

Ottawa, Wednesday, February 23, 1994

Appeal No. AP-92-283

IN THE MATTER OF an appeal heard on November 1, 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, relating to a notice  
of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**MOTO OPTICAL 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

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-283**

**MOTO OPTICAL LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate with respect to its goods held in inventory on January 1, 1991. Specifically, the Tribunal must determine whether the rebate application was filed with the Minister of National Revenue before 1992.*

***HELD:** The appeal is dismissed. Pursuant to subsection 120(8) of the Excise Tax Act, "[n]o rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992." With respect to a rebate application mailed to the Minister of National Revenue, the Tribunal has held that it is "filed" when it is mailed. In addition, the date of the postmark on the envelope is evidence of the date of mailing. The Tribunal was shown a photocopy of the envelope, mailed by the appellant's witness, that is clearly postmarked 1992. As the Tribunal was not persuaded by the evidence that the application was mailed prior to 1992, it finds that the application was not filed before 1992. Thus, pursuant to subsection 120(8) of the Excise Tax Act, the rebate cannot be paid to the appellant.*

*Place of Hearing: Calgary, Alberta  
Date of Hearing: November 1, 1993  
Date of Decision: February 23, 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*

*Appearances: Darrell T. Hui, for the appellant  
Brian Tittlemore, for the respondent*

**Appeal No. AP-92-283**

**MOTO OPTICAL 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*<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. By application dated December 28, 1991, the appellant claimed a rebate of \$7,356.54 for tax-paid inventory held on January 1, 1991. The envelope containing the application was postmarked January 24, 1992, and was received by the respondent on January 27, 1992. On February 19, 1992, the respondent advised the appellant that its application had been disallowed. Responding to this, the appellant served a notice of objection dated February 26, 1992. On April 13, 1992, the respondent issued a notice of determination that disallowed the rebate on the basis that it was filed beyond the time specified in subsection 120(8) of the Act. A notice of decision disallowing the objection and confirming the determination was issued on August 14, 1992. Moto Optical Ltd. then appealed the determination to the Tribunal.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate with respect to its goods held in inventory on January 1, 1991. Specifically, the Tribunal must determine whether the rebate application was filed with the Minister before 1992.

Mr. Darrell T. Hui, President of Moto Optical Ltd., explained that his company is involved in the resale of eyeglass frames and computer hardware. Mr. Hui told the Tribunal that he and his wife were leaving the country for a vacation on December 27, 1991, and that on the evening of December 24, 1991, he mailed the rebate application. They returned to Canada on January 10, 1992. He explained that, because of the holidays, the application was dated December 28, 1991. After giving examples of tardy mail delivery, he opined that any delay in delivery of the application was the result of the postal system. He submitted that the appellant should not be penalized because of the mail system, over which it has no control. He reminded the Tribunal that the rebate for which the appellant applied is not a grant, rather, it is a refund of moneys that the appellant has paid. Like any debt, he argued, there should be no time limit that can deny the creditor its repayment.

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

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

Counsel for the respondent noted that the onus is on the appellant to establish that it is entitled to the rebate claimed and that the respondent's determination is incorrect. The rebate application was filed after 1991, as evidenced by the postmark dated January 24, 1992. It was submitted that no rebate can be paid pursuant to subsection 120(3) of the Act if the application therefor is not filed before 1992. Counsel argued that the respondent has no discretion to waive, extend or alter the statutory time limit to file a rebate application. In addition, the Tribunal has no equitable jurisdiction.

Pursuant to subsection 120(8) of the Act, "[n]o rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992." With respect to a rebate application mailed to the Minister, the Tribunal has held that it is "filed" when it is mailed. In addition, the date of the postmark on the envelope is evidence of the date of mailing.<sup>3</sup>

The Tribunal was shown a photocopy of the envelope mailed by Mr. Hui, which is clearly postmarked 1992. As the Tribunal was not persuaded by the evidence that the application was mailed prior to 1992, it finds that the application was not filed before 1992. Thus, pursuant to subsection 120(8) of the Act, the rebate cannot be paid to the appellant.

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

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3. Canadian International Trade Tribunal, *Vern Glass Company (1976) Limited v. The Minister of National Revenue*, Appeal No. AP-92-221, December 13, 1993.