

Ottawa, Monday, December 13, 1993

Appeal No. AP-92-221

IN THE MATTER OF an appeal heard on April 28, 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 26, 1992, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**VERN GLASS COMPANY (1976) LIMITED**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Charles A. Gracey

Charles A. Gracey

Member

Lise Bergeron

Lise Bergeron

Member

Michel P. Granger

Michel P. Granger

Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-221**

**VERN GLASS COMPANY (1976) LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*On January 16, 1992, the respondent received an application from the appellant for a federal sales tax inventory rebate in the amount of \$4,312 in respect of its tax-paid inventory held as of January 1, 1991. The application was dated December 30, 1991. On June 10, 1992, the Minister of National Revenue issued a notice of determination disallowing the application on the basis that it was filed outside the time limit specified by the Excise Tax Act. On the basis of a notice of objection, the Minister of National Revenue confirmed the determination, which was appealed to the Tribunal.*

*There are two issues in this appeal. First, the Tribunal must determine whether the appellant filed its application for a federal sales tax inventory rebate within the statutorily prescribed time. If the Tribunal finds that the appellant did not file before 1992, the appeal must fail. If the Tribunal determines that the appellant filed on time, it must determine whether the appellant is entitled to the federal sales tax inventory rebate.*

**HELD:** *The appeal is dismissed. The only evidence presented by the appellant as to the date of mailing is an unsworn statement contained in its brief. The Tribunal did not have a postmarked envelope before it. The respondent submitted evidence in the form of a date-stamped copy of the appellant's application form. The witness for the respondent indicated that it is the practice of the Department of National Revenue to date-stamp an application when received by it, the appellant's application being date-stamped January 16, 1992. As such, the Tribunal cannot find that the application was filed before 1992, as required by the Excise Tax Act.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 28, 1993  
Date of Decision: December 13, 1993*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Charles A. Gracey, Member  
Lise Bergeron, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Janet Rumball*

*Appearance: Brian Tittlemore, for the respondent*

Appeal No. AP-92-221

**VERN GLASS COMPANY (1976) LIMITED**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
CHARLES A. GRACEY, Member  
LISE BERGERON, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue (the Minister) disallowing an application for a federal sales tax (FST) inventory rebate made under section 120<sup>2</sup> of the Act.

The appellant is in the business of installing automobile windshields and glass, thermally sealed window units, commercial aluminum framing, glass and glazing products, and glass sundry and material, which represent the goods in issue.

On January 16, 1992, the Minister received an application from the appellant for an FST inventory rebate in the amount of \$4,312 in respect of its tax-paid inventory of the goods in issue held as of January 1, 1991. The application was dated December 30, 1991. On June 10, 1992, the Minister issued a notice of determination disallowing the application on the basis that it was received outside the time limit prescribed by the Act. On the basis of a notice of objection, the Minister confirmed the determination, which was appealed to the Tribunal.

There are two issues in this appeal. First, the Tribunal must determine whether the appellant filed its application for an FST inventory rebate within the statutorily prescribed time. If it is found that the appellant did not file on time, the appeal must fail. If the Tribunal determines that the appellant did file on time, it must determine whether the appellant is entitled to the FST inventory rebate for which it applied and which was denied.

For purposes of this appeal, the relevant FST inventory rebate provisions are found at subsections 120(3) and (8) of the Act, which state:

*(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).*

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1. R.S.C. 1985, c. E-15.  
2. S.C. 1990, c. 45, s. 12.

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

The appellant was not in attendance at the hearing. In the appellant's brief, it was claimed that the application for an FST inventory rebate was mailed on December 30, 1991, which complies with the requirements of the Act. It was claimed that any delay in processing the claim can be attributed to late delivery by Canada Post Corporation or to internal processing on the part of the Department of National Revenue (Revenue Canada).

Counsel for the respondent submitted that the time limit for filing an application for an FST inventory rebate is specifically determined by statute. Counsel referred to subsection 120(8) of the Act. Similarly, the application form is clear and concise and reflects the requirements and wording of the Act. It was indicated, at the hearing, that the only evidence on which the Tribunal could proceed was the appellant's application dated December 30, 1991. Counsel explained that it was received by the Toronto East Office of Revenue Canada on January 16, 1992. As such, it was not filed before 1992, as required by the Act.

Mr. Ted Glas, a litigation officer with Revenue Canada, was called as a witness for the respondent to explain the policy of Revenue Canada and why the envelope in which the application was received could not be produced. The Tribunal indicated its interest in the envelope as it would reveal the Canada Post Corporation date stamp. Mr. Glas referred the Tribunal to a memorandum of Revenue Canada entitled "Time limitation for filing FST Inventory Rebate Claims." The memorandum states that, where an envelope is postmarked by the post office before 1992, the application will be considered as having been filed before 1992. However, if the district office of Revenue Canada assessing the application does not have the envelope, it allows a 10-day grace period. As such, any application received by the district office up to and including January 10, 1992, would be accepted.

On the basis of the evidence available to the Tribunal, the appeal must fail. The Act is clear that an application for an FST inventory rebate must be filed before 1992. The word "filed" is not defined in the Act; however, a meaning can be gleaned from the Act as a whole. For example, the Tribunal makes reference to section 79.2 of the Act, which deals with filing returns of tax owing or filing payment or remittances of amounts owing to Revenue Canada. Subsection 79.2(3) of the Act states:

*(3) Where a person who is required by this section to file a return with the Minister does so by mailing the return, the return shall be deemed to have been filed with the Minister on the day on which the return was mailed and the date of the postmark is evidence of that day.*

(Emphasis added)

Though this provision provides some meaning to the word "file" for a purpose other than what is at issue in this appeal, it must be assumed that Parliament intended that a uniform definition of the word be applied throughout the Act. On this basis, it is accepted that the application was "filed" by the appellant on the day that it was mailed. The Act has provided that the date of the postmark is evidence of the date of the mailing.

However, this does not advance the appellant's case. The only evidence presented by the appellant as to the date of mailing is the application dated December 30, 1991, and an unsworn statement contained in the appellant's brief that it was mailed on this date. The Tribunal did not have a postmarked envelope before it. The respondent submitted evidence

in the form of a date-stamped copy of the appellant's application form. The witness for the respondent indicated that it is the practice of Revenue Canada to date-stamp an application when received by it, the appellant's application being date-stamped January 16, 1992. As such, the Tribunal cannot find that the application was filed before 1992. Accordingly, the appeal is dismissed.

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