

Ottawa, Tuesday, December 16, 1997

Appeal No. AP-92-342

IN THE MATTER OF an appeal heard on October 30, 1997,
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 December 1, 1992, with respect to a
notice of objection served under section 81.17 of the *Excise Tax
Act*.

BETWEEN

SMITH'S MARINE INSTRUMENTS 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

Anita Szlazak
Anita Szlazak
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-342

SMITH'S MARINE INSTRUMENTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled to a refund of federal sales tax under section 68.2 of the *Excise Tax Act* in respect of sales to tax-exempt purchasers that were made more than two years before the date on which the appellant filed its application for the refund.

HELD: The appeal is dismissed. The appellant acknowledged that it did not file its application within the prescribed time frame with respect to the amount under appeal. Therefore, the Tribunal has no basis upon which to conclude that the appellant properly filed a refund application with the respondent. Furthermore, as previous decisions of the Tribunal make clear, the Tribunal has no jurisdiction to apply principles of equity.

Places of Video Conference

Hearing: Hull, Quebec, and Corner Brook, Newfoundland
Date of Hearing: October 30, 1997
Date of Decision: December 16, 1997

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Anita Szlazak, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerks of the Tribunal: Anne Jamieson and Margaret Fisher

Appearance: Kathleen McManus, for the respondent

Appeal No. AP-92-342

SMITH'S MARINE INSTRUMENTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANITA SZLAZAK, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This appeal was heard by way of video conference in Hull, Quebec, and Corner Brook, Newfoundland, under section 81.19 of the *Excise Tax Act*¹ (the Act), from a decision of the Minister of National Revenue dated December 1, 1992.

The appellant is in the business of selling marine electronic devices to fishers. On March 17, 1992, the appellant filed an application for a federal sales tax (FST) refund in the amount of \$14,556.54 in respect of its tax-paid goods which were subsequently sold to tax-exempt purchasers between November 19, 1987, and September 17, 1990. By notice of determination dated May 13, 1992, the respondent allowed the application in part and disallowed that portion of the claim which related to sales made beyond the two-year time period specified in section 68.2 of the Act. The appellant filed a notice of objection and, by decision dated December 1, 1992, the respondent upheld the determination.

The issue in this appeal is whether the appellant is entitled to a refund of FST under section 68.2 of the Act in respect of sales to tax-exempt purchasers that were made more than two years before the date on which the appellant filed its application for the refund.

The appellant did not appear at the hearing in Corner Brook. The Tribunal decided to hear this appeal on the basis of the record, which included the appellant's brief and related materials.

Counsel for the respondent submitted that the relevant provision provides that, once a sale has been made to a tax-exempt purchaser, the person who sold the goods has two years from the date of that sale to file an application for a refund. She indicated that the appellant's application, which was dated March 12, 1992, covered the period from November 19, 1987, to September 17, 1990. The respondent refunded only that portion of the claim which covered the period falling within the two-year time limit. She also submitted that it did not appear from the record that the appellant was contesting the fact that the amount under appeal was denied on the basis that it fell outside the time limit. Rather, the appellant appears to be seeking an equitable remedy based on representations made to it by officials of the Department of National Revenue (Revenue Canada), upon which it relied. Counsel relied on the Tribunal's decision in *Arnold Forsythe v. The Minister of National Revenue*² in support of the argument that the Tribunal has no power to

1. R.S.C. 1985, c. E-15.

2. Appeal No. AP-93-273, September 9, 1996.

waive a limitation period or grant equitable relief. With respect to the allegations of misrepresentations by officials of Revenue Canada, counsel cited the Supreme Court of Canada's decision in *Joseph Granger v. Canada Employment and Immigration Commission*³ in support of the proposition that the Crown is not bound by representations made to taxpayers by Revenue Canada officials when such representations are contrary to the express provisions of the law.

As noted by the Tribunal in *Kim Hutton v. The Minister of National Revenue*,⁴ where an appellant claims the benefit of a refund, it has the onus to establish that every condition necessary for the refund has been satisfied. In this case, one of these conditions is that the application for the refund be filed within the time limitation set by the Act. In this regard, the appellant acknowledged that it did not file its application within the prescribed time frame with respect to the amount under appeal. Therefore, the Tribunal has no basis upon which to conclude that the appellant properly filed a refund application with the respondent. Furthermore, as previous decisions of the Tribunal make clear,⁵ 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

Anita Szlajak
Anita Szlajak
Member

Charles A. Gracey
Charles A. Gracey
Member

3. [1986] 3. F.C. 70, affirmed [1989] 1 S.C.R 141.

4. Appeal No. AP-90-164, November 19, 1992.

5. In addition to *Arnold Forsythe*, see, for instance, *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and decisions referred to therein.