit set out in section 68.2 of the Act so that the refund claim could be considered.

Counsel for the respondent replied that the appellant could have registered its request within the time limit and then tried to recover the supporting written documents. He further argued that section 68.2 of the Act cannot be altered by the Tribunal even on compassionate grounds.

After having examined the record, the Tribunal considers that the appellant had indeed exceeded the two-year time limit provided in section 68.2 of the Act when it filed its refund claim for transactions pertaining to the period between September 9 and November 29, 1986. As was noted above, both parties agree on this conclusion. Thus, the issue before this Tribunal is whether it can extend that limit on compassionate grounds. In other words, can the Tribunal grant equitable relief in applying the Act?

Several cases on the subject have been provided by the respondent. Moreover, the Tribunal has already dealt with this issue on several occasions in the recent past. For example, in the case of *Pappa Geppetto's Wonderful Wooden Things Ltd. v. The Minister of National Revenue*,² the Tribunal stated:

*The appellants are seeking equitable relief from what they consider to be undue hardship imposed upon them by the Act. The powers of the Tribunal on appeals are defined and, as stated on page 6 of the Tribunal's decision in Walbern Agri-Systems Ltd. v. The Minister of National Revenue,*³

... This does not mean that the Tribunal is authorized to introduce concepts of equity nor to accept compassionate considerations in

2. Canadian International Trade Tribunal, Appeal No. 3105, June 27, 1991.

3. Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989.

dealing with the appeal.

To similar effect is the Tribunal's decision in *Kiliannan Raju v. The Deputy Minister of National Revenue for Customs and Excise*⁴ in which it was stated:

... But it is a well-established principle of law that taxing statutes ... cannot be construed to avoid the effects of the legislation, no matter how great the hardship may appear to be....

The foregoing makes it clear that this appeal must be decided on the law. While the Tribunal has sympathy for the difficulties and hardships incurred as a result of the flood, section 68.2 of the Act states that the appellant had to make its refund claim within two years of the sales occurring between September 9 and November 29, 1986. This the appellant did not do and, therefore, according to the law, Pelletrex Ltée's appeal must fail. The appeal is dismissed.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

W. Roy Hines

W. Roy Hines
Member

4. Canadian International Trade Tribunal, Appeal No. AP-89-026, October 18, 1989.