

Ottawa, Monday, November 15, 1993

Appeal No. AP-92-167

IN THE MATTER OF an appeal heard on May 25, 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, relating to a notice
of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

LAKHANI GIFT STORE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-167

LAKHANI GIFT STORE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant operates a retail gift shop. It filed an application for a federal sales tax inventory rebate in the amount of \$3,283.14 in respect of its tax-paid goods in inventory as of January 1, 1991. The application form was dated December 24, 1991. However, the envelope which contained the application form was postmarked January 9, 1992, and was received by the respondent on January 10, 1992. The Tribunal must determine whether the appellant filed its application for a federal sales tax inventory rebate before 1992, in accordance with subsection 120(8) of the Excise Tax Act.

HELD: *The appeal is dismissed. The only evidence presented by the appellant as to the date of mailing is the application dated December 24, 1991, and an unsworn statement contained in the appellant's brief that it was mailed on that date. However, it is agreed between the parties that the application was postmarked January 9, 1992, which the Tribunal accepts as the date that it was mailed in the absence of any other compelling evidence. The Tribunal, therefore, accepts January 9, 1992, as the date on which the application was filed. As such, the Tribunal finds that the application was not filed before 1992.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 25, 1993
Date of Decision: November 15, 1993

Tribunal Members: Michèle Blouin, Presiding Member
W. Roy Hines, Member
Lise Bergeron, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-167

LAKHANI GIFT STORE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
W. ROY HINES, 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 of the Minister of National Revenue (the Minister). The appeal was made on the basis of an agreed statement of facts and the Tribunal's record as supplemented by briefs submitted by the parties. The issue in this appeal is whether the appellant is entitled to a federal sales tax (FST) inventory rebate in accordance with section 120² of the Act.

The appellant operates a retail gift shop. It filed an application for an FST inventory rebate in the amount of \$3,283.14 in respect of its tax-paid goods in inventory as of January 1, 1991. The application form was dated December 24, 1991. However, the envelope which contained the application form was postmarked January 9, 1992, and was received by the respondent on January 10, 1992.

On April 13, 1992, the Minister sent a notice of determination to the appellant disallowing the application on the basis that it was received outside the time limit prescribed by the Act. On the basis of a notice of objection, the Minister confirmed the determination, which was appealed to the Tribunal.

Specifically, the Tribunal has to determine whether the appellant filed its application for an FST inventory rebate before 1992. If it is found that the appellant did not file on time, the appeal must fail. If the Tribunal determines that the appellant did file on time, it must determine whether the appellant is entitled to the FST inventory rebate for which it applied and which was denied.

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

(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,

(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).

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

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

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

The appellant argued that the application was mailed on December 24 or 26, 1991. It was contended that the Christmas mail volume and reduced delivery schedule during the holiday season may have caused a processing delay.

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. The word "filed" is not defined in the Act; however, a meaning can be gleaned from the Act as a whole. For example, the Tribunal makes reference to section 79.2 of the Act, which deals with filing returns of tax owing or filing payment or remittances of amounts owing to the Department of National Revenue. Subsection 79.2(3) of the Act states:

(3) Where a person who is required by this section to file a return with the Minister does so by mailing the return, the return shall be deemed to have been filed with the Minister on the day on which the return was mailed and the date of the postmark is evidence of that day.

(Emphasis added)

Though this provision provides some meaning to the word "file" for purposes other than what is at issue in this appeal, it must be assumed that Parliament intended that a uniform definition of the word be applied throughout the Act. On this basis, it is accepted that the application was "filed" by the appellant on the day that it was mailed. The Act has provided that the date of the postmark is evidence of the date of the mailing.

The only evidence presented by the appellant as to the date of the mailing is the application dated December 24, 1991, and an unsworn statement contained in the appellant's brief that it was mailed on that date. However, it is agreed between the parties that the application was postmarked January 9, 1992, which the Tribunal accepts as the date on which it was mailed in the absence of any other compelling evidence. The Tribunal, therefore, accepts January 9, 1992, as the date on which the application was filed. As such, the Tribunal finds that the application was not filed before 1992.

Accordingly, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member