

Ottawa, Monday, February 28, 1994

Appeal No. AP-93-068

IN THE MATTER OF an appeal heard on November 2, 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 February 26, 1993, with respect to a
notice of objection served under section 81.17 of the *Excise
Tax Act*.

BETWEEN

JIM'S MOTOR REPAIRS (CALGARY) LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Anthony T. Eyton

Anthony T. Eyton

Member

Sidney A. Fraleigh

Sidney A. Fraleigh

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-068

JIM'S MOTOR REPAIRS (CALGARY) LTD.

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 in the amount of \$19,603.35 in respect of tax-paid goods held in inventory as of January 1, 1991, on the basis that the application was received outside the time limit specified by the Excise Tax Act. The original application was dated February 18, 1991; however, it was never received by the Department of National Revenue. On January 31, 1992, the appellant mailed a copy to the Department of National Revenue, which it received on February 3, 1992. On April 24, 1992, the Minister of National Revenue rejected the rebate application. On May 24, 1992, the appellant served a notice of objection. The Minister of National Revenue confirmed the determination in a notice of decision dated February 26, 1993. The issue is whether the appellant filed the application within the statutorily prescribed time limit.

HELD: *The appeal is dismissed. The Tribunal did not have a postmarked envelope before it. It, therefore, considered the evidence which was presented by the appellant, more particularly, the testimonies of Messrs. Harvey Riczu and Amir Moosa. The Tribunal is of the view that the evidence does not establish that the application for a federal sales tax inventory rebate was filed before 1992, that is, that the appellant did not file its application within the statutorily prescribed time limit. The Tribunal is bound by the law. It has no authority to waive or extend statutory time limits and no authority to apply principles of equity or grant equitable relief in determining appeals.*

*Place of Hearing: Calgary, Alberta
Date of Hearing: November 2, 1993
Date of Decision: February 28, 1994*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Anthony T. Eyton, Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

*Appearances: Harvey Riczu, for the appellant
Anne M. Turley, for the respondent*

Appeal No. AP-93-068

JIM'S MOTOR REPAIRS (CALGARY) LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANTHONY T. EYTON, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination of the Minister of National Revenue (the Minister) dated April 24, 1992, that rejected an application for a federal sales tax (FST) inventory rebate filed under section 120² of the Act on the basis that it was mailed outside the time limit specified by the Act. On May 24, 1992, the appellant served a notice of objection. The Minister confirmed the determination in a notice of decision dated February 26, 1993.

The appellant is a dealer of lawnmowers and lawnmower parts. The appellant's representative filed an application for an FST inventory rebate in the amount of \$19,603.35 in respect of its tax-paid goods held in inventory as of January 1, 1991. The original application was dated February 18, 1991; however, it was never received by the Department of National Revenue (Revenue Canada). On January 31, 1992, the appellant mailed a copy to Revenue Canada, which it received on February 3, 1992. The issue is whether the appellant filed the application within the statutorily prescribed time limit.

At the hearing, the appellant was represented by its president and owner, Mr. Harvey Riczu. Mr. Riczu testified on behalf of the appellant. One other witness also testified, Mr. Amir Moosa, the appellant's accountant. Mr. Moosa testified that, on February 18, 1991, he presented a duly completed FST inventory rebate application form to Mr. Riczu for his review and signature. He said that Mr. Riczu reviewed the application form, signed it, sealed it in the envelope provided with the application form and placed it with the other mail in his office. Mr. Riczu confirmed this and testified that, as he does every evening of every working day, he picked up all of the mail and placed it in the local mailbox on his way home. Mr. Moosa also testified that, while working on the appellant's 1992 year end in January of that year, he noticed that his client had not received its FST inventory rebate. He, therefore, advised Revenue Canada of this fact. Revenue Canada's officials said that they had not received the application. As a result, Mr. Moosa sent a copy to Revenue Canada, which it eventually received on February 3, 1992.

Counsel for the respondent did not present any evidence.

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

2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27, s. 6.

The appellant's representative argued that he mailed the application for rebate on February 18, 1991, and that the reason that Revenue Canada did not receive it on time could only be that it must have been lost in the mail. He argued that the Tribunal should accept his evidence that he mailed the application for rebate on February 18, 1991, and that this appeal should be allowed.

Counsel for the respondent argued that the onus is on the appellant and that it had not discharged this onus. She argued that subsection 120(8) of the Act clearly provides that no rebate shall be paid unless the application is filed with the Minister before 1992 and that, since the application was received on February 3, 1992, the appeal must fail. She argued that the Tribunal is bound by and must apply the law and that it has no authority to waive or extend statutory time limits and no authority to apply principles of equity or grant equitable relief in determining appeals.³ Finally, she questioned the credibility of the testimonies of the appellant's witnesses that the application had been mailed on February 18, 1991. She submitted that, if that had been the case, the appellant's representative or its accountant would have inquired as to why the appellant had not received the rebate before the end of January 1992, almost one year after the original application had been filed.

For the purposes of this appeal, the relevant FST inventory rebate provisions are found at subsections 120(3) and (8) of the Act, which state, in part, the following :

(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);

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

Making reference to Revenue Canada departmental policy and to section 79.2 of the Act, the Tribunal has held that an application, under subsection 120(8) of the Act, is considered to have been filed by the appellant on the day that it was mailed and that the date of postmark is evidence of the date of mailing.⁴ In the present case, the Tribunal did not have a postmarked envelope before it. Therefore, the Tribunal considered the evidence which was presented by the appellant, more particularly, the testimonies of Messrs. Riczu and Moosa. The Tribunal is unable to accept the evidence that the application was mailed on February 18, 1991. It believes that, if that were the case, the appellant's representative or its accountant would have inquired as to why the appellant had not received the rebate before the end of January 1992, almost one year after the original application had allegedly been filed. With respect to this issue, the Tribunal agrees with counsel for the respondent. Consequently, the Tribunal is of the view that the evidence does not establish that the application was filed before 1992, that is, that the appellant

3. *Joseph Granger v. Employment and Immigration Commission*, [1986] 3 F.C. 70 (C.A.), affirmed [1989] 1 S.C.R. 141.

4. *Lakhani Gift Store v. The Minister of National Revenue*, Appeal No. AP-92-167, November 15, 1993.

did not file its application within the statutorily prescribed time. The Tribunal is bound by the law. It has no authority to waive or extend statutory time limits and no authority to apply principles of equity or grant equitable relief in determining appeals.⁵

Accordingly, the appeal is dismissed.

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

Anthony T. Eyton
Anthony T. Eyton
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

5. *Supra*, note 3.