

Ottawa, Monday, February 28, 1994

Appeal No. AP-93-050

IN THE MATTER OF an appeal heard on November 2, 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 March 26, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

**JAMES WOOD, WOOD ALTERNATOR
& STARTER REBUILDERS**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-050

**JAMES WOOD, WOOD ALTERNATOR
& STARTER REBUILDERS**

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 federal sales tax inventory rebate in the amount of \$2,929.30 in respect of tax-paid goods held in inventory as of January 1, 1991, on the basis that the application was received outside the time limit specified by the Excise Tax Act. The application form was dated December 30, 1991; however, it was received by the Department of National Revenue on January 20, 1992. On May 11, 1992, the Minister of National Revenue rejected the rebate application. On August 15, 1992, the appellant served a notice of objection. The Minister of National Revenue confirmed the determination in a notice of decision dated March 26, 1993. The issue is whether the appellant filed the application within the statutorily prescribed time limit.

HELD: *The appeal is allowed, and the determination is referred back to the Minister of National Revenue for reconsideration. The Tribunal did not have a postmarked envelope before it. Therefore, the Tribunal considered the evidence which was presented by the appellant, more particularly, the testimonies of Mr. James J. Wood and Mrs. Beverly L. Wood. Having weighed this evidence carefully, the Tribunal is of the view that the appellant did file his application before 1992, that is, that the application was mailed on December 31, 1991. Consequently, the appellant did file the application for a federal sales tax inventory rebate within the statutorily prescribed time limit.*

Place of Hearing: Calgary, Alberta
Date of Hearing: November 2, 1993
Date of Decision: February 28, 1994

Tribunal Members: Robert C. Coates, Q.C. Presiding Member
Anthony T. Eyton, Member
Sidney A. Fraleigh, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Norman L. Tainsh, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-93-050

**JAMES WOOD, WOOD ALTERNATOR
& STARTER REBUILDERS**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANTHONY T. EYTON, Member
SIDNEY A. FRALEIGH, 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 (the Minister) dated May 11, 1992, that rejected an application for a federal sales tax (FST) inventory rebate filed under section 120² of the Act. The appellant's application was rejected on the basis that it was received outside the time limit specified by the Act. On August 15, 1992, the appellant served a notice of objection. On March 26, 1993, the Minister issued a notice of decision confirming the determination.

The appellant is in the business of repairing and rebuilding alternators and starters, as well as selling these and other automotive parts. It filed an application for an FST inventory rebate in the amount of \$2,929.30 in respect of its tax-paid goods held in inventory as of January 1, 1991. The application was dated December 30, 1991; however, it was received by the Department of National Revenue (Revenue Canada) on January 20, 1992. The issue is whether the appellant filed its application for an FST inventory rebate within the statutorily prescribed time limit.

Counsel for the appellant called two witnesses, Mr. James J. Wood, proprietor of Wood Alternator and Starter Rebuilders, and his wife, Mrs. Beverly L. Wood. Mr. Wood testified that he had completed the application for rebate on December 30, 1991, and that he had placed the form in an envelope, which he then gave to his wife to mail. Mrs. Wood testified that, on December 31, 1991, she made a copy of the application, placed it back in the envelope and, at approximately 3:30 p.m., she went to the local post office and mailed the envelope by placing it in a mail box situated just outside the building. The evidence showed that the post office was open from 9:00 a.m. to 5:00 p.m. and that there was a sign posted on the window indicating that all mail should be posted before 4:30 p.m. to be considered to have been mailed on that day.

Counsel for the respondent did not present any evidence.

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 appellant argued that, in the absence of a postmarked envelope, the Tribunal should rely on the sworn evidence of the two witnesses who both testified that the application had been mailed before 1992. He emphasized that Mr. and Mrs. Wood had done everything that they possibly could to meet the requirements of subsection 120(8) of the Act and that the appeal should be allowed.

Counsel for the respondent argued that the onus was on the appellant and that it had not discharged this onus. She argued that subsection 120(8) of the Act clearly provides that no rebate shall be paid unless the application for rebate is filed with the Minister before 1992 and that, since the application was received on January 20, 1992, the appeal must fail. Finally, she argued that the Tribunal is bound by and must apply the law and that it has no authority to waive or extend statutory time limits and no authority to apply principles of equity or grant equitable relief in disposing of appeals.³

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

(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.

Making reference to Revenue Canada departmental policy and to section 79.2 of the Act, the Tribunal has held that an application, under subsection 120(8) of the Act, is considered to have been filed by the appellant on the day that it was mailed and that the date of postmark is evidence of the date of mailing.⁴ In the present case, the Tribunal did not have a postmarked envelope before it. Therefore, the Tribunal considered the evidence which was presented by the appellant, more particularly, the testimonies of Mr. and Mrs. Wood. Having weighed this evidence carefully, the Tribunal is of the view that the appellant did file the application before 1992, that is, that the application was mailed on December 31, 1991. Consequently, the appellant did file the application for an FST inventory rebate within the statutorily prescribed time limit.

3. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.

4. *Lakhani Gift Store v. The Minister of National Revenue*, Appeal No. AP-92-167, November 15, 1993.

Accordingly, the appeal is allowed. The Tribunal refers the determination back to the Minister for reconsideration of whether the appellant is entitled to an FST inventory rebate in respect of its tax-paid goods held in inventory as of January 1, 1991.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Anthony T. Eyton

Anthony T. Eyton

Member

Sidney A. Fraleigh

Sidney A. Fraleigh

Member