CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, April 12, 1994

Appeal No. AP-93-051

IN THE MATTER OF an appeal heard on October 19, 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 8, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

DE MERS ELECTRIC LIMITED **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed (Member Gracey dissenting).

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-93-051

DE MERS ELECTRIC LIMITED **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 (the Minister) dated August 7, 1992, which denied an application for a federal sales tax inventory rebate in respect of tax-paid goods held as of January 1, 1991, in the amount of $3,964.46 on the basis that it was filed outside the time limit specified by the Excise Tax Act. The application was dated February 21, 1992, and it was received by the Department of National Revenue on February 23, 1992. The appellant's representative argued that he was unable to file the application on time since he was not provided with a prescribed form by the Minister. On October 9, 1992, the appellant served on the Minister a notice of objection. In a notice of decision dated March 8, 1993, the Minister confirmed the determination. The issue in this appeal is whether the appellant filed its application for a federal sales tax inventory rebate within the statutorily prescribed time.

HELD: *The appeal is dismissed (Member Gracey dissenting). Although, by reading the relevant sections of the Excise Tax Act, it could be said that the Minister had the duty to provide applicants for federal sales tax inventory rebates with prescribed forms and that, in this case, the Minister did not fulfil his duty, having considered the evidence of the appellant's witnesses, the Tribunal is of the view that the appellant did not file the application for rebate before 1992. The Tribunal does not have jurisdiction to vary the limitation period.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*October 19, 1993*
Date of Decision:	*April 12, 1994*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Kathleen E. Macmillan, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*Joël J. Robichaud*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Donald R. De Mers, for the appellant* *Anne Michaud, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-051

DE MERS ELECTRIC LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
KATHLEEN E. MACMILLAN, 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 (the Minister) dated August 7, 1992, which denied an application for a federal sales tax (FST) inventory rebate under section 120 of the Act.[2] The application was rejected on the basis that it was filed outside the time limit specified by the Act. On October 9, 1992, the appellant served on the Minister a notice of objection. On March 8, 1993, the Minister issued a notice of decision confirming the determination.

The appellant is a retailer who sells appliance parts for domestic and commercial appliances. It filed an application for an FST inventory rebate in the amount of $3,964.46 in respect of its tax-paid goods held in inventory as of January 1, 1991. The application was dated February 21, 1992, and was received by the Department of National Revenue (Revenue Canada) on February 23, 1992. The issue in this appeal is whether the appellant filed its application for an FST inventory rebate within the statutorily prescribed time.

At the hearing, the appellant was represented by its President, Donald R. De Mers. Mr. De Mers and his wife, Trudy De Mers, Vice-President of De Mers Electric Limited, testified on behalf of the appellant. Mr. De Mers testified that, sometime in October 1991, he was made aware that his company could claim an FST inventory rebate in respect of its tax-paid goods held as of January 1, 1991, and that the claim had to be filed with the Minister before 1992. He also testified that he and his wife made several unsuccessful attempts to obtain a proper application form.

The evidence showed that Mr. De Mers or his wife made at least three telephone calls to the district office of Revenue Canada in London, Ontario, and at least two telephone calls to the district office of Revenue Canada in Windsor, Ontario. They said that they were informed that there were no application forms available and that a form would be sent to them by mail as soon as these forms became available. Mr. De Mers testified that, on December 20, 1991, he visited the Windsor district office and that, after requesting the proper application forms, he was

1. R.S.C. 1985, c. E-15.
2. S.C. 1990, c. 25, s. 12, as amended by S.C. 1993, c. 27, s. 6.

advised that there were no forms and that none would be available before Christmas. He relied on this information and waited until January 28, 1992, when he went to the Windsor district office and demanded that they provide him with an application form. He testified that the employees were reluctant and that he had to convince them to give him a copy of a form which they had in the office. Mr. De Mers and his wife filled out the form and mailed it on February 21, 1992. Revenue Canada received it on February 23, 1992.

The appellant's representative argued that he and his wife took all necessary and reasonable steps to obtain the proper application forms and that there existed a duty on Revenue Canada to provide them with these forms. Furthermore, they argued that they should not be bound by misrepresentations made to them by employees of Revenue Canada, and that the Minister should be held responsible for the actions of his employees.

Counsel for the respondent argued that neither the Minister nor the Tribunal has the jurisdiction to disregard or extend the limitation period for filing an application for an FST rebate under section 120(8) of the Act.[3] She also argued that the Tribunal lacks jurisdiction to grant equitable relief and that it cannot refuse to apply the law as it is written or construe taxing statutes to avoid the effects of legislation, even on the ground of equity because a taxpayer has been misinformed by employees of Revenue Canada.[4] Consequently, counsel argued that, because the appellant had not filed its application for an FST inventory rebate before 1992, the appeal should be dismissed. Accordingly, whether there were any application forms available is irrelevant.

Subsection 120(8) of the Act reads as follows:

> *120.(8) No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992.*

With respect to Mr. De Mers' argument that there should be a duty on Revenue Canada to provide application forms, the Tribunal considered subsections 120(6) and 72(2) of the Act which state the following:

> *120.(6) Parts VI and VII, other than subsection 72(7), apply in respect of an application for a rebate and of a payment of a rebate under this section as if the application were an application for a refund under section 68 and the payment were made under section 72.*

> *72.(2) An application shall be made in the prescribed form and contain the prescribed information.*

The Tribunal notes that there does exist prescribed "Application for Federal Sales Tax Inventory Rebate" forms on which these applications are made, and which make reference to subsection 72(2) of the Act.

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3. See, for instance, *Giovanni Miucci v. Her Majesty the Queen and Minister of National Revenue*, Federal Court, Trial Division, File No. T-348-91, November 1, 1991.

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

In *Dai Nguyen of Groupe Solidarité and Luong Manh Nguyen v. The Minister of Employment and Immigration*,[5] the Federal Court of Appeal (the Court) heard an appeal from a motion for an order of *mandamus*, or for an order compelling a statutory duty owed to the applicant. The Court held that although there existed no explicit statutory requirement to send an application form for landing to a person upon request in order to come to Canada as a refugee, based on past practice and the general scheme of the *Immigration Act* and Regulations, there existed a duty to provide such a form.

In making this decision, the Court referred to *Yee Chuen Choi v. The Minister of Employment and Immigration and the Secretary of State for External Affairs*.[6] In that case, the applicant had suffered prejudice through not being immediately given the proper form which, if it had been timely filed, would have resulted in his receiving a more favourable assessment. MacGuigan J.A., speaking for the Court, quoted from an earlier decision, *Minister of Manpower and Immigration v. Helen Tsiafakis*,[7] where it was determined that there existed a duty to provide a form to a person seeking to sponsor someone for admission to Canada where such a right could not be exercised unless the prescribed form could be obtained from the immigration authorities, and then said:

> *when the Canadian Government, through its agents, undertakes to supply information to immigration applicants as to how to become immigrants, it assumes a duty to provide this information accurately. This does not imply that Canadian authorities must provide a detailed exegesis of Canadian immigration law and procedures, or legal advice to prospective immigrants as to the legal significance of the available options, but it does mean that the immigration authorities have an obligation in fairness to provide basic information on the methods of application, and to make available the appropriate forms.*[8]

Consequently, the Tribunal believes that, in the present case, it could be said that the Minister had the duty to provide the appellant with proper application forms so that it could apply for an FST inventory rebate before 1992. However, the Tribunal's jurisdiction in determining this appeal is much more limited than was the Court's in hearing the applications for *mandamus* referred to above. It is well settled law that the Tribunal's powers are limited to those expressly stated in the Act, and that these powers do not include varying a statutory limitation period or applying equitable relief. It must therefore limit itself to determining the real issue of this appeal, that is, did the appellant file the application for an FST inventory rebate before 1992. If it did not, then the appeal must fail.

Having considered the evidence, the majority of the Tribunal is of the view that the appellant did not file the application for rebate before 1992. The application was dated February 21, 1992, and was received by Revenue Canada on February 23, 1992. Given the circumstances of this case, had the appellant sent a letter before 1992 to Revenue Canada to the effect that it was filing an application for an FST inventory rebate, it is possible that the Tribunal might have considered this letter to be a proper application. However, no such document was presented into evidence. Therefore, the Tribunal has no choice but to abide by the statutory time limit.

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5. Unreported, Federal Court of Appeal, File No. A-120-91, July 12, 1993.
6. [1992] 1 F.C. 763.
7. [1977] 2 F.C. 216.
8. *Supra*, note 6 at 769-70.

The Canadian courts, and in particular the Federal Court of Appeal in its decision in the *Granger*[9] case, have held that the Crown is not bound by representations made to taxpayers by Revenue Canada officials, if such representations are contrary to the express provisions of the law. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

DISSENTING OPINION OF MEMBER GRACEY

I cannot agree with my colleagues in this matter. I would find for the appellant on the very clear ground that its failure to actually submit its application before 1992 can be attributed entirely to the failure of Revenue Canada to provide it with a form upon request. It was the evidence of the witness for the appellant, which was not contested by the respondent, that he requested the proper form in repeated telephone calls, and that he finally visited the Windsor, Ontario, district office of Revenue Canada, where he requested, but did not receive, the required form. The appellant was aware of the deadline and it did all that could reasonably be expected to secure the form.

I also note that the form on which the application was to be made is a prescribed form under the Act and that, when a form is prescribed, it is incumbent upon Revenue Canada to provide persons with such a form. In support of this proposition, I refer to the *Nguyen*[10] case in which the Court referred to a statement of Le Dain J. in *Tsiafakis* where he said that where there is a prescribed form, "there is a correlative duty to provide the form.[11]"

9. *Supra*, note 4, [1986] 3 F.C. 70 at 86.
10. *Supra*, note 5.
11. *Supra*, note 7 at 224.

I would therefore have granted the appeal by asserting that the appellant did all that was reasonably possible to file its application within the statutory deadline, and that it failed only because the taxing body did not provide it with the required form. Consequently, I find that, to the extent possible, the appellant did make its application before 1992.

Accordingly, I would allow the appeal.

Charles A. Gracey
Charles A. Gracey
Member