



Ottawa, Tuesday, February 22, 1994

Appeal No. AP-93-088

IN THE MATTER OF an appeal heard on November 22, 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 25, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**CALEB LTD. o/a THE JAMES BROS.**

**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

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-088**

**CALEB LTD. o/a THE JAMES BROS.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant operates a furniture store in Ottawa, Ontario. On March 5, 1992, the appellant filed an application for a federal sales tax inventory rebate in respect of goods held in inventory as of January 1, 1991. The issue in this appeal is whether the appellant's application for the rebate is statute-barred under subsection 120(8) of the Excise Tax Act.*

**HELD:** *The appeal is dismissed. In light of the fact that the appellant agreed that the application was filed on March 5, 1992, the Tribunal finds that the appellant's application was not filed before 1992 as required by subsection 120(8) of the Excise Tax Act and is, therefore, statute-barred.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: November 22, 1993*  
*Date of Decision: February 22, 1994*

*Tribunal Members: W. Roy Hines, Presiding Member*  
*Kathleen E. Macmillan, Member*  
*Robert C. Coates, Q.C., Member*

*Counsel for the Tribunal: John L. Syme*

*Clerk of the Tribunal : Janet Rumball*

*Parties: Gerald Beaudin, for the appellant*  
*Anne M. Turley, for the respondent*

**Appeal No. AP-93-088**

**CALEB LTD. o/a THE JAMES BROS.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member  
KATHLEEN E. MACMILLAN, Member  
ROBERT C. COATES, Q.C., 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 the appellant's application for a federal sales tax (FST) inventory rebate under section 120 of the Act.<sup>2</sup> The appeal proceeded on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> In this regard, the parties submitted an agreed statement of facts, from which the facts herein are taken.

The appellant operates a furniture store in Ottawa, Ontario. It has been a Goods and Services Tax registrant since January 1, 1991. On March 5, 1992, the appellant filed an application for an FST inventory rebate in the amount of \$3,108.81 in respect of tax-paid goods held in inventory as of January 1, 1991. By notice of determination dated May 6, 1992, the appellant was advised that the application was rejected on the basis that it was filed beyond the time period specified by the Act. By notice of objection dated July 29, 1992, the appellant objected to this determination. By notice of decision dated March 25, 1993, the respondent rejected the objection and confirmed the determination.

The issue in this appeal is whether the appellant's application for an FST inventory rebate is statute-barred under subsection 120(8) of the Act.

Paragraph 120(3)(a) and subsection 120(8) of the Act 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).*

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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.

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

In its brief, the appellant requested that the Tribunal take into account certain extenuating circumstances which the appellant indicated contributed to the application being filed in 1992.

It is clear to the Tribunal that, under subsection 120(8) of the Act, an application for an FST inventory rebate must be filed before 1992. The agreed statement of facts and the appellant's brief indicate that the appellant's application was filed on March 5, 1992. The Tribunal finds that the application was not filed before 1992.

Although the Tribunal sympathizes with the appellant, it has no basis on which to conclude that the appellant properly filed an FST inventory rebate application with the respondent. Furthermore, as previous Tribunal's decisions<sup>4</sup> make clear, the Tribunal has no jurisdiction to apply principles of equity and, therefore, has no power to relieve the appellant from the requirements of subsection 120(8) of the Act.

Accordingly, the appeal is dismissed.

W. Roy Hines  
W. Roy Hines  
Presiding Member

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Member

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Member

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4. See, for instance, *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and decisions referred to therein.