

Ottawa, Monday, January 10, 1994

**Appeal No. AP-92-232**

IN THE MATTER OF an appeal heard on June 14, 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 September 4, 1992, with respect to a  
notice of objection served under section 81.17 of the *Excise  
Tax Act*.

**BETWEEN**

**TOR-BRAM ELECTRIC CONTRACTING  
& MAINTENANCE CO. LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

*UNOFFICIAL SUMMARY*

Appeal No. AP-92-232

**TOR-BRAM ELECTRIC CONTRACTING  
& MAINTENANCE CO. LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the appellant is entitled to a refund of federal sales tax paid in error during the period from March 14 to September 30, 1989, where its application for refund was filed outside the two-year limitation period prescribed by section 68 of the Excise Tax Act.*

**HELD:** *The appeal is dismissed. The appellant did not satisfy the statutory time limit set out in section 68 of the Excise Tax Act.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: June 14, 1993*  
*Date of Decision: January 10, 1994*

*Tribunal Members: Charles A. Gracey, Presiding Member*  
*Kathleen E. Macmillan, Member*  
*Desmond Hallissey, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Janet Rumball*

*Parties: Werner Schiebel, for the appellant*  
*Michael Ciavaglia, for the respondent*

Appeal No. AP-92-232

**TOR-BRAM ELECTRIC CONTRACTING  
& MAINTENANCE CO. LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
DESMOND HALLISSEY, 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. By agreement of both parties, the Tribunal disposed of the appeal on the basis of written submissions and documentation before it, in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup>

The appellant is an electrical contracting company which is not a licensed manufacturer under the Act. It paid federal sales tax (FST) on certain purchases of electrical components between March 14 and September 30, 1989. These parts were subsequently sold to Tower Steel Co. Ltd. (Tower), which did not reimburse the appellant for the FST due to the fact that Tower was a licensed manufacturer for FST purposes. Tower indicated that it would be incorporating the electrical components into the manufacture of taxable goods for resale.

The appellant applied for a refund of \$1,385.35 under section 68 of the Act, representing the FST allegedly paid in error on the electrical components. The appellant's refund application was dated September 16, 1991, and was received by the Department of National Revenue (Revenue Canada) on October 1, 1991. By notice of determination dated December 26, 1991, the refund application was disallowed on the ground that it was not filed within the two-year limitation period set out in section 68 of the Act. The determination was subsequently confirmed by the respondent in a notice of decision.

The issue in this appeal is whether the appellant is entitled to a refund of FST paid in error during the period from March 14 to September 30, 1989, where its application for refund was filed outside the two-year limitation period prescribed by section 68 of the Act.

Having carefully reviewed the file, the Tribunal is of the view that the appeal must be dismissed. Section 68 of the Act provides that a person may seek a refund of FST paid in error, provided the person applies for such refund within two years after the erroneous payment of the moneys. In this appeal, the moneys were paid during the period from March 14 to September 30, 1989. The application was actually filed with Revenue Canada on October 1, 1991,

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

2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

which is not within two years of payment of the FST. Therefore, the appellant did not satisfy the clear statutory requirement for entitlement to a refund set out in section 68 of the Act.

Although the Tribunal may sympathize with the appellant, it has no jurisdiction to apply principles of equity.

In light of the foregoing, the appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Desmond Hallissey  
Desmond Hallissey  
Member