



Ottawa, Thursday, January 13, 1994

Appeal No. AP-93-007

IN THE MATTER OF an appeal heard on September 10, 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 10, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

LUMITROL LTD.

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

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-007

LUMITROL LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is in the business of selling lighting equipment. It applied for a federal sales tax inventory rebate in the amount of \$2,556.06 in respect of goods held in inventory as of January 1, 1991. The application was dated December 19, 1991, and was received by the respondent on January 15, 1992. There are two issues in this appeal: (1) whether the appellant's application for a rebate is statute-barred under subsection 120(8) of the Excise Tax Act; and (2) if the first issue is answered in the negative, whether the appellant is entitled to the federal sales tax inventory rebate for which it applied and which was denied.

HELD: *The appeal is dismissed. In light of the fact that it was agreed by the parties that the respondent received the appellant's application on January 15, 1992, and that the appellant admitted that it submitted its application late, the Tribunal is not persuaded that the appellant's application was filed before 1992.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 10, 1993
Date of Decision: January 13, 1994

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Kathleen E. Macmillan, Member
Lise Bergeron, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

Parties: Bruce Whitehead, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-93-007

LUMITROL LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
LISE BERGERON, 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 disallowing the appellant's application for a federal sales tax (FST) inventory rebate under section 120 of the Act.² The Tribunal disposed of the matter on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.³ In this regard, the parties submitted an agreed statement of facts, from which the facts herein are taken.

The appellant, which is in the business of selling lighting equipment, has been a Goods and Services Tax registrant since January 1, 1991. The appellant applied for an FST inventory rebate in the amount of \$2,556.06 in respect of goods held in inventory as of January 1, 1991. The application was dated December 19, 1991, and was received by the respondent on January 15, 1992. By notice of determination dated May 29, 1992, the appellant's application was disallowed on the basis that it was received outside the statutorily prescribed time limit. On July 13, 1992, the appellant served a notice of objection to this determination. By notice of decision dated March 10, 1993, the respondent disallowed the objection and confirmed the determination.

There are two issues in this appeal: (1) whether the appellant's application for a rebate is statute-barred under subsection 120(8) of the Act; and (2) if the first issue is answered in the negative, whether the appellant is entitled to the FST inventory rebate for which it applied and which was denied.

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,

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1. R.S.C. 1985, c. E-15.
 2. S.C. 1990, c. 45, s. 12.
 3. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

(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.

It is clear to the Tribunal that, under subsection 120(8) of the Act, an application for an FST inventory rebate must be filed before 1992. The agreed statement of facts indicates that, although the application was dated before 1992, it was received by the respondent on January 15, 1992. Further, the appellant, in its brief, admits that the application was submitted late. In the absence of any other evidence, the Tribunal is not persuaded that the application was filed before 1992.

Although the Tribunal feels a degree of sympathy for the appellant, it has no basis on which to conclude that the appellant properly filed an FST inventory rebate application with the respondent. Furthermore, as previous decisions of the Tribunal⁴ make clear, the Tribunal has no jurisdiction to apply principles of equity.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Lise Bergeron

Lise Bergeron
Member

4. See, for instance, *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and decisions referred to therein.