

Ottawa, Tuesday, August 4, 1992

Appeal No. AP-91-221

IN THE MATTER OF an appeal heard on June 7, 1992,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated November 6, 1991, with respect to
a notice of objection served under section 81.15 of the
Excise Tax Act.

BETWEEN

H & H FORMS INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michèle Blouin
Michèle Blouin
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-221

H & H FORMS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal made pursuant to section 81.19 of the Excise Tax Act on the basis of an agreed statement of facts and the written submissions of the parties. The issue in this appeal is whether the appellant is entitled to receive the full amount of its refund claim for federal sales tax paid on goods subsequently sold under tax-exempt conditions.

HELD: *The Excise Tax Act clearly states that a refund will be paid for taxes paid on goods subsequently sold under tax-exempt circumstances if the person who sold the goods applies for the refund within two years after the sale. That portion of the refund claim rejected by the Minister of National Revenue related to transactions made prior to two years from the date of the refund claim. Therefore, the appeal is dismissed.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: July 20, 1992
Date of Decision: August 4, 1992*

*Tribunal Members: Desmond Hallissey, Presiding Member
Sidney A. Fraleigh, Member
Michèle Blouin, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

*Appearances: Doreen Ringer, for the appellant
Wayne D. Garnons-Williams, for the respondent*

Appeal No. AP-91-221

H & H FORMS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
SIDNEY A. FRALEIGH, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal made pursuant to section 81.19 of the *Excise Tax Act*¹ (the Act) on the basis of an agreed statement of facts and the written submissions of the parties. The issue in this appeal is whether the appellant is entitled to receive the full amount of its refund claim for federal sales tax paid on goods subsequently sold under tax-exempt conditions.

The notice of determination of the Minister of National Revenue (the Minister) rejected, in part, a refund claim dated February 28, 1991, made pursuant to section 68.2 of the Act, covering the period from May 5, 1986, to December 31, 1990. The rejection was based on section 68.2 which stipulates that a refund will be paid if the person who sold the goods applies for a refund within two years after the sale. The refund claim included transactions beyond this time limit.

In the notice of objection to the determination, which was not supplemented for the appeal, several arguments in favour of a full refund were advanced on behalf of the appellant, which is a small family business that does not have the resources to hire an accountant. It claimed not to have received any notification of the amendment to the Act that reduced the four-year refund period to two years. As the goods were purchased tax included and ultimately sold by the appellant's customers subject to tax, the Department of National Revenue received tax on the goods twice. An argument was also raised on the understanding that the appellant was applying for a refund pursuant to section 68 of the Act.

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

The Tribunal regrets that it does not have the jurisdiction to assist the appellant. The Act clearly states that a refund will be paid for taxes paid on goods subsequently sold under tax-exempt circumstances if the person who sold the goods applies for the refund within two years after the sale. That portion of the refund claim rejected by the Minister related to transactions made prior to two years from the date of the refund claim. Therefore, the appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michèle Blouin
Michèle Blouin
Member