

Ottawa, Thursday, March 31, 1994

Appeal No. AP-92-135

IN THE MATTER OF an appeal heard on December 2, 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 July 31, 1992, with respect to a notice  
of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**PROGRESSIVE SERVICES LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Sidney A. Fraleigh

Sidney A. Fraleigh  
Member

Nicole Pelletier

Nicole Pelletier  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-135**

**PROGRESSIVE SERVICES LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This is an appeal under section 81.19 of the Excise Tax Act. The appellant filed an application for a federal sales tax inventory rebate in the amount of \$4,183.49, dated January 27, 1992, which was received by the Minister of National Revenue on January 30, 1992. On April 10, 1992, the Minister of National Revenue rejected the refund application. Progressive Services Ltd. appealed this determination on the basis of extraordinary circumstances, i.e. the sudden and lengthy illness of one of its management employees, which left the appellant with only three permanent employees at fiscal year end 1991. Further, the appellant came under new management in December 1990, creating an additional workload. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate under section 120 of the Excise Tax Act.*

**HELD:** *The appeal is dismissed. The parties agreed that the rebate application was filed beyond the time specified in the Excise Tax Act. As such, the Tribunal finds that the rebate application was not filed before 1992. The Tribunal's jurisdiction in disposing of appeals is very limited and does not include varying a statutory limitation period or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 2, 1993  
Date of Decision: March 31, 1994*

*Tribunal Members: Anthony T. Eyton, Presiding Member  
Kathleen E. Macmillan, Member  
Sidney A. Fraleigh, Member*

*Counsel for the Tribunal: Joël J. Robichaud*

*Clerk of the Tribunal: Janet Rumball*

*Parties: Marcia Ross, for the appellant  
Anne M. Turley, for the respondent*

Appeal No. AP-92-135

**PROGRESSIVE SERVICES LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ANTHONY T. EYTON, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
SIDNEY A. FRALEIGH, 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 (the Minister) dated April 10, 1992, which rejected an application for a federal sales tax (FST) inventory rebate in the amount of \$4,183.49, made under section 120 of the Act,<sup>2</sup> on the basis that it was received beyond the time specified in the Act. The appellant served a notice of objection dated April 20, 1992. The Minister issued a notice of decision confirming the determination on July 31, 1992. The Tribunal disposed of the appeal on the basis of an agreed statement of facts and of written documentation before it. The issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act.

The appellant is a wholesale distributor of specialty coatings and aluminum marine mouldings, vinyl inserts for boat trims, specialty paints, putties, rollers, paint brushes, paint trays, application blocks and pads. The appellant's application was dated January 27, 1992, and was received by the respondent on January 30, 1992.

Progressive Services Ltd. appealed the determination of the Minister on the basis of extraordinary circumstances, i.e. the sudden and lengthy illness of one of its management employees, which left the appellant with only three permanent employees at fiscal year end 1991. Further, the appellant came under new management in December 1990, creating an additional workload. The appellant, therefore, requested that the Tribunal grant it equitable relief.

It was the respondent's position that, since the application was filed beyond the time specified in the Act, the appellant could not be granted the rebate.

For purposes of this appeal, the relevant FST inventory rebate provisions are found at subsections 120(3) and (8) of the Act, as follows:

*(3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,*

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

2. S.C. 1990, c. 45, s. 12, amended by S.C. 1993, c. 27, s. 6.

*(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.*

It is clear to the Tribunal that, under subsection 120(8) of the Act, an application for an FST inventory rebate must be filed before 1992. It was agreed by the parties that the rebate application in the present case was filed beyond the time specified in the Act. As such, the Tribunal finds that the rebate application was not filed before 1992. For the reasons stated above, the appellant requested that the Tribunal grant it equitable relief. The Tribunal's jurisdiction in disposing of appeals is very limited and does not include varying a statutory limitation period or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.<sup>3</sup>

Accordingly, the appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton  
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan  
Member

Sidney A. Fraleigh

Sidney A. Fraleigh  
Member

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3. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.