

Ottawa, Monday, February 27, 1995

Appeal No. AP-92-236

IN THE MATTER OF an appeal heard on October 26, 1994,
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 16, 1992, with respect to a
notice of objection served under section 81.17 of the *Excise
Tax Act*.

BETWEEN

**DIANE BERNAUER
T/A VIDEO QUEST**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-236

**DIANE BERNAUER
T/A VIDEO QUEST**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is a retail business in Humboldt, Saskatchewan, which applied for a federal sales tax inventory rebate in respect of two categories of goods described as blank video tapes and some food items. The appellant's representative acknowledged that the application was filed after the statutory deadline, but claimed that extenuating circumstances contributed to the late filing of the rebate application and that it should be considered by the Tribunal. The issue in this appeal is whether the appellant's application for a federal sales tax inventory rebate is statute-barred under subsection 120(8) of the Excise Tax Act.

HELD: *The appeal is dismissed. In light of the fact that the appellant's rebate application was received by the respondent on January 8, 1992, and that the appellant's representative agreed that the application was filed late, the Tribunal finds that the appellant's application was not filed before 1992 as required by subsection 120(8) of the Excise Tax Act.*

Place of Hearing: Saskatoon, Saskatchewan
Date of Hearing: October 26, 1994
Date of Decision: February 27, 1995

Tribunal Members: Lyle M. Russell, Presiding Member
Arthur B. Trudeau, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

Appearances: N. Barry Jolly, for the appellant
Christopher Rupar, for the respondent

Appeal No. AP-92-236

**DIANE BERNAUER
T/A VIDEO QUEST**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
CHARLES A. GRACEY, 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 that rejected the appellant's application for a federal sales tax (FST) inventory rebate under section 120 of the Act.²

The appellant is a retail business, whose activities include the renting and selling of video tapes, in Humboldt, Saskatchewan. The appellant has been a Goods and Services Tax registrant since January 1, 1991. On January 8, 1992, the respondent received the appellant's application for an FST inventory rebate in the amount of \$681.09 in respect of tax-paid goods, namely, certain video supplies and food items, held in inventory as of January 1, 1991. The envelope in which the application was mailed was postmarked January 7, 1992. By notice of determination dated April 6, 1992, the appellant was advised that the application was rejected on the basis that it was filed after December 31, 1991. By notice of objection dated June 17, 1992, the appellant objected to this determination. By notice of decision dated September 16, 1992, the respondent disallowed the objection and upheld the determination.

The issue in this appeal is whether the appellant's application for an FST inventory rebate is statute-barred under subsection 120(8) of the Act.

Paragraph 120(3)(a) and subsection 120(8) of the Act read as follows:

(3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX has any tax-paid goods in inventory at the beginning of that day,

(a) where the tax-paid goods are goods other than used goods, the Minister shall, on application made by the person, pay to that person a rebate in accordance with subsections (5) and (8).

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

The appellant was represented by Mr. N. Barry Jolly, its tax consultant, who had dealt directly with the rebate application. Mr. Jolly explained that, early in 1991, the appellant applied for a notional input tax credit for video tapes which were included in the goods for which the rebate was later claimed. The appellant was not notified of its application being rejected until the respondent forwarded a letter dated

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

2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, s. 27, s. 6.

October 9, 1991. Subsequently, the Department of National Revenue changed this decision and allowed the appellant a tax credit on certain assets. The appellant was made aware of this change in treatment in early December 1991. Mr. Jolly testified that confusion over this matter left the appellant unsure as to which goods qualified for an FST inventory rebate and that this uncertainty, in turn, led to the late filing of the rebate application.

Mr. Jolly mailed the FST inventory rebate application to the appellant on December 16, 1991, with instructions to complete, sign and return the application to him, along with certain information about inventory values. The application was subsequently returned to Mr. Jolly's office, completed and filed with the respondent. However, by the time this process was completed, the deadline for filing had passed. Mr. Jolly attributed the delay to a slowdown in the mail service during the Christmas season.

It is clear to the Tribunal that, pursuant to subsection 120(8) of the Act, an application for an FST inventory rebate must be filed before 1992. In the Tribunal's view, there is some credible evidence that the appellant experienced some delays arising out of misinformation received concerning the application for tax credits. The evidence is equally clear that Mr. Jolly mailed the rebate application to the appellant for completion, signature and return in mid-December 1991. In any event, the appellant's rebate application was received on January 8, 1992, and Mr. Jolly acknowledged that the application was filed late.

The Tribunal cannot disregard the fact that the application was not filed before 1992. Furthermore, as previous decisions³ of the Tribunal make clear, the Tribunal has no jurisdiction to apply principles of equity.

Accordingly, the appeal is dismissed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

3. See, for instance, *Faurschou Farms Limited v. The Minister of National Revenue*, Appeal No. AP-92-145, May 10, 1993; and *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and the decisions referred to therein.