

Ottawa, Friday, February 11, 2000

Appeal No. AP-93-049

IN THE MATTER OF an appeal heard on October 20, 1999,
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 26, 1993, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

RAYMONDE PLOURDE

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-049

RAYMONDE PLOURDE

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the *Excise Tax Act* of a determination of the Minister of National Revenue that rejected an application for a federal sales tax inventory rebate made under section 120 of the *Excise Tax Act*. The issue in this appeal is whether the respondent correctly decided that the appellant was not entitled to the federal sales tax inventory rebate for which she had applied, on the grounds that the application was made after the deadline prescribed under subsection 120(8) of the *Excise Tax Act*. In her notice of objection, the appellant argued that she should still receive this rebate, adding that special circumstances had prevented her from applying for the rebate before the prescribed deadline. The appellant asked the Tribunal to grant her equitable relief.

HELD: The appeal is dismissed. The appellant admitted that the application for a federal sales tax inventory rebate was made late. The *Excise Tax Act* clearly stipulates that the respondent shall pay the rebate only if the application is filed before 1992. The Tribunal acknowledged that the application for rebate is dated January 16, 1992, and therefore found that it was not made before 1992. In determining appeals, the Tribunal's jurisdiction is strictly limited by statute and it does not have the authority to change a legislative deadline or to apply principles of equity.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 20, 1999
Date of Decision:	February 11, 2000
Tribunal Members:	Patricia M. Close, Presiding Member Raynald Guay, Member Arthur B. Trudeau, Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Parties:	Raymonde Plourde, the appellant Anne M. Turley, for the respondent

Appeal No. AP-93-049

RAYMONDE PLOURDE

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and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
RAYNALD GUAY, Member
ARTHUR B. TRUDEAU, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ of a determination of the Minister of National Revenue that rejected an application for a federal sales tax (FST) inventory rebate made under section 120² of the *Act*, because it was filed after the deadline specified in the *Act*. The respondent issued a notice of decision confirming the determination. On September 25, 1999, the Tribunal published a notice in the *Canada Gazette*, notifying the parties that the Tribunal would be disposing of the appeal on October 20, 1999, on the basis of the documentary evidence contained in the file. Pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*,³ the Tribunal disposed of the matter on the basis of the written documents available.

The appellant applied for an FST inventory rebate in the amount of \$2,903.04 for tax-paid goods held in inventory on January 1, 1991. The application was dated January 16, 1992. The issue in this appeal is whether the appellant is entitled to an FST inventory rebate pursuant to section 120 of the *Act*.

In the material filed with the Tribunal, the appellant admitted that her application did not meet the legislative deadline. The appellant explained that the application was late because her company's fiscal year ends on February 28. It was only in December 1991 that she gave her accountant the company's books and records and asked him to complete the various financial reports. By then, it was impossible for him to meet the prescribed deadline. However, the appellant submitted that it would be fair that she receive the rebate because small businesses are forced to comply to many laws, some of which are very complex and detailed, and that small businesses cannot always resort to expensive experts. Since the error was made in good faith, the appellant asked the Tribunal for equitable relief.

For the purpose of this appeal, the provisions relevant to the FST inventory rebate are in subsections 120(3) and (8) of the *Act*, which read as follows:

(3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V of Part IX 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);

1. R.S.C. 1985, c. E-15 [hereinafter *Act*].
2. S.C. 1990, c. 45, s. 12.
3. SOR/91-499.

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

In the Tribunal's view, it is clear that, pursuant to subsection 120(8) of the *Act*, an application for an FST inventory rebate must be filed before 1992. The parties have agreed that the application at issue was dated January 16, 1992, and that, consequently, it was not filed before 1992. The Tribunal, therefore, finds that it was not filed before the deadline prescribed by the *Act*. For the above-mentioned reasons, the appellant asked the Tribunal to grant her equitable relief. The Tribunal's jurisdiction is strictly limited by statute when determining appeals. It therefore does not have the authority to change a legislative deadline or to apply principles of equity. The Tribunal must apply the law, even when the result may be harmful to the appellant's financial situation.⁴

In light of the foregoing, the appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

4. See, for example, *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.