



Ottawa, Tuesday, October 8, 1996

Appeal No. AP-93-011

IN THE MATTER OF an appeal heard on March 22, 1996, 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 17, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

NOREEN P. RUSSELL

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Lyle M. Russell

Lyle M. Russell
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-011

NOREEN P. RUSSELL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the *Excise Tax Act* (the Act) of a determination of the Minister of National Revenue (the Minister) rejecting an application for a federal sales tax inventory rebate made under section 120 of the Act. The issue in this appeal is whether the appellant's application was filed with the Minister before 1992 as prescribed by subsection 120(8) of the Act and, if not, whether the appellant is entitled to the rebate, notwithstanding that her application was filed outside the application period.

HELD: The appeal is dismissed. In making its decision, the Tribunal acknowledges that its jurisdiction is strictly limited by statute and that it lacks the authority to render a decision based on equity or fairness. While the appellant may have missed the deadline for filing the application for an inventory rebate for reasons not entirely her own, she admitted that it was not filed before 1992. The Act is clear in requiring the application to be filed with the Minister before 1992 for the rebate to be paid. There is no authority in the Act authorizing payment of the rebate to the appellant.

Places of Hearing: Hull, Quebec, and Moncton, New Brunswick

Date of Hearing: March 22, 1996

Date of Decision: October 8, 1996

Tribunal Members: Anthony T. Eyton, Presiding Member
Arthur B. Trudeau, Member
Lyle M. Russell, Member

Counsel for the Tribunal: David M. Attwater

Clerks of the Tribunal: Susanne Grimes and Anne Jamieson

Appearances: Noreen P. Russell, for the appellant
Lyndsay K. Jeanes, for the respondent

Appeal No. AP-93-011

NOREEN P. RUSSELL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ANTHONY T. EYTON, Presiding Member
ARTHUR B. TRUDEAU, 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 a determination of the Minister of National Revenue (the Minister) rejecting an application for a federal sales tax (FST) inventory rebate made under section 120² of the Act. The issue in this appeal is whether the appellant's application was filed with the Minister before 1992 as prescribed by subsection 120(8) of the Act and, if not, whether the appellant is entitled to the rebate, notwithstanding that her application was filed outside the application period.

For purposes of this appeal, the relevant provisions of the Act read as follows:

120.(3) Subject to this section, where a person who, as of January 1, 1991, ... 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.

The appellant is in the business of selling water and air filtration systems. She started her business on January 1, 1991, after purchasing an inventory in December 1990. The appellant paid FST on the inventory prior to the imposition of the Goods and Services Tax (GST) on January 1, 1991.

The appellant told the Tribunal that she had erroneously been assigned two GST registration numbers by the Department of National Revenue (Revenue Canada). She advised Revenue Canada of the duplication and was informed that one of the numbers would be cancelled. Revenue Canada asked her to destroy any future correspondence relating to the cancelled number. However, the number that she understood she was to keep was cancelled. In effect, she said, Revenue Canada cancelled both numbers.

As the business was small, the appellant elected to account for the GST with Revenue Canada on an annual basis. For this reason, it was not discovered until March 1992 that both numbers had been cancelled. It was at that time that the appellant discovered, through her local newspaper, that she could have applied for a rebate of the FST paid on the inventory, and she immediately applied for the rebate. However, her application was rejected, as she had not applied before 1992. She opined that, because both GST registration numbers had been cancelled in error, she did not receive information from Revenue Canada alerting her to the application deadline.

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.

During cross-examination, the appellant said that she had no recollection of receiving a letter (Exhibit B-1) from Revenue Canada dated March 6, 1991, indicating a registration number and advising that her registration had been cancelled effective January 1, 1991. She claimed to have been informed by telephone in January 1991 of the cancellation. In this exchange, counsel for the respondent noted that her client is not disputing that both GST registration numbers were cancelled.

The appellant argued that, because Revenue Canada cancelled both registration numbers, she was not provided sufficient information to understand or comply with the legislation. She submitted that the Minister had an obligation to inform her of her entitlement to the rebate and about the deadline for filing an application for the rebate. As the Minister failed in his obligations, the deadline for filing the application cannot be enforced against her. Regardless, under the circumstances, it is unfair to deny her the rebate to which she is otherwise entitled.

Counsel for the respondent submitted that there was no obligation on Revenue Canada to inform each entitled taxpayer of his or her right to apply for an FST inventory rebate. It was the appellant's responsibility to inform herself of this matter. Counsel added that the appellant had a GST registration number until it was cancelled on March 6, 1991, as indicated in Exhibit B-1. Therefore, the appellant was a GST registrant during the time when application forms for the rebate and other information on the GST were distributed. The appellant admitted that she did not file the application within the time period required by subsection 120(8) of the Act. Furthermore, the Tribunal has no authority to waive, extend or alter the time limitation established by the Act.

In making its decision, the Tribunal acknowledges that its jurisdiction is strictly limited by statute and that it lacks the authority to render a decision based on equity or fairness. While the appellant may have missed the deadline for filing the application for an inventory rebate for reasons not entirely her own, she admitted that it was not filed before 1992. The Act is clear in requiring the application to be filed with the Minister before 1992 for the rebate to be paid. As this was not the case, there is no authority in the Act authorizing payment of the rebate to the appellant.

Accordingly, the appeal is dismissed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lyle M. Russell
Lyle M. Russell
Member