



Ottawa, Monday, May 10, 1993

Appeal No. AP-92-145

IN THE MATTER OF an appeal heard on February 15, 1993, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National Revenue dated June 29, 1992, with respect to notices of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

FAURSCHOU FARMS LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-145

FAURSCHOU FARMS LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled to claim refunds under subsections 68.16(1) and 69(6.1) of the Excise Tax Act for expenses incurred in relation to fuel purchased more than two years before the appellant filed its refund claims.

HELD: *The appeal is dismissed.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: February 15, 1993

Date of Decision: May 10, 1993

Tribunal Members: Michèle Blouin, Presiding Member

Desmond Hallissey, Member

Lise Bergeron, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

Appearances: Ralph Faurschou, for the appellant

Brian Tittlemore, for the respondent

Appeal No. AP-92-145

FAURSCHOU FARMS LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
DESMOND HALLISSEY, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) from determinations of the Minister of National Revenue (the Minister).

The appellant is a corporation that operates a number of farms in the province of Manitoba. On July 27, 1991, the appellant applied for two refunds relating to taxes that it had paid in purchasing gasoline used in its farming operations. One claim, relating to excise taxes, was made under subsection 68.16(1) of the Act. The other claim, relating to fuel taxes, was made under subsection 69(6.1) of the Act. Both claims covered the period from April 1, 1988, to December 31, 1989.

By notices of determination dated October 17 and 29, 1991, the respondent allowed, in part, the refund claims, disallowing that portion of each claim which related to fuel purchases occurring more than two years before the applications for refund. The appellant served notices of objection in relation to these determinations on January 13, 1992. By notices of decision dated June 29, 1992, the Minister confirmed both determinations.

The issue in this appeal is whether the appellant is entitled to claim refunds under subsections 68.16(1) and 69(6.1) of the Act for expenses incurred in relation to fuel purchased more than two years before the appellant filed its refund claims.

At the hearing, Mr. Ralph Faurshou, appearing on behalf of the appellant, acknowledged that the company had filed its refund claims after the two-year statutory time limit. However, Mr. Faurshou indicated that he felt that it was unfair for the government to retain money, which it had committed to refund through the legislation, solely on the basis of time limitation periods in the statute.

Counsel for the respondent submitted that both provisions at issue clearly set out a requirement that, in order to claim a refund of the subject taxes, claimants must apply within two years from the time that the gas was purchased. Counsel indicated that, as the appellant did not dispute the fact that each of its applications was made outside the appropriate time

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

period, there was no basis upon which the Tribunal could allow the refunds. In this respect, counsel referenced previous decisions of the Tribunal, including *Kim Hutton v. The Minister of National Revenue*,² which, he submitted, support the position that the Tribunal will not interfere with limitation periods.

As noted by the Tribunal in *Kim Hutton*, where an appellant claims the benefit of a refund, it has the onus to establish that every condition necessary for the refund has been satisfied. In the instant case, one of these conditions is that the application for the refund be filed within the time limitation set by the Act. In this respect, the appellant has acknowledged that it did not file its applications within the relevant time. Although the Tribunal feels a degree of sympathy with the appellant, it has no basis on which to conclude that the appellant properly filed refund claims with the respondent. Furthermore, as previous decisions of the Tribunal³ make clear, the Tribunal has no jurisdiction to apply principles of equity.

Accordingly, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

2. Appeal No. AP-90-164, November 19, 1992.

3. See, for instance, *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and decisions referred to therein.