

Ottawa, Tuesday, February 22, 1994

Appeal No. AP-92-234

IN THE MATTER OF an appeal heard on November 2, 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 25, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

CALDWELL & CHOONG SALON

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-92-234

CALDWELL & CHOONG SALON

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 hair care products, such as shampoo and conditioner, held in inventory on January 1, 1991. Specifically, the Tribunal must determine whether the refund application was filed with the Minister of National Revenue before 1992, as prescribed by subsection 120(8) of the Excise Tax Act.

***HELD:** The appeal is dismissed. The Excise Tax Act is explicit in specifying that no rebate shall be paid unless the application therefor has been filed with the Minister of National Revenue before 1992. The appellant agreed that it filed its rebate application on February 6, 1992, and the Tribunal finds that the Minister of National Revenue correctly rejected the appellant's rebate application.*

Place of Hearing: Calgary, Alberta
Date of Hearing: November 2, 1993
Date of Decision: February 22, 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: Kevin Caldwell, for the appellant
Michael Ciavaglia, for the respondent

Appeal No. AP-92-234

CALDWELL & CHOONG SALON

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 Tribunal's record as supplemented by an agreed statement of facts and briefs submitted by the parties. The appellant's representative accepted the facts contained in the respondent's brief as the agreed statement of facts.

The appellant was, at all material times, the operator of two hair salons. The rebate application relates to hair care products such as shampoo, conditioner, etc. In the respondent's brief, it is indicated that the appellant filed its FST inventory rebate application on February 6, 1992, in the amount of \$3,690.26 with respect to its tax-paid inventory held in inventory on January 1, 1991. On April 10, 1992, the Minister issued a notice of determination rejecting the application on the basis that it was filed beyond the time period specified by the Act. On June 19, 1992, the appellant objected to the determination, which was confirmed by a decision of the Minister dated September 25, 1992. Caldwell & Choong Salon 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 its goods held in inventory on January 1, 1991. Specifically, the Tribunal must determine whether the refund application was filed with the Minister before 1992, as prescribed by subsection 120(8) of the Act.

In the appellant's brief, it is submitted that it is unrealistic to believe that a small business can be aware of all the rules and regulations accompanying the Goods and Services Tax. The Minister's decision imposes a substantial penalty on the appellant due to the late filing of the rebate application. It is noted that the result of the Minister's decision is double taxation, which was not intended by the legislation.

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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.

Counsel for the respondent noted that the onus is on the appellant to establish that it is entitled to the rebate claimed and that the respondent's determination is incorrect. The time limit for filing an application for an FST inventory rebate is specifically determined by statute. Subsection 120(8) of the Act specifies that an application must be filed before 1992, and the appellant's application was not filed before this date. Counsel submitted that the Tribunal lacks the jurisdiction to grant equitable relief and, further, that it is bound to apply the law and cannot refuse to apply it, even on grounds of equity. In addition, counsel submitted that taxing statutes cannot be construed to avoid the effects of legislation, no matter how great the hardship may be.

The Tribunal recognizes that the Act is explicit in specifying that no rebate shall be paid unless the application therefor has been filed with the Minister before 1992. The appellant agreed that it filed its rebate application on February 6, 1992, and the Tribunal finds that the Minister correctly rejected the appellant's rebate application.

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