



Ottawa, Tuesday, June 7, 1994

Appeal No. AP-93-086

IN THE MATTER OF an appeal heard on November 19, 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 March 17, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

OAKWOOD RADIATOR SERVICE LIMITED

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-93-086

OAKWOOD RADIATOR SERVICE LIMITED

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant operates a business in which it services automobiles. The appellant filed an application for a federal sales tax inventory rebate in the amount of \$9,289.10 in respect of its tax-paid goods held in inventory as of January 1, 1991. The application was dated November 30, 1991, and filed with the respondent on January 30, 1992. There are two issues in this appeal. First, the Tribunal must determine whether the appellant's rebate application is statute-barred under subsection 120(8) of the Excise Tax Act. Second, if the first issue is answered in the negative, the Tribunal must determine whether the appellant is entitled to the rebate for which it applied.

HELD: *The appeal is dismissed. In light of the fact that it was agreed by the parties that the appellant filed its application on January 30, 1992, the Tribunal is not persuaded that the appellant's application was filed before 1992.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 19, 1993
Date of Decision: June 7, 1994

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

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Janet Rumball

Parties: Louise R. Summerhill, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-93-086

OAKWOOD RADIATOR SERVICE LIMITED

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) that rejected the appellant's application for federal sales tax (FST) inventory rebate under section 120 of the Act.² 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, which operates a business in which it services automobiles, has been a Goods and Services Tax registrant since January 1, 1991. The appellant filed an application for an FST inventory rebate in the amount of \$9,289.10 in respect of its tax-paid goods held in inventory as of January 1, 1991. The application was dated November 30, 1991, and filed with the respondent on January 30, 1992. By notice of determination dated June 12, 1992, the appellant's application was rejected on the basis that it was received outside the statutorily prescribed time limit. By notice of objection dated September 3, 1992, the appellant objected to this determination. By notice of decision dated March 17, 1993, the respondent rejected the objection and confirmed the determination.

There are two issues in this appeal. First, the Tribunal must determine whether the appellant's rebate application is statute-barred under subsection 120(8) of the Act. Second, if the first issue is answered in the negative, the Tribunal must determine whether the appellant is entitled to the rebate for which it applied.

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).

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

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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.

In her brief, counsel for the appellant stated that the appellant's accountant had filed a late rebate application for another client, which application was accepted by the respondent. Counsel submitted that this example showed that some discretion is available in dealing with late rebate applications and that fairness dictates that, in light of the circumstances in this case, the appellant's application should be accepted. Counsel also argued that an ambiguity exists between subsections 120(6) and (8) and section 68 of the Act, which, when read together, counsel submitted, provide that a taxpayer is entitled to apply for a refund thereunder within two years of the date of overpayment. Counsel argued that case law supports the position that ambiguity is to be read in favour of the appellant.⁴

Counsel for the respondent submitted that the provisions of Parts VI and VII of Schedule III to the Act should only be applied in circumstances where section 120 of the Act is silent. Counsel further argued that, as the time limitation in subsection 120(8) of the Act is clearly identified, the time limitation in section 68 of the Act does not apply to rebate applications. Counsel added that, if Parliament had intended for the limitation period in section 68 of the Act to apply to rebate applications, it would not have established a specific time limitation in subsection 120(8) of the Act.

The Tribunal is of the opinion that the wording of subsection 120(8) of the Act makes clear that Parliament considered the date by which rebate applications had to be submitted and that, under subsection 120(8) of the Act, such applications must be filed before 1992. The agreed statement of facts indicates that, although the application was dated before 1992, it was filed by the appellant on January 30, 1992. Further, the appellant, in its brief, admits that the application was submitted late. In the absence of any other evidence, the Tribunal is not persuaded that the application was filed before 1992.

Although the Tribunal sympathizes with the appellant, it has no basis on which to conclude that the appellant properly filed a rebate application with the respondent. Furthermore, as previous Tribunal decisions⁵ make clear, the Tribunal has no jurisdiction to apply principles of equity.

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 instance, *Stuart Investments Limited v. Her Majesty The Queen*, [1984] 1 S.C.R. 536; and *AMOCO Canada Petroleum Company Ltd. v. The Minister of National Revenue*, 85 D.T.C. 5169.

5. See, for instance, *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and decisions referred to therein.