



Ottawa, Monday, February 1, 1993

Appeal No. AP-90-011

IN THE MATTER OF an appeal heard on
December 3, 1992, 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 March 23, 1990, with respect to a
notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

POWER'S PRODUCE LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-011

POWER'S PRODUCE LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the Tribunal has the jurisdiction to grant the appellant a fuel tax rebate where it has not filed its claim within the two-year limitation period prescribed under subsection 69(6.1) of the Excise Tax Act.

HELD: *The appeal is dismissed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 3, 1992
Date of Decision: February 1, 1993

Tribunal Members: Charles A. Gracey, Presiding Member
Kathleen E. Macmillan, Member
Sidney A. Fraleigh, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Dyna Côté

Appearances: Muriel Power, for the appellant
Wayne D. Garnons-Williams, for the respondent

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POWER'S PRODUCE LTD.

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and

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TRIBUNAL: CHARLES A. GRACEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal made under section 81.19 of the *Excise Tax Act*¹ (the Act) from a decision of the Minister of National Revenue (the Minister) which confirmed that the appellant was not entitled to a fuel tax rebate.

The issue in this appeal is whether the Tribunal has the jurisdiction to grant the appellant a fuel tax rebate where it has not filed its claim within the two-year limitation period prescribed under subsection 69(6.1) of the Act.

On December 6, 1988, the appellant, Power's Produce Ltd., filed a claim for a rebate in the amount of \$10,151.97 for fuel tax that it paid in respect of gasoline or diesel fuel purchased for farming purposes during the period from June 1, 1985, to November 30, 1988. By notice of determination dated March 22, 1989, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) adjusted the amount of the claim such that the appellant was allowed a rebate in the amount of \$5,692.56. However, the Deputy Minister disallowed a rebate of the remaining \$4,459.41 on the basis that this amount represented gasoline or diesel fuel purchased more than two years prior to the filing of the claim, which was outside of the limitation period for filing such a claim. The appellant served a notice of objection, but the determination was confirmed by a decision of the Minister dated March 23, 1990. The decision was appealed to the Tribunal on May 7, 1990.

From the information provided in the parties' briefs and submissions made at the hearing, the parties agreed that the appellant's rebate claim in respect of the amount of \$4,459.41, which was denied by the Minister, was not filed within the two-year limitation period prescribed under the Act.

In their submissions to the Tribunal, the parties discussed the issue of whether the respondent notified the public that the limitation period was amended from four years to two years.

Counsel for the respondent stated that Excise Communiqué 103/GT entitled Federal Fuel Tax Rebate Program was sent to all persons on a mailing list of fuel tax rebate claimants. Counsel also referred to pamphlets and booklets explaining the amendment that were made available at regional

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

offices of the Department of National Revenue (Revenue Canada). Ms. Muriel Power, who appeared on behalf of the appellant, stated that Revenue Canada made no effort to communicate to the appellant that the limitation period for filing rebate claims had been changed from four years to two years. More particularly, Ms. Power stated that the appellant did not receive any notification of the amendment by mail, and there was nothing on the rebate claim form obtained from the post office to indicate that there had been an amendment. Further, Ms. Power stated that the closest Revenue Canada regional office is not easily accessible.

The Tribunal notes that the time limit for claiming a fuel tax rebate under subsection 69(6.1) of the Act was reduced from four years to two years in 1986, by an amendment to the Act which was deemed effective as of May 24, 1985.² As a result of this deeming provision, it became impossible to recover any unclaimed rebates dating from May 24, 1981, to May 24, 1983. This fact does not affect the appellant's position, however, since its rebate claim is for the period beginning June 1, 1985. Thus, the appellant's only claim can be that it was unaware that a change in the law had occurred reducing the limitation period for filing rebate claims from four years to two years.

However, the Tribunal has no equitable jurisdiction to ignore or vary a limitation period prescribed under the Act on the basis that it would be fair or just. Although the Tribunal recognizes that the appellant may not have received notice of the amendment, to decide in favour of the appellant would be acting in excess of the Tribunal's jurisdiction and in direct violation of the intention of Parliament.

The Tribunal takes full note of Ms. Power's assertion that she was not notified of the change in the limitation period and that there was no reference to the change on the form used to make the rebate claim. This factor is not an adequate reason for the Tribunal to grant the appellant's rebate claim. However, the Tribunal suggests that Revenue Canada make every effort to ensure that all information relating to the filing of the claim, such as a limitation period, be printed on the form.

The Tribunal rendered its decision at the time of the hearing, but indicated that it would issue written reasons, which are herewith presented. Accordingly, the appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

2. S.C. 1986 (Vol. I), c. 9 s. 31(3).