CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, March 8, 1994

Appeal No. AP-92-249

IN THE MATTER OF an appeal heard on November 16, 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

COMPUTALOG 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

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UNOFFICIAL SUMMARY

Appeal No. AP-92-249

COMPUTALOG LTD. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The issue in this appeal is whether the appellant is entitled to a refund of taxes paid on the importation of well-logging tape prior to November 8, 1989, more than two years before the date of the refund application. The amount in dispute is $1,340.67, which relates to four separate importations of the tape prior to that date.

HELD: *The appeal is dismissed. Section 68 of the Excise Tax Act is clear in prescribing two years within which a person may apply for a refund of moneys paid in error that were taken into account as taxes under the Excise Tax Act. Taxes were paid in error at the time of importation of the goods, and the appellant had two years from that time to apply for a refund of those moneys. The respondent disallowed a portion of the refund application, as some of the importations on which taxes were paid occurred more than two years before November 8, 1991, the date of the refund application. The Tribunal finds that the respondent correctly disallowed that portion of the refund application relating to importations occurring before November 8, 1989.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*November 16, 1993*
Date of Decision:	*March 8, 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:	*R.N. Pike, for the appellant* *Michael Ciavaglia, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-249

COMPUTALOG 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, in part, an application for refund of federal sales tax. The appeal proceeded by way of written submissions, pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*,[2] on the basis of the written documentation before the Tribunal, as supplemented by an agreed statement of facts and briefs filed by the parties.

In the agreed statement of facts, it is indicated that the appellant carries on business in Calgary, Alberta, and is a licensed manufacturer or producer of well-logging film. On November 8, 1991, the appellant filed an application for refund of taxes paid on the importation of well-logging tape and seismic recording paper during the period of March 1989 to December 1990. On January 28, 1992, the respondent allowed the application in part. The portion of the refund application pertaining to taxes paid on the importation of well-logging tape prior to November 8, 1989, was disallowed due to the two-year limitation period set out in section 68 of the Act. The appellant objected to the determination on the grounds that the two-year limitation period should run from February 19, 1991, the date on which the respondent advised the appellant that well-logging tape could be purchased tax-exempt. However, the respondent confirmed the determination, which was subsequently appealed by Computalog Ltd.

The issue in this appeal is whether the appellant is entitled to a refund of taxes paid on the importation of well-logging tape prior to November 8, 1989, more than two years before the date of the refund application. The amount in dispute is $1,340.67, which relates to four separate importations of the tape prior to November 8, 1989.

Section 68 of the Act reads as follows:

> *Where a person, otherwise than pursuant to an assessment, has paid any moneys in error, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account as taxes, penalties, interest or other sums under this Act, an amount equal to the amount of those moneys shall, subject to this Part, be paid to that person if he applies therefor within two years after the payment of the moneys.*

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.

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To understand the appellant's argument that the two-year limitation period should run from February 19, 1991, a brief history of the exchange between the parties is required. Apparently, the taxes in issue were claimed as part of a customs duty and sales tax rebate some time before August 1, 1990. However, in a letter of that date, the district excise tax office of the Department of National Revenue (Revenue Canada) ruled that "[t]he processing of seismic data, does not constitute a process of manufacture or production.... Accordingly, the well logging tape is properly subject to sales tax at the general rate." In response, on September 24, 1990, the appellant wrote to Revenue Canada, arguing that well logging is a process of manufacture or production. In a letter dated October 17, 1990, Revenue Canada accepted this contention, but informed the appellant that it could not import or purchase well-logging tape because it was not a licensed manufacturer or producer. In a letter dated October 29, 1990, the appellant informed Revenue Canada that the appellant was a licensed manufacturer, but that the licence was in the name of Computalog Gearhart Ltd., the appellant's former name. Finally, on February 19, 1991, the appellant was informed that it could purchase well-logging tape tax-exempt for use as described. However, it was not until November 8, 1991, that the appellant filed a refund application for taxes it had already paid on the importation of the tape.

In the appellant's brief, it is noted that the respondent erred in disallowing a refund of the taxes in issue when the initial application for refund of those taxes was filed. Subsequent to the letter of February 19, 1991, the appellant required until November 8, 1991, to obtain the necessary documentation to substantiate its claim for the refund. In argument, the appellant noted paragraph 6 of Excise Memorandum ET 313,[3] which states "persons entitled to a refund of tax(es) must file their refund application within two years of the time when the refund first became payable." It was submitted that the refund became payable on February 19, 1991, and that the appellant was entitled to a refund of all taxes paid in error within two years prior to that date.

Counsel for the respondent noted that sales tax is not payable on partly manufactured goods imported by a licensed manufacturer and that an application for refund of sales tax paid in error is payable if the refund application is made within two years from payment of the tax. Referring to section 68 of the Act, counsel submitted that, as the appellant applied for a refund of the tax on November 8, 1991, the appellant is statute-barred from receiving a refund of tax paid prior to November 8, 1989. It is the date of importation that is used in calculating the commencement of the statutory two-year time limit as that is the date when taxes were paid in error and the refund first became payable. It was argued that there is no provision in the Act which grants the authority to waive, extend or alter the statutory period prescribed by the Act. In addition, there is no form of equitable relief available to the appellant.

The Tribunal notes that, between March 1989 and December 1990, the appellant imported well-logging tape and paid taxes thereon. After much discussion between the parties, the respondent acknowledged that these taxes were paid in error and, on November 8, 1991, the appellant applied, under section 68 of the Act, for a refund of these moneys. However, as a portion of the refund was in respect of taxes paid more that two years before the date of the refund application, the respondent disallowed that part of the appellant's application.

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3. Application for Refund, Department of National Revenue, Customs and Excise, February 20, 1989.

Considering the events of this case, the Tribunal has a great deal of sympathy for the position of the appellant. However, section 68 of the Act is clear in prescribing two years within which a person may apply for a refund of moneys paid in error that were taken into account as taxes under the Act. Taxes were paid in error at the time of importation of the goods, and the appellant had two years from that time to apply for a refund. The respondent disallowed that portion of the refund application related to importations that occurred more than two years before November 8, 1991, the date of the refund application. The Tribunal finds that the respondent correctly disallowed that portion of the refund application relating to importations occurring before November 8, 1989.

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