

Ottawa, Monday, April 25, 1994

Appeal No. AP-93-071

IN THE MATTER OF an appeal heard on February 14, 1994,
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 April 30, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

COSMAN INTERNATIONAL INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

W. Roy Hines

W. Roy Hines
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Charles A. Gracey

Charles A. Gracey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-071

COSMAN INTERNATIONAL INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The sole 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 even though its application was filed on January 3, 1992.

HELD: *The appeal is dismissed. Although the Tribunal sympathizes with the appellant, the Tribunal's jurisdiction is governed by statute. In an appeal under the Excise Tax Act, the Tribunal must apply the law, as it interprets it, to the facts of the case. Subsection 120(8) of the Excise Tax Act is clear as to the time limitation applicable in this instance, that is, December 31, 1991, which the Tribunal has no jurisdiction to extend.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 14, 1994
Date of Decision: April 25, 1994

Tribunal Members: W. Roy Hines, Presiding Member
Kathleen E. Macmillan, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Parties: Walter R. Cosman, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-93-071

COSMAN INTERNATIONAL INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

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TRIBUNAL: W. ROY HINES, Presiding Member
KATHLEEN E. MACMILLAN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination rejecting an application for a federal sales tax (FST) inventory rebate filed by the appellant, which determination was later confirmed by the Minister of National Revenue.

In accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,² the parties submitted an agreed statement of facts, and the Tribunal, after issuing a public notice of its intention, proceeded to dispose of the matter by way of written submissions on February 14, 1994.

The sole issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act even though its application was filed after December 31, 1991.

Subsection 120(8) of the Act provides that:

No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992.

In this case, the parties agreed on the fact that the application was filed on January 3, 1992. However, the appellant contended that, because of the recession, it had to terminate the employment of two employees, including its office manager who was in charge of the accounting and inventory operations. Moreover, during 1991, the appellant was very busy carrying on business, given new pricing and confusion resulting from the coming into force of the Goods and Services Tax. The appellant claimed that the rejection of its rebate application, due to it being filed three days after the time limitation, is an extreme penalty.

Although the Tribunal sympathizes with the appellant, the Tribunal's jurisdiction is governed by statute. In an appeal under the Act, the Tribunal must apply the law, as it interprets it, to the facts of the case. Subsection 120(8) of the Act is clear as to the time limitation applicable in this instance, that is, December 31, 1991, which the Tribunal has no

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

2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

jurisdiction to extend. As the rebate application was filed on January 3, 1992, the Tribunal must dismiss the appeal.

Consequently, the appeal is dismissed.

W. Roy Hines

W. Roy Hines
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Charles A. Gracey

Charles A. Gracey
Member