

Ottawa, Tuesday, June 21, 1994

Appeal No. AP-93-075

IN THE MATTER OF an appeal heard on January 10, 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 March 17, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

PARKVIEW SUPERETTE (1985) LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-075

PARKVIEW SUPERETTE (1985) LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant's federal sales tax inventory rebate application was filed within the statutory time limit set forth in subsection 120(8) of the Excise Tax Act.

HELD: *The appeal is dismissed. The appellant admits that the application was filed in mid-January 1992, that is, beyond the statutory time limit.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 10, 1994
Date of Decision: June 21, 1994

Tribunal Members: Sidney A. Fraleigh, Presiding Member
Anthony T. Eyton, Member
Arthur B. Trudeau, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Parties: David L. Allen, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-93-075

PARKVIEW SUPERETTE (1985) LTD.

Appellant

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THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ANTHONY T. EYTON, Member
ARTHUR B. TRUDEAU, 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 rejecting a federal sales tax (FST) inventory rebate application filed by the appellant.

In accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,² the Tribunal, after having given public notice of its intention, proceeded to dispose of the matter on the basis of written submissions on January 10, 1994.

The issue in this appeal is whether the appellant's FST inventory rebate application was filed within the statutory time limit set forth in subsection 120(8) of the Act.³

In agreeing with the statement of facts contained in the respondent's brief, the appellant admits that its FST inventory rebate application, which was received by the respondent on January 28, 1992, was mailed between January 10 and 16, 1992. However, the appellant's representative argued that it would only be fair that the appellant obtain the rebate because small businesses have so much legislation with which to comply that they are forced to rely on expensive professional assistance. The appellant's accountant, who acted as its representative, further argued that, on December 27, 1991, the appellant brought its books of accounts to his accounting firm, which was then advised that the FST inventory rebate application had not yet been filed.

The Tribunal is bound to apply the prescriptions of the statute to the statement of facts submitted by the parties. In this case, the FST inventory rebate application was filed in mid-January 1992, outside the statutory time limit of subsection 120(8) of the Act, which provides that "[n]o rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992." For that reason, the appeal should be dismissed.

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.

3. S.C. 1990, c. 45, s. 12.

Moreover, although it has no jurisdiction to apply principles of equity and, thus, to consider fairness, the Tribunal notes that the FST inventory rebate application was filed in mid-January 1992 despite the fact that the appellant was advised by its accountant to file a blank application with basic information before the end of 1991. Had the appellant simply filed an incomplete application before 1992, the situation would have been different, as the Tribunal would have been ready to accept that the statutory deadline had been met which, the Tribunal understands, is also the policy of the Department of National Revenue in such cases.

Consequently, the appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Arthur B. Trudeau
Arthur B. Trudeau
Member