



Ottawa, Tuesday, October 5, 1993

Appeal No. AP-90-200

IN THE MATTER OF an appeal heard on March 15, 1993,
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 December 18, 1990, with respect to
a notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

C.R. PLUMBING LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-200

C.R. PLUMBING LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The sole issue in this appeal is whether the appellant's refund claim is statute-barred by virtue of the two-year time limitation provided in subsection 68.16(1) of the Excise Tax Act.

***HELD:** The appeal is dismissed. The appellant argued that it was not aware that the Excise Tax Act had been amended and thought that the refund provision had been abrogated, which explains why it did not file its refund claim within the statutory time limit. In the case of an appeal of a refund application, the Tribunal can only allow the appeal if the appellant shows that it comes within the terms of the refund provision. In this case, the appellant has presented a refund claim beyond the two-year statutory time limitation and the Tribunal has no jurisdiction to waive the application of that limitation period.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 15, 1993

Date of Decision: October 5, 1993

*Tribunal Members: Lise Bergeron, Presiding Member
Kathleen E. Macmillan, Member
Michèle Blouin, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

*Appearances: Valerie Rousseau, for the appellant
Yvonne E. Milosevic, for the respondent*

Appeal No. AP-90-200

C.R. PLUMBING LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

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TRIBUNAL: LISE BERGERON, Presiding Member
KATHLEEN E. MACMILLAN, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from a decision of the Minister of National Revenue, disallowing an objection to a determination which rejected an excise tax refund claim.

In accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,² the parties submitted an agreed statement of facts, and the Tribunal, after having given public notice of its intention, proceeded on the matter by way of written submissions on March 15, 1993.

The facts of this case can be summarized as follows. On February 23, 1990, the appellant filed an excise tax refund claim in the amount of \$345.70 with respect to gasoline purchased for commercial or business purposes during the period from January 1, 1986, to December 31, 1987. On April 4, 1990, the refund claim was disallowed on the grounds that it had not been made within the two-year limitation period provided by the Act. On April 18, 1990, the appellant objected to the determination and, on December 18, 1990, the respondent disallowed the objection and confirmed the determination.

The sole issue in this appeal is whether the appellant's refund claim is statute-barred by virtue of the two-year time limitation provided in subsection 68.16(1) of the Act.

As mentioned in the agreed statement of facts, the Act was amended and the statutory time limitation for filing a refund claim was reduced from four to two years effective on May 24, 1985. The Tribunal has examined and read with attention the appellant's brief and its explanation that it was not aware that the Act had been amended and thought that the refund provision had been abrogated, which explains why it did not file its refund claim within the statutory time limitation. However, the Tribunal is bound by the Act, as is the appellant. In the case of an appeal involving a refund application, the appellant is entitled to a refund, and the Tribunal allows the appeal only if the appellant shows that it comes within the terms of the refund provision. In this case, the appellant presented a refund claim beyond the two-year statutory time limitation and the Tribunal has no jurisdiction to waive the application of that limitation period.

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.

In light of the foregoing, the Tribunal has no choice but to dismiss the appeal.

Lise Bergeron
Lise Bergeron
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member