

Ottawa, Tuesday, June 21, 1994

Appeal No. AP-93-097

IN THE MATTER OF an appeal heard on January 14, 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 31, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

GUY VAILLANCOURT HOLDINGS INC.

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

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-097

GUY VAILLANCOURT HOLDINGS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant operates a television sales and service business in Noëlville, Ontario. On February 28, 1992, the appellant filed an application for a federal sales tax inventory rebate in respect of tax-paid 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 February 28, 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: January 14, 1994
Date of Decision: June 21, 1994*

*Tribunal Members: Sidney A. Fraleigh, Presiding Member
Anthony T. Eyton, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Janet Rumball

*Parties: Guy Vaillancourt, for the appellant
Anne M. Turley, for the respondent*

Appeal No. AP-93-097

GUY VAILLANCOURT HOLDINGS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ANTHONY T. EYTON, Member
DESMOND HALLISSEY, 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) rejecting the appellant's application for a federal sales tax (FST) inventory rebate made under section 120 of the Act.² The appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.³ The parties submitted an agreed statement of facts, from which the facts herein are taken.

The appellant operates a television sales and service business in Noëlville, Ontario. The appellant has been a registrant for the purposes of the Goods and Services Tax since January 1, 1991. On February 28, 1992, the appellant filed an application for an FST inventory rebate in respect of tax-paid goods held in inventory as of January 1, 1991. By notice of determination dated June 22, 1992, the appellant was advised that the application was rejected, as it had been filed beyond the time period specified in the Act. By notice of objection dated August 25, 1992, the appellant objected to this determination. By notice of decision dated March 31, 1993, the respondent disallowed 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:

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).

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

The appellant requested that the Tribunal consider certain extenuating circumstances which the appellant claimed contributed to the application being filed late. However, it is clear to the Tribunal that, under subsection 120(8) of the Act, an application for a rebate must be filed before 1992. The agreed statement of facts indicates that the appellant's rebate application was filed on February 28, 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 decisions⁴ of the Tribunal 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.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Desmond Hallissey
Desmond Hallissey
Member

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