



Ottawa, Tuesday, October 19, 1993

Appeal No. AP-92-196

IN THE MATTER OF an appeal heard on May 25, 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 August 14, 1992, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

CITY TIRE & AUTO CENTRE LIMITED

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-196

CITY TIRE & AUTO CENTRE LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

From February 1, 1989, to January 31, 1990, the appellant purchased gasoline for commercial or business purposes for its sole use and not for resale. The appellant paid excise tax under Part III of the Excise Tax Act in respect of this gasoline. On October 30, 1991, the appellant applied for a refund of the tax paid. The issue in this appeal is whether the appellant is entitled to claim a refund under subsection 68.16(1) of the Excise Tax Act for fuel purchased more than two years before the appellant filed its refund claim.

HELD: *The appeal is dismissed. An appellant who claims the benefit of a refund has the onus of establishing that every condition necessary for the refund has been satisfied. In this case, one of these conditions is that the application for the refund be filed within the time limitation set by the Excise Tax Act. The appellant has acknowledged that a portion of his claim relates to a period outside the relevant time period. The Tribunal has no basis on which to conclude that the refund claim in issue was properly filed with the respondent.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: May 25, 1993
Date of Decision: October 19, 1993*

*Tribunal Members: Michèle Blouin, Presiding Member
W. Roy Hines, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-196

CITY TIRE & AUTO CENTRE LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
W. ROY HINES, Member
LISE BERGERON, 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 dated August 14, 1992. The appeal proceeded on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.² In this regard, the parties submitted an agreed statement of facts, from which the facts set out herein are taken.

From February 1, 1989, to January 31, 1990, the appellant purchased gasoline for commercial or business purposes for its sole use and not for resale. The appellant paid excise tax under Part III of the Act in respect of this gasoline. On October 30, 1991, the appellant applied for a refund of the tax paid.

By notice of determination dated December 24, 1991, the respondent rejected that portion of the refund application relating to the period from February 1 to October 30, 1989, on the basis that it was filed beyond the time period specified under subsection 68.16(1) of the Act. The respondent received the appellant's notice of objection to this determination on January 22, 1992. By notice of decision dated August 14, 1992, the respondent rejected the objection and confirmed the determination.

The issue in this appeal is whether the appellant is entitled to claim a refund under subsection 68.16(1) of the Act for fuel purchased more than two years before the appellant filed its refund claim.

In written representations to the Tribunal, the appellant's representative, Mr. Robert J. Nash, acknowledged that the appellant had filed its refund claim after the two-year statutory time limit. However, Mr. Nash indicated that he felt that the refund was justifiably due to the appellant and should not be denied solely on the basis of an error relating to the time periods set out in the legislation.

In his brief, counsel for the respondent submitted that the provision at issue clearly sets out a requirement that, in order to claim a refund of the subject tax, one must apply within

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.

two years from the time that the gasoline was purchased. Counsel also argued that the Tribunal has recognized that it has no discretion to waive the time requirement or to provide equitable or other relief to a taxpayer who has applied outside the prescribed time limitation period. In this respect, counsel referenced previous decisions of the Tribunal, including *Walbern Agri-Systems Ltd. v. The Minister of National Revenue*,³ which, he submitted, support the position that the Tribunal will not interfere with limitation periods.

As noted by the Tribunal in *Walbern* and other decisions,⁴ where an appellant claims the benefit of a refund, it has the onus of establishing 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 a portion of his claim relates to a period outside the relevant time period. Although the Tribunal feels a degree of sympathy with the appellant, it has no basis on which to conclude that the appellant properly filed a refund claim with the respondent with respect to that portion of the application in issue. Furthermore, as previous decisions⁵ of the Tribunal make clear, the Tribunal has no jurisdiction to apply principles of equity.

Accordingly, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member

3. Appeal No. 3000, December 21, 1989.

4. See, for instance, *Kim Hutton v. The Minister of National Revenue*, Appeal No. AP-90-164, November 19, 1992.

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