

Ottawa, Tuesday, September 5, 1995

Appeal No. AP-93-052

IN THE MATTER OF an appeal heard on March 20, 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 February 23, 1993, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

GEORGE STRANGE LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member

Nicole Pelletier

Nicole Pelletier
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-052

GEORGE STRANGE LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of an assessment of the Minister of National Revenue that rejected an application for a federal sales tax inventory rebate in the amount of \$2,496.02 in respect of tax-paid goods held in inventory as of January 1, 1991, on the basis that it was filed outside the time limit specified by the Excise Tax Act. The envelope in which the appellant's application for rebate was mailed to the District Excise Office, Department of National Revenue, in Brandon, Manitoba, was postmarked February 6, 1992.

HELD: *The appeal is dismissed. The Tribunal accepts February 6, 1992, as the date on which the application for rebate was filed. As such, the Tribunal finds that the application was not filed before 1992. The Tribunal's jurisdiction in determining appeals is very limited and does not include varying a statutory limitation period or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.*

Place of Hearing: Winnipeg, Manitoba
Date of Hearing: March 20, 1995
Date of Decision: September 5, 1995

Tribunal Members: Arthur B. Trudeau, Presiding Member
Robert C. Coates, Q.C., Member
Lyle M. Russell, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: George D. Strange, for the appellant
Jennifer Oulton, for the respondent

Appeal No. AP-93-052

GEORGE STRANGE LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of an assessment of the Minister of National Revenue that rejected an application for a federal sales tax (FST) inventory rebate, filed under section 120² of the Act, on the basis that it was filed outside the time limit specified by the Act. The appellant served a notice of objection on August 20, 1992, that was disallowed by the respondent in a notice of decision dated February 23, 1993.

The appellant is a small enterprise carrying on business in Brandon, Manitoba. The appellant's representative filed an application for an FST inventory rebate in the amount of \$2,496.02 in respect of tax-paid goods held in inventory as of January 1, 1991. The envelope in which the application form was mailed was postmarked February 6, 1992. The issue in this appeal is whether the appellant is entitled to an FST inventory rebate in accordance with section 120 of the Act, although its application was not filed within the statutory time limit.

The appellant's representative testified that the application was not filed within the statutory time limit because, after attending a meeting sponsored by the Department of National Revenue, he went away with the understanding that time was not a problem. Because the company was going through some reorganization problems, the application was "put on the back burner." The representative basically made a sympathetic plea to the Tribunal to grant the FST inventory rebate although it was not filed before 1992.

Counsel for the respondent argued that subsection 120(8) of the Act clearly provides that no rebate shall be paid under section 120 unless the application for rebate is filed before 1992. Since the envelope in which the application was mailed was postmarked February 6, 1992, the appeal must fail. The Tribunal has no authority to waive or extend statutory time limits and no authority to apply principles of equity or grant equitable relief in determining appeals. Furthermore, taxing statutes cannot be construed to avoid the effects of legislation, no matter how great the hardship may appear to be.

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

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.

(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. It was agreed by the parties that the envelope in which the appellant's application for rebate was mailed to the District Excise Office, Department of National Revenue, in Brandon was postmarked February 6, 1992. The Tribunal has held on many occasions that the date of filing is the date on which the application is mailed and that the date of the postmark is evidence of the date of mailing.³ As such, in the present case, the Tribunal finds that the application was not filed before 1992.

The appellant's representative requested that the Tribunal grant the appellant equitable relief. The Tribunal's jurisdiction in determining appeals is very limited and does not include varying a statutory limitation period or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.⁴

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member

3. See, for example, *Vern Glass Company (1976) Limited v. The Minister of National Revenue*, Appeal No. AP-92-221, December 13, 1993; and *Lakhani Gift Store v. The Minister of National Revenue*, Appeal No. AP-92-167, November 15, 1993.

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