



Ottawa, Tuesday, April 12, 1994

Appeal No. AP-93-106

IN THE MATTER OF an appeal heard on
November 29, 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 April 8, 1993, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

**R.C. BARRY AND M.A. BARRY
D.B.A. BARRY'S TRADING POST**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-106

**R.C. BARRY AND M.A. BARRY
D.B.A. BARRY'S TRADING POST**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The sole issue in this appeal is whether the appellant's application for a federal sales tax inventory rebate is statute-barred under subsection 120(8) of the Excise Tax Act. The appellant claims that it was misinformed by a representative of the Department of National Revenue as to the time limitation for filing an application for the inventory rebate and that to reject its application subjects the appellant to double taxation.

***HELD:** The appeal is dismissed. The Tribunal has no jurisdiction to extend the time limitation prescribed in subsection 120(8) of the Excise Tax Act. As the application for the inventory rebate was filed in March 1992 and the statutory limit for filing such an application was December 31, 1991, the appeal is dismissed.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: November 29, 1993

Date of Decision: April 12, 1994

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Charles A. Gracey, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Nicole Pelletier

*Appearances: Robert C. Barry and Maurine A. Barry, for the appellant
Gilles Villeneuve, for the respondent*

Appeal No. AP-93-106

**R.C. BARRY AND M.A. BARRY
D.B.A. BARRY'S TRADING POST**

Appellant

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
CHARLES A. GRACEY, 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 that rejected an application for a federal sales tax (FST) inventory rebate filed by the appellant. The determination was later confirmed by the Minister of National Revenue.

The sole issue in this appeal is whether the appellant's application for an FST inventory rebate that was mailed on March 16, 1992, is statute-barred under subsection 120(8) of the Act.² Subsection 120(8) reads as follows:

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

Mr. Robert C. Barry explained the circumstances of the late filing of the appellant's FST inventory rebate application. Mr. Barry stated that, in June 1991, he asked representatives of the Department of National Revenue (Revenue Canada) for help, as he did not know how to fill out the form properly. He further testified that, as a result of a phone conversation with a Revenue Canada official, he had the impression that he had until the end of 1992 to file the FST inventory rebate application. Given that he was ill in December 1991 and part of January 1992, he telephoned Revenue Canada officials in mid-January. He was told, at that time, that it was too late to file an application for an FST inventory rebate.

In argument, Mr. Barry admitted to the late filing of the FST inventory rebate application. However, he argued that he was not treated fairly by Revenue Canada, as he was told by one of its representatives that he had until the end of 1992 to file an FST inventory rebate application. Mr. Barry contended that he was being subjected to double taxation because he paid FST on the goods for which he must now remit taxes under the Goods and Services Tax provisions of the Act.

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

Counsel for the respondent argued that the appellant's FST inventory rebate application is statute-barred under the Act, that the appellant is essentially seeking an equitable remedy and that the Tribunal has no jurisdiction to apply principles of equity, as it only has the power granted to it by its enabling statute and other legislation. Relying upon the Federal Court of Appeal decision in *Joseph Granger v. Canada Employment and Immigration Commission*,³ counsel for the respondent further stated that the respondent is not bound by representations made and interpretations given to taxpayers by representatives of Revenue Canada.

The Tribunal sympathizes with the appellant and understands the circumstances that contributed to the late filing. However, it has no authority to extend the prescribed time limit for filing an FST inventory rebate.

Consequently, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Lise Bergeron
Lise Bergeron
Member

3. [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.