



Ottawa, Wednesday, June 29, 1994

Appeal No. AP-93-091

IN THE MATTER OF an appeal heard on January 31, 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 18, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

**696533 ONTARIO INC.
o/a BOGAR - PATERSON HEATING & AIR CONDITIONING**

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

W. Roy Hines
W. Roy Hines
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-091

696533 ONTARIO INC.
o/a BOGAR - PATERSON HEATING & AIR CONDITIONING **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant is in the business of selling and installing heating and air conditioning equipment. It filed an application for a federal sales tax inventory rebate in the amount of \$3,043.49 in respect of its tax-paid goods held in inventory as of January 1, 1991. The application was dated January 13, 1992, and the envelope in which it was mailed was postmarked January 16, 1992. It was received by the respondent on January 17, 1992. The 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. In the material filed with the Tribunal, the appellant's representative alleged that the appellant should be granted the rebate even though the application was not filed within the statutorily prescribed time. He argued that certain circumstances prevented the appellant from applying for the rebate on time. The appellant claimed equitable relief from the Tribunal.

HELD: *The appeal is dismissed. The Tribunal accepts that the application was mailed on January 16, 1992. As such, the Tribunal finds that the application was not filed before 1992. The Tribunal's jurisdiction in determining appeals is very limited and does not include varying a statutory limitation period nor applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 31, 1994
Date of Decision: June 29, 1994

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
W. Roy Hines, Member
Lise Bergeron, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Janet Rumball

Parties: Robert Nori, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-93-091

696533 ONTARIO INC.
o/a BOGAR - PATERSON HEATING & AIR CONDITIONING **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
 W. ROY HINES, Member
 LISE BERGERON, 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) that rejected an application for a federal sales tax (FST) inventory rebate made under section 120 of the Act² on the basis that it was received outside the time limit specified in the Act. The Minister issued a notice of decision confirming the determination. In accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,³ the Tribunal proceeded to dispose of the matter by way of written submissions.

The appellant is in the business of selling and installing heating and air conditioning equipment. It filed an application for an FST inventory rebate in the amount of \$3,043.49 in respect of its tax-paid goods held in inventory as of January 1, 1991. The application was dated January 13, 1992, and the envelope in which it was mailed was postmarked January 16, 1992. It was received by the respondent on January 17, 1992. The issue in this appeal is whether the appellant is entitled to an FST inventory rebate under section 120 of the Act.

In the material filed with the Tribunal, the appellant's representative alleged that the appellant should be granted the rebate even though the application was not filed within the statutorily prescribed time. He argued that certain circumstances, for example, the illness of the appellant's accountant, prevented the appellant from applying for the rebate on time. Since the mistake was an honest one, the appellant claimed equitable relief from the Tribunal.

Counsel for the respondent submitted that the appellant is not entitled to the rebate, as it did not file its application before 1992, as required by subsection 120(8) of the Act. She added that the Tribunal is bound by and must apply the law, that it has no authority to waive or extend statutory time limits, apply principles of equity or grant equitable relief in determining appeals and, consequently, that the appeal should fail.

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

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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.

120.(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).

120.(8) No rebate shall be paid under this section unless the application therefor is filed with the Minister before 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. It was agreed by the parties that the application in the present case was mailed on and postmarked January 16, 1992, and, consequently, that it was filed outside the time limit specified in the Act. The Tribunal accepts that the application was mailed on January 16, 1992. As such, the Tribunal finds that the application was not filed before 1992. For the reasons stated earlier, the appellant requested that the Tribunal grant it equitable relief. The Tribunal's jurisdiction in determining appeals is very limited and does not include varying a statutory limitation period nor applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.⁴

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

W. Roy Hines

W. Roy Hines

Member

Lise Bergeron

Lise Bergeron

Member

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