

Ottawa, Thursday, July 22, 1993

Appeal No. AP-92-134

IN THE MATTER OF an appeal heard on April 26, 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 August 31, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

DAVID BUTTERFIELD DBA SIGN LANGUAGE SIGNS & DESIGNS **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

John C. Coleman
John C. Coleman
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-134

DAVID BUTTERFIELD DBA SIGN LANGUAGE SIGNS & DESIGNS Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.17 of the Excise Tax Act from a decision of the Minister of National Revenue dated August 31, 1992. The issue in this appeal is whether the Tribunal has jurisdiction to grant the appellant a federal sales tax inventory rebate where it has not filed its claim before 1992, as prescribed under subsection 120(8) of the Excise Tax Act.

HELD: *The appeal is dismissed. The appellant did not file its rebate claim within the time period prescribed under the Excise Tax Act, and the Tribunal does not have jurisdiction to vary the limitation period.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: April 26, 1993

Date of Decision: July 22, 1993

Tribunal Members: W. Roy Hines, Presiding Member

John C. Coleman, Member

Desmond Hallissey, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-134

DAVID BUTTERFIELD DBA SIGN LANGUAGE SIGNS & DESIGNS Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
JOHN C. COLEMAN, Member
DESMOND HALLISSEY, 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 (the Minister) dated August 31, 1992, disallowing the appellant's claim for a federal sales tax (FST) inventory rebate under section 120 of the Act.² The parties filed an agreed statement of facts on February 23, 1993, and asked the Tribunal to proceed on the basis of the written documentation before it in accordance with paragraph 25(1)(a) of the *Canadian International Trade Tribunal Rules*.³

The issue in this appeal is whether the Tribunal has jurisdiction to grant the appellant an FST inventory rebate where it has not filed its claim before 1992, as prescribed under subsection 120(8) of the Act.

As established in the agreed statement of facts, on May 25, 1992, the appellant, a sole proprietor carrying on business under the name Sign Language Signs & Designs, filed a claim for an FST inventory rebate in the amount of \$203.69 pursuant to section 120 of the Act. The claim related to various materials used for sign manufacturing and held in inventory by the appellant as of January 1, 1991.

In its brief, the appellant submitted that it made several attempts to get information from the Department of National Revenue (Revenue Canada) and from the then Minister of Revenue Canada (the Minister), concerning its entitlement to an FST inventory rebate. The brief stated that the appellant contacted five different officers of Revenue Canada and received conflicting responses. In April 1992, the Minister responded that the appellant was not entitled to the FST inventory rebate because the goods in respect of which the claim was made were removed from inventory in a form different from when they were entered in inventory. The appellant relied on this conflicting information from Revenue Canada officials as part of its grounds for this appeal.

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

2. S.C. 1990, c. 45, s. 12.

3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

In response to the appellant's argument concerning misinformation, the respondent referred to the decision of the Tribunal in *Homestead Logs Ltd. v. The Minister of National Revenue*⁴ which, he submits, provides that any misinformation by officials of the Crown does not excuse the appellant from its responsibility to manage its own affairs and be aware of the relevant tax legislation.

In the Tribunal's view, the appellant has not complied with the limitation period for filing FST inventory rebate claims under the Act, and this appeal, therefore, must be dismissed. Subsection 120(8) of the Act specifically provides that "[n]o rebate shall be paid under [section 120] unless the application therefor is filed with the Minister before 1992." The appellant filed its application in 1992 and is, therefore, not entitled to an FST inventory rebate. The Tribunal's powers in an appeal are limited to those expressly stated in the Act and these powers do not include varying a statutory limitation period.

The Tribunal recognizes the confusion surrounding the implementation of the Goods and Services Tax and the problems that the appellant may have encountered in obtaining information from Revenue Canada officials concerning the transitional provisions in the Act. However, the Canadian courts, and in particular the Federal Court of Appeal in its decision in *Granger v. Canada Employment and Immigration Commission*,⁵ have consistently held that the Crown is not bound by representations made to taxpayers by Revenue Canada officials, if such representations are contrary to the express provisions of the law. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.

The appeal is dismissed.

W. Roy Hines
W. Roy Hines
Presiding Member

John C. Coleman
John C. Coleman
Member

Desmond Hallissey
Desmond Hallissey
Member

4. Appeal No. AP-89-277, December 4, 1990.

5. [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.