

Ottawa, Wednesday, October 23, 1996

Appeal No. AP-93-283

IN THE MATTER OF an appeal heard on February 8, 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 August 16, 1993, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

ELECTROL DISTRIBUTORS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Raynald Guay
Raynald Guay
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-283

ELECTROL DISTRIBUTORS LTD.

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 February 5, 1993, that disallowed part of an application for a refund of federal sales tax. The issue in this appeal is whether the appellant is statute barred from being refunded the full amount claimed in its application for a refund of federal sales tax and, if so, whether the Tribunal has jurisdiction to waive or abridge the two-year statutory limitation period imposed under the *Excise Tax Act*.

HELD: The appeal is dismissed. The Tribunal is of the opinion that the appellant's application for a refund of overpayments of federal sales tax made before January 18, 1991, is statute barred. Section 68 of the *Excise Tax Act* provides that an application for refund of moneys paid in error must be made within two years after payment of the moneys. Since the appellant's refund application was filed on January 18, 1993, the appellant is not entitled to recover overpayments of federal sales tax for the period from June 1, 1988, to December 31, 1990, as these payments were made before January 18, 1991. Furthermore, the Tribunal is a creature of statute. Its powers or jurisdiction is circumscribed by legislation. Although the Tribunal sympathizes with the appellant, it does not have jurisdiction to deviate from the law and take principles of equity into account in rendering its decision.

Place of Hearing: Vancouver, British Columbia
Date of Hearing: February 8, 1996
Date of Decision: October 23, 1996

Tribunal Members: Desmond Hallissey, Presiding Member
Arthur B. Trudeau, Member
Raynald Guay, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: C.R. (Clare) Hinchliff, for the appellant
Josephine A.L. Palumbo, for the respondent

Appeal No. AP-93-283

ELECTROL DISTRIBUTORS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
 ARTHUR B. TRUDEAU, Member
 RAYNALD GUAY, 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 dated February 5, 1993, that disallowed part of an application for a refund of federal sales tax (FST). The appellant served a notice of objection dated March 18, 1993, which was disallowed by the respondent in a decision dated August 16, 1993.

The appellant is a wholesaler of electrical components for industrial control equipment. It was issued a wholesaler's sales tax licence on April 13, 1978. The appellant filed an application for a refund of FST on January 18, 1993, for the period from June 1, 1988, to December 31, 1990, in the amount of \$59,249.04. The respondent approved an amount of \$2,270.94. The balance of the claim was disallowed, as it was for taxes which were paid outside the two-year statutory limitation period.

The issue in this appeal is whether the appellant is statute barred from being refunded the full amount claimed in its application for a refund of FST and, if so, whether the Tribunal has jurisdiction to waive or abridge the two-year statutory limitation period imposed under the Act.

Mr. C.R. (Clare) Hinchliff, President of Electrol Distributors Ltd., who acted as the appellant's representative, Mr. Michael C. Hinchliff, General Manager of Electrol Distributors Ltd., and Mr. Peter J. Karius, the appellant's accountant, all testified on behalf of the appellant. Mr. Clare Hinchliff testified that, as of March 12, 1991, Mr. Karius started the process of claiming a refund for overpayments of FST for the period from November 1, 1988, to December 31, 1990. He explained that it was the first time that the appellant had ever filed an application for a refund for overpayments of FST. Prior to this, any rebates granted to the appellant were as a result of audits conducted by officials of the Department of National Revenue (Revenue Canada). Mr. Hinchliff testified that the process to obtain a refund was started late since he expected Revenue Canada officials to come and perform an audit, as they had always done in the past. He testified that he did not know and that he was not told by Revenue Canada officials that there was a time limit for filing an application for a refund until January 12, 1993. He explained that Mr. Karius tried unsuccessfully, on many occasions, to obtain information from government officials on how to properly calculate and determine the amount of the refund for taxes paid in error.

1. R.S.C. 1985, c. E-15.

For purposes of this appeal, the relevant legislative provision is found at section 68 of the Act. It provides as follows:

Where a person, otherwise than pursuant to an assessment, has paid any moneys in error, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account as taxes, penalties, interest or other sums under this Act, an amount equal to the amount of those moneys shall, subject to this Part, be paid to that person if he applies therefor within two years after the payment of the moneys.

Mr. Hinchliff argued that, since he tried unsuccessfully to obtain information from government officials on how to calculate and determine the amount of the refund for taxes paid in error for the period from June 1, 1988, to December 31, 1990, and he was not informed that there was a time limit for filing a claim, the appellant should be granted the refund. He argued that the steps that he and other representatives of the appellant took were reasonable and that, as such, the appellant should not be denied the refund. Mr. Hinchliff requested a refund of the full amount plus a 1 percent charge per month since the appellant had to borrow its operating capital from the bank.

Counsel for the respondent argued that the evidence did not show that the appellant was misled by government officials, that he was given the general runaround or that he was not alerted to the fact that there was a limitation period imposed on the respondent's power to refund taxes paid in error. Counsel argued that, even if the appellant had been misled, there still would not be a basis for allowing a claim under section 68 of the Act, as the application was not filed within the statutory time limit. In summary, counsel argued that the Tribunal's jurisdiction is restricted to the four corners of the statute and that it has no power to dispense with the statutory requirements or to award relief on equitable grounds. Since the moneys claimed were all paid more than two years before the claim for a refund was made, counsel argued that the appellant is statute barred from obtaining the refund. In the alternative, counsel submitted that, if the Tribunal finds that a portion of the appellant's claim is not statute barred, the matter should be referred back to the respondent for further consideration.

The Tribunal is of the opinion that the appellant's application for a refund of overpayments of FST made before January 18, 1991, is statute barred. Section 68 of the Act provides that an application for refund of moneys paid in error must be made within two years after payment of the moneys. Since the appellant's refund application was filed on January 18, 1993, the appellant is not entitled to recover overpayments of FST for the period from June 1, 1988, to December 31, 1990, as these payments were made before January 18, 1991. Furthermore, the Tribunal is a creature of statute. Its powers or jurisdiction is circumscribed by legislation. Although the Tribunal sympathizes with the appellant, it does not have jurisdiction to deviate from the law and take principles of equity into account in rendering its decision.²

In the Tribunal's opinion, the evidence shows that the appellant did receive some information from Revenue Canada explaining how to fill out an application for a refund of overpayments of FST and that it was, at one point, informed that there existed a prescribed time limit for filing an application for a refund of FST. Unfortunately, whether the information received was sufficient to allow the appellant to determine

2. See, for example, *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141; and *Cablecor Data Lines Limited v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-93-304, November 2, 1994.

how to properly calculate the amount of the refund or whether the information that there existed a prescribed time limit was communicated on time cannot affect the outcome of this appeal. It is settled law that the Crown cannot be bound by representations made to taxpayers by Revenue Canada officials, even when such representations are contrary to the express provisions of the law.³

Consequently, the appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Raynald Guay
Raynald Guay
Member

3. *Ibid.*