

Ottawa, Thursday, May 26, 1994

Appeal No. AP-92-140

IN THE MATTER OF an appeal heard on December 1, 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 June 30, 1992, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

FREDERICK YUE-PANG TSUI AND HELENA KOON-TO TSUI **Appellants**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

Appeal No. AP-92-140

FREDERICK YUE-PANG TSUI AND HELENA KOON-TO TSUI Appellants

and

THE MINISTER OF NATIONAL REVENUE Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ARTHUR B. TRUDEAU, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination concerning an application for a federal sales tax (FST) new housing rebate.

Under the new housing rebate provisions of the Act, the appellants filed an application in which they claimed one third of the estimated FST for a single unit residential complex that they had purchased. Although the rebate application was allowed as filed, the appellants later served a notice of objection to the determination, claiming an additional one third of the estimated amount of FST. The appellants' objection was disallowed by the Minister of National Revenue.

The original issue in this appeal was whether the appellants were entitled, under paragraph 121(2)(e) of the Act, to an FST new housing rebate equal to two thirds of the estimated FST for the house which they purchased. At the hearing, however, the appellants abandoned that contention and essentially claimed that, since the purpose of the new housing rebate was to avoid double taxation and because they were paying Goods and Service Tax (GST) on the house, they were entitled to a full rebate of the FST. The appellants submitted that they had paid \$20,125.00 in GST as well as \$13,452.51 in FST, of which one third, or \$4,484.17, was reimbursed as an FST new housing rebate. They explained that the amount of \$1,723.34 that is now claimed is the difference between (1) the amount of FST for which they were ultimately liable, i.e. \$8,395.83 (given the rebate of one third that they obtained), and (2) the amount that represents the discrepancy between the two taxes prior to the deduction of the FST rebate, i.e. \$6,672.49, which difference, they said, amounts to double taxation. During cross-examination, Mr. Tsui admitted that the appellants received \$7,245.00 as a GST rebate, but maintained that they are still entitled to \$1,723.34 to avoid double taxation.

The Tribunal agrees with counsel for the respondent that the Tribunal lacks the jurisdiction to grant remedies solely on the basis of equity. Moreover, the Tribunal has no jurisdiction with respect to issues arising from the GST rebate provisions under which the appellants received a rebate. In this appeal, the Tribunal has only the jurisdiction to deal with the rebate application filed under subsection 121(2) of the Act with respect to the estimated amount of FST for the new house.

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

Under subsection 121(2) of the Act, the appellants were entitled to an FST rebate for the FST elements of taxation that applied to the new house, provided they met the conditions of either paragraph 121(2)(e) or (f). These paragraphs provide that a person is entitled to two thirds or one third, respectively, of the estimated FST for the house, depending on whether possession is transferred before or after April 1991. The appellants first obtained one third of the estimated FST under paragraph 121(2)(f). In their notice of objection, they sought to obtain an additional one third of the estimated FST, claiming that paragraph 121(2)(e) should apply rather than paragraph 121(2)(f). At the hearing, however, the appellants withdrew their argument as to the proportion of the estimated FST to which they were entitled. Mr. Tsui conceded that the Act was clear on that issue and that possession of the house was transferred after April 1991.

As to the double taxation aspect in this case, the Tribunal recognizes that the rebate mechanism set forth by Parliament may not have eliminated all elements of double taxation, although it undoubtedly was created to partly avoid, or compensate for, double taxation. The Tribunal again agrees with counsel for the respondent that a rebate does not necessarily mean a full refund, especially in light of the fact that rebates are also provided under the GST provisions of the Act. Given that there is no statutory basis to support the appellants' position that they are entitled to the payment of the sum requested, the Tribunal has no choice but to dismiss the appeal.

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Lise Bergeron

Lise Bergeron
Member