

Ottawa, Thursday, April 28, 1994

Appeal No. AP-92-169

IN THE MATTER OF an appeal heard on November 5, 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 14, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

**M-M ELECTRIC - A DIVISION OF
RIO DE JANEIRO HOLDINGS LTD.**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-169

**M-M ELECTRIC - A DIVISION OF
RIO DE JANEIRO HOLDINGS LTD.**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate with respect to goods held in inventory as of January 1, 1991. Specifically, the Tribunal must determine whether the rebate application was filed with the Minister of National Revenue before 1992.

HELD: *The appeal is dismissed. Under subsection 120(8) of the Excise Tax Act, "[n]o rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992." With respect to a rebate application mailed to the Minister of National Revenue, the Tribunal has held that it is "filed" when it is mailed. In addition, the date of the postmark on the envelope is evidence of the date of mailing.*

The respondent's brief contained a photocopy of the envelope in which the appellant's application was mailed, which is clearly postmarked 1992. As such, the Tribunal finds that, as the application was not mailed before 1992, it was not filed before 1992. Thus, under subsection 120(8) of the Excise Tax Act, the appellant is not entitled to the federal sales tax inventory rebate.

Place of Hearing: Calgary, Alberta
Date of Hearing: November 5, 1993
Date of Decision: April 28, 1994

Tribunal Members: Sidney A. Fraleigh, Presiding Member
Anthony T. Eyton, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Parties: Rio J. Morelli and Linda S. Morelli, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-92-169

**M-M ELECTRIC - A DIVISION OF
RIO DE JANEIRO HOLDINGS LTD.**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ANTHONY T. EYTON, Member
ROBERT C. COATES, Q.C., 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) rejecting an application for a federal sales tax (FST) inventory rebate made under section 120² of the Act. The appeal proceeded by way of written submissions, under rule 25 of the *Canadian International Trade Tribunal Rules*,³ on the basis of the written documentation before the Tribunal as supplemented by a brief submitted by the respondent.

The appellant, an electrical contractor and retailer operating under the trade name M-M Electric, filed an application for an FST inventory rebate in the amount of \$1,302.84 in respect of goods held in inventory as of January 1, 1991. The application was dated January 9, 1992, and the envelope in which the application was mailed was postmarked January 14, 1992. The application was received by the respondent on January 16, 1992.

By notice of determination dated April 24, 1992, the appellant's rebate application was rejected on the basis that it was received outside the statutorily prescribed time limit. On the basis of a notice of objection, the respondent confirmed the determination by a notice of decision dated August 14, 1992. In the notice of decision, it was stated that the filing date is determined to be the date on which the application is mailed or hand delivered. In the appellant's case, the application was considered to have been filed on the postmarked date. M-M Electric then appealed the determination to the Tribunal.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate with respect to goods held in inventory as of January 1, 1991. Specifically, the Tribunal must determine whether the rebate application was filed with the Minister before 1992.

Under subsection 120(8) of the Act, "[n]o rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992." With respect to a rebate

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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.

application mailed to the Minister, the Tribunal has held that it is "filed" when it is mailed. In addition, the date of the postmark on the envelope is evidence of the date of mailing.⁴

The respondent's brief contained a photocopy of the envelope in which the appellant's application was mailed, which is clearly postmarked 1992. As such, the Tribunal finds that, as the application was not mailed before 1992, it was not filed before 1992. Thus, under subsection 120(8) of the Act, the appellant is not entitled to the FST inventory rebate.

Accordingly, the appeal is dismissed.

Sidney A. Fraleigh

Sidney A. Fraleigh
Presiding Member

Anthony T. Eyton

Anthony T. Eyton
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

4. Canadian International Trade Tribunal, *Vern Glass Company (1976) Limited v. The Minister of National Revenue*, Appeal No. AP-92-221, December 13, 1993.