



Ottawa, Thursday, September 22, 1994

**Appeal Nos. AP-93-101, AP-93-102 and AP-93-103**

IN THE MATTER OF appeals heard on August 4, 1994,  
under section 81.19 of the *Excise Tax Act*, R.S.C. 1985,  
c. E-15;

AND IN THE MATTER OF decisions of the Minister of  
National Revenue dated April 8 and May 21, 1993, with  
respect to notices of objection served under section 81.17 of  
the *Excise Tax Act*.

**BETWEEN**

**INTERNATIONAL REBUILDERS COMPONENTS INC.  
MR. SPARKS AUTO ELECTRIC SERVICE LTD.  
MR. SPARKS AUTO ELECTRIC LTD.**

**Appellants**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeals are dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Anthony T. Eyton  
Anthony T. Eyton  
Member

Raynald Guay  
Raynald Guay  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal Nos. AP-93-101, AP-93-102 and AP-93-103**

**INTERNATIONAL REBUILDERS COMPONENTS INC.  
MR. SPARKS AUTO ELECTRIC SERVICE LTD.  
MR. SPARKS AUTO ELECTRIC LTD.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*These are appeals under section 81.19 of the Excise Tax Act of determinations of the Minister of National Revenue that rejected the appellants' applications for federal sales tax inventory rebates on the basis that the applications were filed outside the statutory time limit.*

***HELD:** The appeals are dismissed. Subsection 120(8) of the Excise Tax Act clearly provides that no rebate will be paid unless the application therefor is filed with the Minister before 1992. The appellants and the respondent agreed that the envelopes in which the applications were mailed were postmarked February 13, 1992. Therefore, the appellants' applications were not filed before 1992, and the appellants are not entitled to federal sales tax inventory rebates.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: August 4, 1994  
Date of Decision: September 22, 1994*

*Tribunal Members: Charles A. Gracey, Presiding Member  
Anthony T. Eyton, Member  
Raynald Guay, Member*

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Anne Jamieson*

*Parties: Peter F. Bain, for the appellants  
Anne M. Turley, for the respondent*

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**INTERNATIONAL REBUILDERS COMPONENTS INC.  
MR. SPARKS AUTO ELECTRIC SERVICE LTD.  
MR. SPARKS AUTO ELECTRIC LTD.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
ANTHONY T. EYTON, Member  
RAYNALD GUAY, Member

### **REASONS FOR DECISION**

These are appeals under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of determinations of the Minister of National Revenue (the Minister) dated April 17, 1992, that rejected the appellants' applications for federal sales tax (FST) inventory rebates made under section 120<sup>2</sup> of the Act. The appellants served notices of objection on the Minister which were received on July 15, 1992. By notices of decision, dated April 8 and May 21, 1993, the appellants' objections were rejected and the determinations were confirmed, hence these appeals before the Tribunal. As the appellants share ownership and all of the relevant facts pertaining to each application are the same, except for the dates and the amounts being claimed, the Tribunal considered the appeals jointly.

The issue in these appeals is whether the Minister correctly determined that the appellants were not entitled to the FST inventory rebates claimed on the basis that the applications were filed outside the time limit prescribed under subsection 120(8) of the Act.

At the joint request of the appellants and the respondent, the appeals proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,<sup>3</sup> on the basis of the Tribunal's record that includes the parties' agreed statement of facts and briefs.

The agreed statement of facts provides that, although each of the FST inventory rebate applications was dated May 23, 1991, and postmarked February 13, 1992, the Department of National Revenue (Revenue Canada) received one of the applications on February 14, 1992, and two on February 17, 1992.

Subsection 120(8) of the Act states clearly and unequivocally that "[n]o 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, as amended by S.C. 1993, c. 27, s. 6.
  3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

The Tribunal has held, in a number of recent decisions,<sup>4</sup> that an application is considered to be "filed" when it is mailed and that the date of the postmark on the envelope is evidence of the date of mailing. The Tribunal believes that, for the purposes of the present appeals, the postmark dated February 13, 1992, provides the best indication of the date that the appellants mailed their applications. Since the applications were mailed in 1992, they were not filed before 1992 as required by subsection 120(8) of the Act; therefore, the appellants are not entitled to the FST inventory rebates.

In their submissions, the appellants relied upon the time limits for filing refund applications set out in Excise Memorandum ET 313 (Memorandum ET 313) entitled Application for Refund.<sup>5</sup> The Tribunal notes that Memorandum ET 313 refers to a refund of FST and was published before 1990. The Tribunal believes that, had the legislator wanted the rules for filing an FST refund claim to apply to applications for FST inventory rebates, it would not have included subsection 120(8) in the Act.

The appellants also relied upon the following statement in a Revenue Canada publication entitled Guide for FST and Excise Tax Licensees:<sup>6</sup>

*Federal sales tax refunds will continue to be payable after 1990, for transactions taking place before January 1, 1991. Since the refund time limit is two years from the date the transaction occurred, the latest date possible for filing FST refunds will be December 31, 1992.*

In this regard, the appellants appear to have confused the long-standing provisions for FST refunds with the transitional FST inventory rebate provisions. The Tribunal sympathizes with the appellants and understands how such confusion arose. However, this confusion cannot form the basis for a successful appeal.

Although the appellants may have received misleading or incomplete information, the Tribunal must apply the provisions of the Act, and the Minister is not bound by representations and interpretations of officials of Revenue Canada that are contrary to the clear provisions of the Act.<sup>7</sup>

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4. *Hergert Electric Ltd. v. The Minister of National Revenue*, Appeal No. AP-93-089, June 7, 1994; *M-M Electric - A Division of Rio de Janeiro Holdings Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-169, April 28, 1994; *Moto Optical Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-283, February 23, 1994; *603852 Ontario Inc. o/a Tropicana Pet Shop v. The Minister of National Revenue*, Appeal No. AP-93-037, February 3, 1994; *Vern Glass Company (1976) Limited v. The Minister of National Revenue*, Appeal No. AP-92-221, December 13, 1993; and *Lakhani Gift Store v. The Minister of National Revenue*, Appeal No. AP-92-167, November 15, 1993.

5. Department of National Revenue, Customs and Excise, February 20, 1989.

6. Department of National Revenue, Customs and Excise at 21.

7. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141; and *Walbern Agri-Systems Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 3000, December 21, 1989, [1989] 1 T.S.T. 1328.

Accordingly, the appeals are dismissed.

Charles A. Gracey \_\_\_\_\_  
Charles A. Gracey  
Presiding Member

Anthony T. Eyton \_\_\_\_\_  
Anthony T. Eyton  
Member

Raynald Guay \_\_\_\_\_  
Raynald Guay  
Member