

Ottawa, Monday, December 2, 1996

Appeal No. AP-93-251

IN THE MATTER OF an appeal heard on September 4, 1996,
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 June 30, 1993, with respect to a notice of
objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

WELLSLEY INVESTMENTS INC.

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

Raynald Guay

Raynald Guay

Member

Lyle M. Russell

Lyle M. Russell

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-251

WELLSLEY INVESTMENTS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant's application for a federal sales tax inventory rebate was filed with the Minister of National Revenue before 1992 as prescribed by subsection 120(8) of the *Excise Tax Act* and, if not, whether the appellant is entitled to the rebate notwithstanding the application being filed outside the application period.

HELD: The appeal is dismissed. In making its decision, the Tribunal acknowledges that its jurisdiction is strictly limited by statute and that it lacks the authority to render a decision based on equity or fairness. While the appellant's application for the rebate may have been filed late for good reasons, it was acknowledged not to have been filed before 1992. The *Excise Tax Act* is clear in requiring the application to be filed with the Minister of National Revenue before 1992 for the rebate to be paid. Although the Tribunal sympathizes with the appellant, there is no authority in the *Excise Tax Act* allowing payment of the rebate to the appellant.

Places of Hearing: Ottawa, Ontario, and Vancouver, British Columbia
Date of Hearing: September 4, 1996
Date of Decision: December 2, 1996

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Raynald Guay, Member
Lyle M. Russell, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearances: William M. Hoops, for the appellant
Lyndsay K. Jeanes, for the respondent

Appeal No. AP-93-251

WELLSLEY INVESTMENTS INC.

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and

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TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
LYLE M. RUSSELL, 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 an application for a federal sales tax (FST) inventory rebate made under section 120² of the Act. The issue in this appeal is whether the appellant's application was filed with the Minister before 1992 as prescribed by subsection 120(8) of the Act and, if not, whether the appellant is entitled to the rebate notwithstanding the application being filed outside the application period. The appeal proceeded by way of conference call.

For purposes of this appeal, the relevant provisions of section 120 of the Act are as follows:

(3) Subject to this section, where a person who, as of January 1, 1991, ... 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);

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

Both Mr. Carl McGowen, President of Wellsley Investments Inc., and the appellant's representative addressed the Tribunal, reiterating and supplementing the written submissions and other documents filed on behalf of the appellant. It was acknowledged that the application for the FST inventory rebate was mailed on December 9, 1992, and received by the Department of National Revenue on or about December 14, 1992.

The Tribunal was informed that, in the late 1980s, the appellant went bankrupt, and through re-structuring, hard work and a very heavy schedule of payments, the appellant's debts were retired by late 1990. However, in doing so, the appellant's accounting was left about two years behind and not made current until late 1992. Mr. McGowen indicated that, under the circumstances, he was unaware of the filing deadline for the FST inventory rebate.

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.

It was argued on behalf of the appellant that late filing should not invalidate the appellant's entitlement to the rebate; otherwise, the appellant will be subjected to double taxation. Furthermore, it was submitted that the Tribunal has the authority to extend the filing deadline for the rebate.

Counsel for the respondent argued that subsection 120(8) of the Act clearly provides that no rebate shall be paid under the Act unless the application is filed before 1992. Counsel reminded the Tribunal that the appellant's application was not mailed until December 9, 1992, well beyond the statutorily prescribed application deadline. Furthermore, there is no provision in the Act that grants authority to the Tribunal to waive, extend or alter the time limitation for filing an application for an FST inventory rebate.

In making its decision, the Tribunal acknowledges that its jurisdiction is strictly limited by statute and that it lacks the authority to render a decision based on equity or fairness. While the appellant's application for the rebate may have been filed late for good reasons, it was acknowledged not to have been filed before 1992. The Act is clear in requiring the application to be filed with the Minister before 1992 for the rebate to be paid. Although the Tribunal sympathizes with the appellant, there is no authority in the Act allowing payment of the rebate to the appellant.

Accordingly, the appeal is dismissed.

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

Raynald Guay
Raynald Guay
Member

Lyle M. Russell
Lyle M. Russell
Member