

Ottawa, Wednesday, July 26, 1995

Appeal No. AP-93-004

IN THE MATTER OF an appeal heard on March 29, 1995, 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 January 8, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

CANADIAN TECHNICAL TAPE LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron
Lise Bergeron
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-93-004

CANADIAN TECHNICAL TAPE LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of a determination of the Minister of National Revenue that rejected an application for a refund of federal sales tax filed by the appellant. The appellant neither filed a brief nor appeared at the hearing in the appeal. However, from the application for refund and statements made in the notice of objection, it appears that the appellant believed that an error was made in a previous tax assessment, in that certain credits were not allowed pursuant to the Excise Tax Act. The respondent rejected the refund application.

HELD: *The appeal is dismissed. The proper recourse for the appellant was to serve a notice of objection to the assessment. Regardless, there is nothing in the record of this appeal to suggest that the respondent's determination is incorrect. An appellant has the onus of establishing that the facts upon which a determination is based are wrong or establishing that the respondent's interpretation of the Excise Tax Act is wrong, either or both of which led to an erroneous determination. The appellant did neither in this case.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 29, 1995

Date of Decision: July 26, 1995

*Tribunal Members: Lise Bergeron, Presiding Member
Arthur B. Trudeau, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearance: Anick Pelletier, for the respondent

Appeal No. AP-93-004

CANADIAN TECHNICAL TAPE LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LISE BERGERON, 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 an application for a refund of federal sales tax believed to have been paid in error.

No briefs were filed by the parties to the appeal. Furthermore, the appellant did not appear at the hearing, while counsel for the respondent appeared for purposes of arguing that the appeal should be dismissed. As such, the Tribunal had few facts upon which to consider the merits of the respondent's determination.

From the application for refund and statements made in the notice of objection, it appears that the appellant believed that an error was made in a previous tax assessment, in that certain credits were not allowed pursuant to subsections 81.1(7) to (10)² of the Act. In rejecting the refund application, the determination indicates that the transactions on which the application is based are outside the time prescribed by the Act during which an application may be made for a refund of moneys paid in error.³

Pursuant to the notice of decision, an adjustment was made to the determination allowing for certain transportation costs included in amounts paid by the appellant on its taxable sales. However, no adjustment was made for the credits that the appellant claimed were not allowed in the previous assessment. The notice of decision states that "it is only in making an assessment that the Minister may determine whether a credit may be allowed to the person being assessed."

Counsel for the respondent argued that an appellant has the onus of establishing that the respondent's determination is incorrect. Counsel submitted that the appellant has not met the onus and, thus, the appeal must be dismissed.

From the information in the file, it appears to the Tribunal that the appellant has attempted to object to an assessment by means of an application, under section 68 of the Act, for a refund of moneys claimed to have been paid in error. Section 68 of the Act states:

Where a person, otherwise than pursuant to an assessment, has paid any moneys in error, whether by reason of mistake of fact or law or otherwise, and the moneys have been

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1. R.S.C. 1985, c. E-15.
 2. Formerly subsections 51.1(7) to (10) of the Act.
 3. Section 68 (formerly section 44) of the Act.

taken into account as taxes, penalties, interest or other sums under this Act, an amount equal to the amount of those moneys shall, subject to this Part, be paid to that person if he applies therefor within two years after the payment of the moneys.

Where a person has remitted moneys in error to the Department of National Revenue that were taken into account as taxes, penalties, interest or other sums under the Act, the person may apply for a refund therefor pursuant to section 68 of the Act. However, the Tribunal understands the expression “otherwise than pursuant to an assessment,” found in section 68 of the Act, to mean that a person cannot object to an assessment by means of an application for refund. If a person is improperly assessed and pays moneys in error for that reason, the person must object to the assessment pursuant to section 81.15⁴ of the Act.

From the statements made by the appellant in its refund application and notice of objection, the Tribunal believes that the appellant is claiming that it paid moneys in error pursuant to an assessment because it was not granted certain credits. As stated above, the proper recourse for the appellant was to serve a notice of objection to the assessment. However, the appellant filed a refund application asserting that there was an error in the assessment. As such, the respondent properly rejected the appellant’s application for those credits. Furthermore, as credits are allowed at the discretion of the respondent, representing moneys that would be payable pursuant to sections 68 to 68.29⁵ of the Act for the period between two and four years prior to the day on which a notice of assessment is sent to a person, the appellant is prescribed by section 68 of the Act from receiving a refund of those moneys.

Regardless, there is nothing in the record of this appeal to suggest that the respondent’s determination is incorrect. An appellant has the onus of establishing that the facts upon which a determination is based are wrong or establishing that the respondent’s interpretation of the Act is wrong, either or both of which led to an erroneous determination. The appellant did neither in this case.

Accordingly, the appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

4. Formerly section 51.15 of the Act.
5. Formerly sections 44 to 44.3 of the Act.