



Ottawa, Monday, January 10, 1994

Appeal No. AP-93-085

IN THE MATTER OF an appeal heard on November 8, 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 September 16, 1992, with respect to a
notice of objection served under section 81.17 of the *Excise
Tax Act*.

BETWEEN

ESTERHAZY HARDWARE & FURNITURE CO. LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Lise Bergeron

Lise Bergeron
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-085

ESTERHAZY HARDWARE & FURNITURE CO. LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant operates a furniture and hardware store in Esterhazy, Saskatchewan. The appellant filed an application on January 29, 1992, 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 this 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 January 29, 1992, and that, as such, the application was filed late, the Tribunal finds that the appellant's application was not filed before 1992 as required by subsection 120(8) of the Excise Tax Act.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: November 8, 1993

Date of Decision: January 10, 1994

*Tribunal Members: Charles A. Gracey, Presiding Member
Kathleen E. Macmillan, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

*Parties: Shirley Michaluk, for the appellant
Michael Ciavaglia, for the respondent*

Appeal No. AP-93-085

ESTERHAZY HARDWARE & FURNITURE CO. LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
KATHLEEN E. MACMILLAN, 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 disallowing the appellant's application for a federal sales tax (FST) inventory rebate under section 120 of the Act². The appeal proceeded on the basis of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*.³ In this regard, the parties submitted an agreed statement of facts, from which the facts herein are taken.

The appellant operates a furniture and hardware store in Esterhazy, Saskatchewan. It has been a Goods and Services Tax registrant since January 1, 1991. On January 29, 1992, the appellant filed an application for an FST inventory rebate in the amount of \$306,911.00 in respect of tax-paid goods held in inventory as of January 1, 1991. The amount of the actual rebate claimed was subsequently revised to \$27,328.66. By letter dated March 24, 1992, the appellant was advised that the application was not allowed on the basis that it was filed beyond the time period specified by the Act. An actual notice of determination in this regard was not issued by the respondent until September 10, 1992. In the interim, the respondent issued a notice of assessment disallowing the application and, by notice of objection dated June 8, 1992, the appellant objected to this assessment. By notice of decision dated September 16, 1992, 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:

(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).

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 relating to the health of the owners of the business and a misunderstanding of information provided by the respondent 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 indicates that the appellant's application was filed on January 29, 1992. Further, the appellant, in its brief, admits that the application was submitted late. In the absence of any other evidence, the Tribunal cannot disregard the fact that the application was not filed before 1992.

Although the Tribunal feels sympathetic to the appellant's experience in attempting to obtain a rebate in this case, 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 decisions⁴ make clear, the Tribunal has no jurisdiction to apply principles of equity.

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Lise Bergeron

Lise Bergeron
Member

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.