



Ottawa, Monday, December 15, 1997

Appeal Nos. AP-89-290 and AP-92-352

IN THE MATTER OF appeals heard on October 27, 1997, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National Revenue dated January 9, 1990, and December 23, 1992, with respect to notices of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

PETER OSTAFIE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Anita Szlajak

Anita Szlajak

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-89-290 and AP-92-352

PETER OSTAFIE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

These two appeals, under section 81.19 of the *Excise Tax Act* (the Act), of two determinations of the Minister of National Revenue were heard together, as they involved the same parties, similar facts and similar provisions of the Act. The issue in Appeal No. AP-92-352 is whether the appellant is entitled to a rebate of fuel taxes paid on gasoline under subsection 69(6.1) of the Act where the application was filed more than four years after the purchases were made, in the case of fuel purchased prior to May 24, 1985, and more than two years after the purchases were made, in the case of fuel purchased on or after May 24, 1985. The issue in Appeal No. AP-89-290 is whether the appellant is entitled to a rebate of excise taxes paid on gasoline purchased more than two years before the appellant filed his rebate application, pursuant to subsection 68.16(1) of the Act.

HELD: The appeals are dismissed. Having reviewed the legislative provisions applicable in respect of each of the applications, the Tribunal is of the view that both appeals must be dismissed. Neither party disputes the relevant facts in this case, specifically, the dates on which the applications were filed and the dates on which the fuel was purchased. In the Tribunal's view, the respondent already has allowed a rebate to the maximum amount to which the appellant is entitled in respect of each application, given the time limits set out in the Act.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 27, 1997
Date of Decision:	December 15, 1997
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Anita Szlazak, Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Parties:	Anne Ostafie, for the appellant Christopher Rupar, for the respondent

Appeal Nos. AP-89-290 and AP-92-352

PETER OSTAFIE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
ANITA SZLAZAK, Member

REASONS FOR DECISION

These two appeals, under section 81.19 of the *Excise Tax Act*¹ (the Act), of two determinations of the Minister of National Revenue were heard together, as they involved the same parties, similar facts and similar provisions of the Act. The appeals proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,² on the basis of the Tribunal's record, including an agreed statement of facts and briefs submitted by the parties.

The appellant is a self-employed farmer in Mikado, Saskatchewan. In respect of Appeal No. AP-92-352, the appellant filed an application for a rebate of fuel taxes paid on gasoline in the amount of \$607.18 for the period from January 1 to June 30, 1985, under subsection 69(6.1) of the Act. The application was dated May 17, 1989, and was received by the Department of National Revenue on June 6, 1989. By notice of determination dated July 18, 1989, the rebate claim was disallowed.

The appellant served a notice of objection and, by notice of decision dated December 23, 1992, the determination was varied and a rebate in the amount of \$133.25 was allowed on the basis that purchases for the period from May 17 to May 23, 1985, were within the eligible four-year period in effect at that time for qualifying for a rebate. However, the determination that disallowed the remaining amount claimed was confirmed on the basis that a claim for a rebate of fuel taxes paid on gasoline bought on or after May 24, 1985, had to be filed within two years from the date of purchase.

The appellant also filed an application for a rebate of excise taxes paid on gasoline for the period from January 1, 1985, to December 31, 1988, under subsection 68.16(1) of the Act. The application was dated May 30, 1989, and the total amount claimed was \$495.27. By notice of determination dated July 10, 1989, the claim was allowed in part in the amount of \$196.03. The remainder of the claim was disallowed on the basis that the purchases in respect of which the claim was made were outside the two-year statutory time limit set out in subsection 68.16(1) of the Act. Pursuant to a notice of objection served by the appellant, the respondent confirmed the determination by notice of decision dated January 9, 1990. It is this determination that is the subject of Appeal No. AP-89-290.

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1. R.S.C. 1985, c. E-15.
 2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912, as amended.

The issue in Appeal No. AP-92-352 is whether the appellant is entitled to a rebate of fuel taxes paid on gasoline under subsection 69(6.1) of the Act where the application was filed more than four years after the purchases were made, in the case of fuel purchased prior to May 24, 1985, and more than two years after the purchases were made, in the case of fuel purchased on or after May 24, 1985. The issue in Appeal No. AP-89-290 is whether the appellant is entitled to a rebate of excise taxes paid on gasoline purchased more than two years before the appellant filed his rebate application, pursuant to subsection 68.16(1) of the Act.

In respect of both appeals, the appellant's representative submitted that the appellant was neither informed nor aware that the statutory time limit for filing rebate applications had been reduced at various intervals, from five years to four years from the date of purchase of the fuel, and then from four years to two years in some cases. The representative submitted that farmers should have been informed individually of these changes or should have had their purchases credited.

Counsel for the respondent submitted, in respect of Appeal No. AP-92-352 that, since the appellant's application was dated May 17, 1989, the respondent is only permitted to pay a rebate in respect of fuel purchased by the appellant within four years prior to the date of the application if that fuel was purchased prior to May 24, 1985. Otherwise, the respondent is only permitted to pay a rebate in respect of fuel purchased by the appellant within two years prior to May 17, 1989. As the portion of the appellant's claim that was disallowed was for purchases of fuel either outside the four-year limitation period, in the case of fuel purchased prior to May 24, 1985, or outside the two-year limitation period, in the case of fuel purchased on or after May 24, 1985, the appellant's claim in respect of those purchases is statute barred.

In respect of Appeal No. AP-89-290, counsel for the respondent made similar arguments. Specifically, he submitted that, since the application was dated May 30, 1989, for fuel purchased from January 1, 1985, to December 31, 1988, the respondent is only permitted to pay a rebate in respect of fuel purchased within two years immediately prior to the date of the application. In other words, the respondent is only able to pay a rebate in respect of purchases of fuel from May 30, 1987, to December 31, 1988.

Counsel for the respondent further submitted that, in respect of both appeals, neither the respondent nor the Tribunal has the jurisdiction to vary strict time limits set out in the Act.

At the outset, the Tribunal would note that a variety of amendments were made to the Act during the 1970s and 1980s, resulting in different limitation periods applying to the appellant's two applications because of the dates on which the various purchases of gasoline were made, as well as the dates on which the claims were made. In the case of Appeal No. AP-92-352, because the application made under subsection 69(6.1) of the Act was filed prior to May 24, 1989, the appellant's claim was governed by a four-year time limit for filing in respect of the purchases made prior to May 24, 1985, while those purchases made on or after May 24, 1985, were subject to a two-year time limit. In the case of Appeal No. AP-89-290, a two-year time limit for filing from the date of purchase of the fuel applied to that application made under subsection 68.16(1) of the Act.

Having reviewed the legislative provisions applicable in respect of each of the applications, the Tribunal is of the view that both appeals must be dismissed. Neither party disputes the relevant facts in this case, specifically, the dates on which the applications were filed and the dates on which the fuel was purchased. In the Tribunal's view, the respondent already has allowed a rebate to the maximum amount to which the appellant is entitled in respect of each application, given the time limits set out in the Act.

It is important to appreciate that the Tribunal has no jurisdiction to either vary or vacate a statutory limitation period and that both the respondent and the Tribunal must apply the time limits as set out in the Act.

Accordingly, the appeals are dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Anita Szlajak

Anita Szlajak

Member