



Ottawa, Monday, May 10, 1993

Appeal No. AP-91-020

IN THE MATTER OF an appeal heard on
December 7, 1992, 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 24, 1991, with respect to
notices of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

EDWIN W. RUSSELL

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

John C. Coleman
John C. Coleman
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-020

EDWIN W. RUSSELL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act from determinations of the Minister of National Revenue. The issue in this appeal is whether the appellant is entitled to a fuel tax rebate under subsection 69(6.1) of the Excise Tax Act and to an excise tax refund under paragraph 68.16(1)(d) of the Excise Tax Act in respect of fuel purchased in 1987, notwithstanding that he filed the applications outside the two-year limitation period prescribed in the respective sections.

HELD: *The appeal is dismissed. The Tribunal does not have jurisdiction to award a fuel tax rebate and an excise tax refund where the claimant has not complied with the limitation periods for filing fuel tax rebate and excise tax refund applications under the Excise Tax Act and to which the claimant would clearly not otherwise be entitled.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 7, 1992
Date of Decision: May 10, 1993

Tribunal Members: John C. Coleman, Presiding Member
Sidney A. Fraleigh, Member
Michèle Blouin, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Dyna Côté

Appeal No. AP-91-020

EDWIN W. RUSSELL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
SIDNEY A. FRALEIGH, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from determinations of the Minister of National Revenue. The issue in this appeal is whether the appellant is entitled to a fuel tax rebate in the amount of \$1,195.78 under subsection 69(6,1)² of the Act and to an excise tax refund in the amount of \$46.95 under paragraph 68.16(1)(d)³ of the Act in respect of fuel purchased in 1987, notwithstanding that he filed the applications outside the two-year limitation period prescribed in the respective sections.

Following a request by the appellant that the appeal be treated as a written file hearing and the consent of the respondent, the parties filed an agreed statement of facts with the Tribunal on October 7, 1992. Accordingly, the Tribunal proceeded to consider the appeal on the basis of written documentation before it in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.⁴

The Tribunal notes that the materials filed indicate that there is no disagreement between the parties concerning the date on which the appellant filed the fuel tax rebate and excise tax refund applications. Both parties accepted, in the agreed statement of facts, that the appellant had filed the fuel tax rebate application and excise tax refund application, both relating to purchases of diesel fuel in 1987, on February 22, 1990, outside the two-year limitation period. However, the appellant stated that he was not aware of the amendments to the Act which resulted in the reduction of the time for filing such applications from four years to two years, and he appeals to the Tribunal to allow the fuel tax rebate and excise tax refund despite the fact that the applications were filed outside the two-year limitation period.

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1. R.S.C. 1985, c. E-15.
 2. Formerly subsection 75.1(6) of the Act, as amended by *An Act to amend the Excise Tax Act and the Excise Act and to amend other Acts in consequence thereof*, R.S.C. 1985, c. 7 (2nd Supp.), subsection 34(1).
 3. Formerly subparagraph 71(1)(a)(iv), as amended by *An Act to amend the Excise Tax Act and the Excise Act and to amend other Acts in consequence thereof*, R.S.C. 1985, c. 7 (2nd Supp.), subsection 34(1).
 4. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

The Tribunal finds that the Act very clearly sets out that the limitation period for filing both fuel tax rebate applications and excise tax refund applications is two years from the time that the fuel was purchased. Although the limitation period for filing such applications was previously four years, the respective provisions in the Act were amended in 1985 to reduce the limitation periods to two years. The limitation period for filing fuel tax rebate applications was changed by an amendment to the Act in 1985 which was deemed to come into force on May 24, 1985.⁵ The limitation period for filing excise tax refund applications was changed by an amendment to the Act in 1985 which was also deemed to come into force on May 24, 1985.⁶

As was stated by the Tribunal in *Walbern Agri-Systems Ltd. v. The Minister of National Revenue*,⁷ the remedial powers available to the Tribunal in deciding an appeal are limited to those enumerated in section 81.27 of the Act, namely, dismissing or allowing an appeal in whole or in part, and vacating or varying an assessment. This section does not authorize the Tribunal to make decisions based on equity or compassionate considerations.

Since the appellant did not comply with the statutory limitation periods governing the filing of applications for fuel tax rebates and excise tax refunds, the Tribunal has no alternative but to dismiss this appeal.

John C. Coleman
John C. Coleman
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michèle Blouin
Michèle Blouin
Member

5. As amended by *An Act to amend the Excise Tax Act and the Excise Act and to amend other Acts in consequence thereof*, R.S.C. 1985, c. 7 (2nd Supp.), subsections 31(3) and (4).

6. As amended by *An Act to amend the Excise Tax Act and the Excise Act and to amend other Acts in consequence thereof*, R.S.C. 1985, c. 7 (2nd Supp.), subsection 26(1).

7. Appeal No. 3000, December 21, 1989, at 6.