

Ottawa, Thursday, February 3, 1994

Appeal No. AP-93-037

IN THE MATTER OF an appeal heard on October 4, 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 16, 1993, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**603852 ONTARIO INC.  
o/a TROPICANA PET SHOP**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-037**

**603852 ONTARIO INC.  
o/a TROPICANA PET SHOP**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant applied for a federal sales tax inventory rebate in the amount of \$4,338.60 in respect of goods held in inventory as of January 1, 1991. The application was dated December 25, 1991. However, the respondent did not receive the application until February 7, 1992. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate under section 120 of the Excise Tax Act. Specifically, the Tribunal must determine whether the appellant filed its application for the federal sales tax inventory rebate before 1992.*

**HELD:** *The appeal is dismissed. Under subsection 120(8) of the Excise Tax Act, no rebate shall be paid unless the application is filed with the Minister of National Revenue before 1992. The Tribunal has interpreted the word "file" to mean the day on which the application was mailed. Furthermore, the Tribunal has accepted the postmark as evidence of the date of mailing. The Tribunal has determined that the envelope in which the application was mailed was postmarked 1992.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 4, 1993  
Date of Decision: February 3, 1994*

*Tribunal Members: Arthur B. Trudeau, Presiding Member  
Charles A. Gracey, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Janet Rumball*

*Parties: Hugh Rice, for the appellant  
Anne M. Turley, for the respondent*

Appeal No. AP-93-037

603852 ONTARIO INC.  
o/a TROPICANA PET SHOP

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
CHARLES A. GRACEY, Member  
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue (the Minister) rejecting an application for a federal sales tax (FST) inventory rebate under section 120<sup>2</sup> of the Act. The Tribunal disposed of the matter on the basis of an agreed statement of facts and written documentation before it as supplemented by briefs submitted by the parties, pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> The issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act. Specifically, the Tribunal must determine whether the appellant filed its application for the FST inventory rebate before 1992.<sup>4</sup>

The appellant filed an application for an FST inventory rebate in the amount of \$4,338.60 in respect of goods held in inventory as of January 1, 1991. The application form was dated December 25, 1991. However, the respondent did not receive the application until February 7, 1992. By notice of determination dated April 10, 1992, the appellant's application was rejected on the basis that it was received outside of the statutorily prescribed time. The appellant objected to the determination, which was confirmed by a notice of decision dated March 16, 1993. By letter dated May 3, 1993, Tropicana Pet Shop appealed the determination to the Tribunal.

In the notice of objection and subsequent appeal to the Tribunal, the President of Tropicana Pet Shop, Mr. Hugh Rice, indicated that he had waited until the end of 1991 to file the application because, at the time, he had to work long hours and the company was experiencing financial difficulties. In his opinion, being denied entitlement to the entire FST inventory rebate because of late filing is too onerous a penalty to pay.

In his submission, the respondent stated that the appellant did not comply with the statutorily prescribed time limit for filing an FST inventory rebate application in that the application was received by the respondent on February 7, 1992. It was also submitted that it is not within the jurisdiction of the Tribunal to grant equitable relief to the appellant.

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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.
  4. Subsection 120(8) of the Act states: "No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992."

Under subsection 120(8) of the Act, no rebate shall be paid unless the application is filed with the Minister before 1992. As indicated in *Vern Glass Company (1976) Limited v. The Minister of National Revenue*,<sup>5</sup> the Tribunal has interpreted the word "file" to mean the day on which the application was mailed. Further, the Tribunal has accepted the postmark as evidence of the date of mailing.

On receipt of a notice of appeal from the Tribunal, the Deputy Minister of National Revenue, Customs and Excise, under subsection 81.25(2) of the Act, must submit to the Tribunal all documentation relevant to the appeal. Accompanying this documentation was a photocopy of an envelope addressed to the Department of National Revenue (Revenue Canada) GST Interim Processing Centre, with a return address to Tropicana Pet Centre. Though the respondent was silent as to the significance of this photocopy, the Tribunal has accepted that it is a copy of the envelope in which the application was mailed to the Minister. The envelope is date-stamped as being received by Revenue Canada on February 7, 1992, as indicated in the respondent's brief. Though the date of the postmark is somewhat obscured, it is clearly marked 1992.

The evidence available to the Tribunal indicates that the application for the FST inventory rebate was mailed in 1992 and, thus, filed in 1992. As the Act indicates that no rebate shall be paid unless the application is filed with the Minister before 1992, the respondent correctly determined that the appellant was not entitled to the rebate.

The Tribunal must apply the law and, in so doing, notes that the Act has allowed an applicant one year after January 1, 1991, to apply for an FST inventory rebate. The Tribunal believes that this is ample time in which to do so.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Charles A. Gracey

Charles A. Gracey  
Member

Desmond Hallissey

Desmond Hallissey  
Member

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5. Canadian International Trade Tribunal, Appeal No. AP-92-221, December 13, 1993.