

Ottawa, Tuesday, March 8, 1994

Appeal No. AP-93-087

IN THE MATTER OF an appeal heard on November 2, 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 May 7, 1993, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

JERIEL ENTERPRISES LTD.

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

Anthony T. Eyton

Anthony T. Eyton

Member

Sidney A. Fraleigh

Sidney A. Fraleigh

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-087

JERIEL ENTERPRISES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

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. Specifically, the Tribunal has to determine whether the appellant filed the rebate application before 1992.

HELD: *The appeal is dismissed. The Tribunal has consistently held that it does not have equitable jurisdiction which could allow it, under certain circumstances, to deviate from the law in order to mitigate the impact therefrom. Subsection 120(8) of the Excise Tax Act dictates that an application for a federal sales tax inventory rebate must be filed before 1992. It was acknowledged on behalf of the appellant that the rebate application was filed in 1992. Although the Tribunal sympathizes with the appellant, it finds that the Minister of National Revenue correctly denied payment of the rebate because of the late filing.*

Place of Hearing: Calgary, Alberta
Date of Hearing: November 2, 1993
Date of Decision: March 8, 1994

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Anthony T. Eyton, Member
Sidney A. Fraleigh, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearances: Lorenz and Donna M. Carlson, for the appellant
Anne M. Turley, for the respondent

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Appellant

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TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANTHONY T. EYTON, Member
SIDNEY A. FRALEIGH, 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 a federal sales tax (FST) inventory rebate application filed under section 120 of the Act.² The appellant's application for an FST inventory rebate in the amount of \$4,588.01 was delivered by hand on June 25, 1992. Accompanying the application was a letter explaining that the company's owner had been disabled as a result of a car accident. By notice of determination dated August 27, 1992, the appellant's application was disallowed on the basis that it was received in 1992, which was outside the statutorily prescribed time limit. By notice of objection dated October 19, 1992, the appellant objected to the determination, which was confirmed by a notice of decision dated May 7, 1993.

In the appellant's brief to the Tribunal, Ms. Donna M. Carlson, corporate officer for Jeriel Enterprises Ltd., explained that the appellant is an interior decorating firm and is also involved in the resale of accessories. Ms. Carlson gave two reasons for the appellant's FST inventory rebate application not being filed before 1992. In August 1989, she became disabled due to a car accident, which had immediate and detrimental consequences for the appellant which was in danger of bankruptcy. She indicated that, at the time, Goods and Services Tax (GST) remittances seemed inconsequential. In addition, Ms. Carlson claimed to have been misinformed with respect to the filing deadline. She believed that the FST inventory rebate application could be filed when the appellant started making GST remittances. It was not until an officer of the Department of National Revenue contacted the appellant to assist in filing its GST remittances that Ms. Carlson became aware of the deadline for filing the application. However, the deadline had passed.

In the respondent's brief, counsel noted that the onus is on the appellant to establish that it is entitled to the FST inventory rebate and that the Minister's determination is incorrect. To establish entitlement to the FST inventory rebate, the appellant must show that every statutory condition necessary has been met.

1. R.S.C. 1985, E-15.
2. S.C. 1990, c. 45, s. 12.

Counsel for the respondent noted that subsection 120(8) of the Act provides that no rebate shall be paid unless the application for rebate is filed with the Minister before 1992. By virtue of subsection 120(6) of the Act, the provisions of section 72 of the Act apply to an application for an FST inventory rebate. An application under section 120 of the Act is, therefore, treated in the same manner as if it were filed under section 68 or 69 of the Act. An application under these sections is considered to be filed on the date on which the envelope is marked by the post office. The payment of an FST inventory rebate is, therefore, only authorized if the application was actually received before 1992 or if the envelope in which the application was mailed was postmarked prior to 1992. As the application was delivered on behalf of the appellant on June 25, 1992, it did not meet the statutory requirement for entitlement to a rebate. Counsel submitted that there is no provision in the Act that grants the authority to either the respondent or the Tribunal to waive, extend or alter the time limitation period established in subsection 120(8) of the Act. In addition, the Tribunal has no equitable jurisdiction and that estoppel cannot lie against the Crown where there has been an incorrect interpretation of the law.

At the hearing, both Mr. Lorenz Carlson and Ms. Carlson spoke on behalf of the appellant. They acknowledged to the Tribunal that the application for the FST inventory rebate had been delivered by hand on June 25, 1992. They reiterated what had been explained in the appellant's brief and asked for some leniency because of the extenuating circumstances.

As was explained at the hearing, the Tribunal is a body created by statute whose jurisdiction is limited to that expressly granted to it or which might be implied therefrom. The Tribunal has consistently held that it does not have equitable jurisdiction which could allow it, under certain circumstances, to deviate from the law in order to mitigate its impact. Subsection 120(8) of the Act dictates that an application for an FST inventory rebate must be filed before 1992. It was acknowledged on behalf of the appellant that the rebate application was filed in 1992. Although the Tribunal sympathizes with the appellant, it finds that the Minister correctly denied payment of the rebate because of the late filing.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member