

Ottawa, Monday, September 9, 1996

**Appeal No. AP-93-273**

IN THE MATTER OF an appeal heard on July 31, 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 March 30, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**ARNOLD FORSYTHE**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Susanne Grimes

Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-273**

**ARNOLD FORSYTHE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of a determination of the Minister of National Revenue dated April 2, 1992, that rejected an application for a federal sales tax inventory rebate filed under section 120 of the *Excise Tax Act* on the basis that the application was received outside the time limit prescribed by the *Excise Tax Act*. It was agreed by the parties that the application was filed outside the time limit prescribed by the *Excise Tax Act*. The issue in this appeal, therefore, is whether the Tribunal has the authority to waive or extend this time limit. In an effort to expedite this matter, the Tribunal held a hearing by way of a telephone conference on July 31, 1996, to hear argument on this issue.

**HELD:** The appeal is dismissed. Although the appellant's circumstances are regrettable, there is no legal basis upon which the federal sales tax inventory rebate can be paid. There is no provision in the *Excise Tax Act* which grants authority to the Tribunal to waive, extend or alter the prescribed time limit for filing an application pursuant to subsection 120(8) of the *Excise Tax Act*. The Tribunal's jurisdiction in determining appeals is very limited and does not include varying a statutory limitation period or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.

Places of Hearing: Ottawa, Ontario, and Halifax, Nova Scotia

Date of Hearing: July 31, 1996

Date of Decision: September 9, 1996

Tribunal Members: Charles A. Gracey, Presiding Member  
Robert C. Coates, Q.C., Member  
Desmond Hallissey, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Harold MacLeod, for the appellant  
Lyndsay K. Jeanes, for the respondent

**Appeal No. AP-93-273**

**ARNOLD FORSYTHE**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
ROBERT C. COATES, Q.C., Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue dated April 2, 1992, that rejected an application for a federal sales tax (FST) inventory rebate in the amount of \$8,181.52 filed under section 120<sup>2</sup> of the Act on the basis that the application was received outside the time limit prescribed by the Act. The appellant served a notice of objection dated July 2, 1992, that was disallowed by the respondent in a decision dated March 30, 1993.

It was agreed by the parties that the application was filed outside the time limit prescribed by the Act. The issue in this appeal, therefore, is whether the Tribunal has the authority to waive or extend the time limit prescribed by the Act. In an effort to expedite this matter, the Tribunal held a hearing by way of a telephone conference on July 31, 1996, to hear argument on this issue.

The appellant's representative contended that the appellant's application for an FST inventory rebate was filed late because he only became aware of the rebate in December 1991. Although the appellant requested a form from the respondent in December 1991, it was sent to him only in January 1992. The representative argued that, if the respondent had proceeded with urgency to ensure that the appellant received the application form prior to December 31, 1991, knowing that the deadline was fast approaching, then the appellant would have been able to file his application on time. The representative also stated that, during 1991, the appellant was ill and experienced family difficulties, including a death and marital problems.

For the purposes of this appeal, the relevant rebate provisions of the Act are set out in subsections 120(3) and (8), which provide, in part, as follows:

(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);

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

It is clear to the Tribunal that, under subsection 120(8) of the Act, an application for an FST inventory rebate must be filed before 1992. It was agreed by the parties that the application was not filed before 1992. Furthermore, the envelope in which the appellant's application was mailed was postmarked in 1992. The Tribunal has held on many occasions that the date of filing is the date on which the

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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.

application is mailed and that the date of the postmark is evidence of the date of mailing.<sup>3</sup> As such, in the present case, the Tribunal finds that the application was not filed before 1992.

Although the appellant's circumstances are regrettable, there is no legal basis upon which the FST inventory rebate can be paid. There is no provision in the Act which grants authority to the Tribunal to waive, extend or alter the prescribed time limit for filing an application pursuant to subsection 120(8) of the Act. The Tribunal's jurisdiction in determining appeals is very limited and does not include varying a statutory limitation period or applying equitable remedies.

The Tribunal also considered the argument of the appellant's representative that the respondent has a duty to provide applicants with the proper forms. In *De Mers Electric Limited v. The Minister of National Revenue*,<sup>4</sup> the appellant argued that all the necessary and reasonable steps to obtain the proper application forms had been taken and that the Department of National Revenue (Revenue Canada) had a duty to provide it with these forms. The Tribunal reviewed relevant case law from the Federal Court of Appeal and ruled that, although, upon reading the relevant provisions of the Act, it could be said that the respondent has a duty to provide applicants for FST inventory rebates with the prescribed forms, the Tribunal has no authority to waive or alter the prescribed time limit for filing an application, even where the respondent fails to fulfil his duty.<sup>5</sup> The Tribunal stated that, "[g]iven the circumstances of this case, had the appellant sent a letter before 1992 to Revenue Canada to the effect that it was filing an application for an FST inventory rebate, it is possible that the Tribunal might have considered this letter to be a proper application."<sup>6</sup> However, as in the present case, no such document was presented into evidence. Finally, the Tribunal notes that the Crown is not bound by representations made to taxpayers by Revenue Canada officials when such representations are contrary to the express provisions of the law.<sup>7</sup> The Tribunal must apply the law, even where such application results in financial hardship for the appellant.

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey

Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Member

Desmond Hallissey

Desmond Hallissey

Member

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3. See, for example, *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.

4. Canadian International Trade Tribunal, Appeal No. AP-93-051, April 12, 1994.

5. *Ibid.* at 3.

6. *Ibid.*

7. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.