

Ottawa, Wednesday, February 27, 1991

Appeal No. AP-90-028

IN THE MATTER OF an appeal heard on January 29, 1991,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15;

AND IN THE MATTER OF a notice of decision of the
Minister of National Revenue dated March 23, 1990, with
respect to a notice of objection filed pursuant to
section 81.17 of the *Excise Tax Act*.

BETWEEN

RIDDELL SCALES

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. Section 68.2 clearly states that a person entitled to a refund with respect to the exemption set forth in subsection 51(1) must apply within two years of the sale of the goods. Furthermore, whether the respondent failed to inform the taxpayer of modifications to the statutory provisions is irrelevant in view of the wording of section 68.2.

W. Roy Hines
W. Roy Hines
Presiding Member

John C. Coleman
John C. Coleman
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-028

RIDDELL SCALES

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Whether section 68.2 allows a refund for sales tax paid on sales made beyond the two-year time limitation because a person was unaware of modifications to the previous four-year limitation.

Part of the appellant's refund claim was denied because of the two-year time limitation set forth in section 68.2. The appellant contended that it should have been informed by the Department of National Revenue of the modification to the Excise Tax Act substituting a two-year time limitation for a four-year time limitation.

HELD: *The appeal is dismissed. Section 68.2 clearly states that a person entitled to a refund with respect to the exemption set forth in subsection 51(1) must apply within two years of the sale of the goods. Also, whether the respondent informed taxpayers of modifications brought to statutory provisions or failed to inform them is irrelevant in view of the wording of section 68.2.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 29, 1991
Date of Decision: February 27, 1991

Tribunal Members: W. Roy Hines, Presiding Member
John C. Coleman, Member
Charles A. Gracey, Member

Clerk of the Tribunal: Nicole Pelletier

Appearances: Linda J. Wall, for the respondent

Statute Cited: Excise Tax Act, R.S.C., 1985, c. E-15, as amended, subsection 51(1) and section 68.2.

Appeal No. AP-90-028

RIDDELL SCALES

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
JOHN C. COLEMAN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

FACTS

On October 12, 1989, the appellant applied for a tax refund of \$4,115.85. The claim covered the period from November 1, 1985, to December 31, 1988. On November 15, 1989, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) adjusted that application by \$2,141.41, deleting sales made before October 12, 1987, the date the application was received. Upon reception of the Deputy Minister's determination, the appellant filed a notice of objection that was disallowed by the Minister of National Revenue (the Minister) on March 23, 1990. It is that decision, which confirmed the Deputy Minister's determination, that is now appealed to this Tribunal.

ISSUE AND RELEVANT LEGISLATION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a decision of the Minister denying a part of the refund of federal sales taxes claimed by the appellant for sales tax paid over a period of 38 months. The appellant, Riddell Scales, seeks a declaration from the Tribunal that it is entitled to a full refund as claimed.

The relevant legislation, subsection 51(1) and section 68.2 of the Act, reads as follows:

51.(1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of that Schedule that are sold to or imported by persons exempt from consumption or sales tax under subsection 54(2).

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

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

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.

The issue is whether a taxpayer is entitled to a refund for sales tax paid with respect to sales made beyond the two-year time limitation because that person was unaware that an amendment to the Act substituted a two-year time limitation for a four-year time limitation.

ARGUMENTS

The appellant, which was not represented at the hearing, contended in its brief that, being directly affected by the amendment substituting a two-year time limitation for a four-year time limitation, it should have been advised of the change by the Department of National Revenue (the Department). The Department, it submitted, did not attempt to contact it by phone or correspondence. The appellant added that, having claimed a refund on October 1, 1985, for the period August 1982 to September 1985, it should have been informed of the modification in the law as it was in place on May 24, 1985. Finally, the appellant submitted that it was being penalized unfairly.

The respondent contended that section 68.2 completely bars the appellant's claim and, moreover, that there is no other provision in the Act derogating from the two-year time limitation set forth by the section. The respondent relied on the decision of the Supreme Court of Canada in *Gustavson Drilling (1964) Limited v. M.N.R.*,² that it is the taxpayer's obligation to be aware of changes in the law and to order its affairs accordingly. The Tribunal's decision in the *Walbern Agri-Systems*³ case is also cited to support this view.

The respondent also contended that the onus is on the appellant to show why the clear wording of the statute should not be applied in this instance. His final argument was that there was no provision for equitable relief available to the Deputy Minister or to the Tribunal. The law is to be applied as it stands.

At the hearing, counsel for the respondent reiterated the main points and arguments expressed in her brief. Counsel added in this regard that the appellant's application for refund was presented some years after the amendment was made to the Act and, thus, the appellant had ample time to made itself familiar with the change.

2. (1977) 1 S.C.R. 271, pp. 282-3.

3. *Walbern Agri-Systems Ltd. v. The Minister of National Revenue* (unreported), Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989 (under appeal to the Federal Court of Canada, Trial Division).

FINDING OF THE TRIBUNAL

The Tribunal notes that this appeal involves the straightforward issue of whether a part of the appellant's application for refund is limited by the two-year time requirement set forth in section 68.2.

Section 68.2 is clearly worded. The person who sold the goods and wishes to use the exemption must apply within two years after he sold the goods. It is unfortunate for the appellant that it was not aware that a two-year time limitation had been substituted for the four-year time limitation. Nevertheless, the Tribunal has to apply the law as it stands at the time of the appellant's application. There is no doubt in this regard that section 68.2 applied when the appellant presented its application for refund.

The Tribunal also finds that whether the respondent informed taxpayers of modifications brought to statutory provisions or failed to inform them is irrelevant in view of the wording of section 68.2.

Since the Act does not set forth other remedies or procedures and taking into account that the Tribunal does not have authority to consider equity or compassion, it has therefore no choice but to disallow this appeal.

CONCLUSION

The appeal should be dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

John C. Coleman
John C. Coleman
Member

Charles A. Gracey
Charles A. Gracey
Member