

Ottawa, Friday, February 18, 1994

**Appeal No. AP-93-039**

IN THE MATTER OF an appeal heard on October 5, 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 17, 1993, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**G.D. BYRNE LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-039**

**G.D. BYRNE LTD.**

**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 disallowing 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 is entitled to a federal sales tax inventory rebate under section 120 of the Act.*

**HELD:** *The appeal is dismissed. Under subsection 120(8) of the Act, no rebate shall be paid unless the application is filed with the Minister of National Revenue before 1992. Although the parties did not appear before the Tribunal, both parties, in their written submissions, stated that the application for the federal sales tax inventory rebate was hand-delivered to the Department of National Revenue on January 6, 1992. This date is clearly outside the prescribed time limit. The Tribunal acknowledges that the appellant, in this case, may have been misled by the verbal advice received by its representative. However, the Tribunal is bound by the law and cannot ignore its clear provisions.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 5, 1993  
Date of Decision: February 18, 1994*

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

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Janet Rumball*

*Parties: Gary D. Byrne, for the appellant  
Anne M. Turley, for the respondent*

**Appeal No. AP-93-039**

**G.D. BYRNE LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
ARTHUR B. TRUDEAU, 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) disallowing an application for a federal sales tax (FST) inventory rebate made under section 120 of the Act.<sup>2</sup> The issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act.

The appellant filed an application for an FST inventory rebate in the amount of \$2,367 in respect of goods held in inventory as of January 1, 1991. The application form was dated November 29, 1991. However, the respondent received the hand-delivered application on January 6, 1992. By notice of determination dated July 24, 1992, the appellant's FST inventory rebate application was rejected, on the basis that it was received outside the statutorily prescribed time limit. The appellant objected to the determination, which was confirmed by a notice of decision dated March 17, 1993. By letter dated May 2, 1993, G.D. Byrne Ltd. appealed this decision to the Tribunal.

Although a hearing was scheduled for this appeal, both parties indicated that they did not intend to appear and agreed that the Tribunal should dispose of the appeal on the basis of the written documentation, under rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup>

Both parties, in their written submissions, agreed that the appellant's application for an FST inventory rebate was hand-delivered by the appellant's representative, Mr. Gary D. Byrne, to the Department of National Revenue (Revenue Canada) on January 6, 1992.

The appellant's representative submitted that, in late 1991, he was unable to obtain information concerning the filing of an FST inventory rebate application. He claimed that he spoke with representatives of Revenue Canada on January 6, 1992, that he received the information required to complete the application and that he was told that Revenue Canada was still accepting applications and that his application would be processed. The appellant's representative stated that, on that basis, he completed the application and hand delivered it to Revenue Canada. He further stated that, at that time, he again sought verification that

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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.

applications were still being processed and that the receptionist checked with her supervisor and assured him that everything was fine.

The appellant's representative claimed that, after a few months, he sought unsuccessfully to find out about the progress of his application. Finally, on July 24, 1992, he received a notice of determination disallowing the application on the basis that it was received outside the time limit.

Counsel for the respondent neither expressly denied nor conceded that the appellant's representative received the assurances which he claimed to have received. Rather, counsel submitted that the respondent is not bound by representations and interpretations given to taxpayers by authorized officials of Revenue Canada if such representations and interpretations are contrary to the clear and peremptory provisions of the law. Counsel also indicated that the Tribunal is bound by the law and does not have jurisdiction to apply principles of equity.

The Tribunal is bound by the law and, although the appellant may have received misinformation in the nature of false assurances from Revenue Canada officials, it cannot provide relief on that basis. The time limit for filing FST inventory rebate applications is clearly set out in the law, and it is the Tribunal's view that a 12-month period for filing an application that relates to goods held in inventory on January 1, 1991, is not unreasonable.

Both parties agree that the application for an FST inventory rebate was hand-delivered in 1992. As subsection 120(8) of 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 FST inventory rebate.

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Desmond Hallissey

Desmond Hallissey  
Member