

Ottawa, Thursday, November 6, 1997

**Appeal No. AP-92-089**

IN THE MATTER OF an appeal heard on September 8, 1997,  
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 May 22, 1992, with respect to a notice of  
objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**MATHEW & CO., LIMITED**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-089**

**MATHEW & CO., LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is whether the appellant's application for a federal sales tax inventory rebate was filed with the respondent before 1992 as prescribed by subsection 120(8) of the *Excise Tax Act* and, if not, whether the appellant is entitled to the rebate notwithstanding that the application was filed outside the prescribed period. The appeal proceeded by way of telephone conference.

**HELD:** The appeal is dismissed. Even if the Tribunal felt that the appellant deserved to have a rebate as claimed, there is no authority upon which the Tribunal could grant an equitable remedy where the appellant has not complied with the statutory provisions.

Places of Telephone

Conference Hearing: Ottawa, Ontario, and Edmonton, Alberta  
Date of Hearing: September 8, 1997  
Date of Decision: November 6, 1997

Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Arthur B. Trudeau, Member  
Charles A. Gracey, Member

Counsel for the Tribunal: Gerry Stobo

Clerk of the Tribunal: Anne Jamieson

Appearances: Don Cherniawsky, for the appellant  
Janet Ozembloski, for the respondent

**Appeal No. AP-92-089**

**MATHEW & CO., LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ARTHUR B. TRUDEAU, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue that rejected an application for a federal sales tax (FST) inventory rebate made under section 120<sup>2</sup> of the Act. The issue in this appeal is whether the appellant's application was filed with the respondent before 1992 as prescribed by subsection 120(8) of the Act and, if not, whether the appellant is entitled to the rebate notwithstanding that the application was filed outside the prescribed period. The appeal proceeded by way of telephone conference.

For purposes of this appeal, the relevant provisions of section 120 of the Act are as follows:

(3) Subject to this section, where a person who, as of January 1, 1991, ... has any tax-paid goods in inventory at the beginning of that day,

(a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8);

(8) No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992.

Counsel for the appellant acknowledged that the application for an FST inventory rebate was filed on January 24, 1992. This date was therefore, he accepted, beyond the December 31, 1991, deadline for filing such applications. Despite the time limitation imposed by subsection 120(8) of the Act, counsel argued that the Tribunal should provide a remedy to the appellant through "the unjust enrichment mechanism."<sup>3</sup> Counsel argued that the respondent has been unjustly enriched because the appellant paid FST which was not in fact owing. Consequently, counsel argued, the appellant was entitled to recover this money through the common law remedy of replevin. In support of this, he cited a recent decision of the Federal Court - Trial Division<sup>4</sup> which dealt with an overpayment of tax to the government. In that case, the plaintiff claimed that it had paid tax which was not owing. The plaintiff did not file certain returns in order to claim this overpayment, as required by the *Petroleum and Gas Revenue Tax Act*.<sup>5</sup> Consequently, there was no authority to remit the

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1. R.S.C. 1985, c. E-15.
  2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27, s. 6.
  3. *Transcript of Teleconference*, September 8, 1997, at 8.
  4. *Forest Oil Corp. v. Canada (T.D.)*, [1997] 1 F.C. 624.
  5. R.S.C. 1985, c. P-12, as rep. by R.S.C. 1985, c. 45 (2nd Supp.), s. 8.

overpayment. The Federal Court concluded that the *Petroleum and Gas Revenue Tax Act* was not a complete code because it did not have provisions to deal with compelling circumstances like those before it. As a result, the Federal Court could fill that gap by granting an equitable remedy based on unjust enrichment.

Despite the valiant efforts of counsel for the appellant, the Tribunal cannot accept his position. Simply put, there is no authority upon which the Tribunal can grant such a remedy. The Tribunal has no authority to go beyond the boundaries of its legislation in granting an equitable remedy to a party. Furthermore, in the Tribunal's view, the provisions of the Act do constitute a complete code for dealing with FST matters.

Counsel for the appellant then asked if the Tribunal would recommend that the respondent provide a remission order granting FST relief. The Tribunal feels that the respondent should look sympathetically upon requests from taxpayers like the appellant that have been affected by technical requirements which prevent them from accessing a benefit to which they otherwise could have been entitled. Whether or not the appellant's case is meritorious and warrants a special review by the respondent is a matter to be left to the parties.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Charles A. Gracey

Charles A. Gracey

Member