

Ottawa, Tuesday, December 21, 1993

Appeal No. AP-92-220

IN THE MATTER OF an appeal heard on July 6, 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

DEMURE ENTERPRISES INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

W. Roy Hines
W. Roy Hines
Member

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-220

DEMURE ENTERPRISES INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The sole issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate under section 120 of the Excise Tax Act if the application therefor is made later than December 31, 1991.

HELD: *The appeal is dismissed. The Tribunal finds that the words "No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992" in subsection 120(8) of the Excise Tax Act means before the start of 1992, not during 1992. Also, while the Tribunal has no jurisdiction to grant equitable relief, it sees no issue of equity in this case, given the fact that subsection 120(8) of the Excise Tax Act is perfectly clear as to the time limitation applicable in this instance, which may be different from that found in other statutes.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: July 6, 1993
Date of Decision: December 21, 1993*

*Tribunal Members: Charles A. Gracey, Presiding Member
W. Roy Hines, Member
Robert C. Coates, Q.C., Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

*Appearances: Gerald L. Coakwell, for the appellant
Brian Tittlemore, for the respondent*

Appeal No. AP-92-220

DEMURE ENTERPRISES INC.

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and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
W. ROY HINES, 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) from a decision of the Minister of National Revenue (the Minister) that disallowed an objection to a determination which also disallowed an application for refund of federal sales tax (FST).

In accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,² the parties submitted an agreed statement of facts, and the Tribunal, after having given public notice of its intention, proceeded on the matter by way of written submissions on July 6, 1993.

The facts of this case can be briefly summarized as follows. On January 28, 1992, the appellant applied for an FST inventory rebate under section 120 of the Act.³ On May 4, 1992, the application was disallowed on the basis that it was received outside the statutory time limit. On May 26, 1992, the appellant served a notice of objection to that determination, which was confirmed by the Minister on September 4, 1992.

The sole issue in this appeal is whether the appellant is entitled to a refund of FST pursuant to section 120 of the Act if the application therefor was made later than December 31, 1991.

The appellant admitted that it applied in January 1992, but argued that the words "before 1992" in subsection 120(8) of the Act could be construed to mean before the end of 1992.

The appellant also contended that the Tribunal should rule in its favour on grounds of equity because the one-year statutory time limit set forth in subsection 120(8) of the Act departs from other rebate provisions contained in the *Income Tax Act*⁴ which allow four years to file an application.

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.

3. S.C. 1990, c. 45, s. 12.

4. R.S.C. 1952, c. 148, s. 1.

Subsection 120(8) of the Act, under which the appellant applied, clearly stipulates that:

No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992.

The Tribunal finds that this means before the start of 1992, not during 1992. Also, while the Tribunal has no jurisdiction to grant equitable relief, it sees no issue of equity in this case, given the fact that subsection 120(8) of the Act is perfectly clear as to the time limitation applicable in this instance, which may be different from that found in other statutes.

Consequently, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member