

Ottawa, Tuesday, September 20, 1994

Appeal No. AP-93-293

IN THE MATTER OF an appeal heard on May 16, 1994,
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 November 24, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

GRAND VALLEY MECHANICAL LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton
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-93-293

GRAND VALLEY MECHANICAL LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether an application for a federal sales tax inventory rebate was filed with the Minister of National Revenue before 1992. The appellant's representative submitted that the appellant relied on its accounting firm to ensure that the application was filed on time. However, during 1991, the accounting firm gave the responsibility of the appellant's account to a different chartered accountant. The new accountant was unaware that the rebate application had not been filed. When this fact was discovered, the application was filed as soon as possible.

***HELD:** The appeal is dismissed. The Tribunal is aware of the circumstances which led to the late filing. It is also aware that the filing deadline was missed by a very short margin and that the appellant's representative took the trouble to personally deliver the application on January 2, 1992. However, the Tribunal's powers are strictly limited by statute, and it does not have the authority to render decisions based on equity or fairness. The Tribunal must apply the law. In this case, there is no ambiguity or doubt as to the fact that the rebate application was not filed before 1992, as required by subsection 120(8) of the Excise Tax Act. Therefore, the Tribunal cannot do otherwise but dismiss the appeal.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: May 16, 1994
Date of Decision: September 20, 1994*

*Tribunal Members: Anthony T. Eyton, Presiding Member
Charles A. Gracey, Member
Lise Bergeron, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

*Parties: Todd R. McKim, for the appellant
Anne M. Turley, for the respondent*

Appeal No. AP-93-293

GRAND VALLEY MECHANICAL LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ANTHONY T. EYTON, 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 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 application was filed with the Minister before 1992.

This appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,³ on the basis of the Tribunal's record as supplemented by an agreed statement of facts and briefs submitted by the parties.

By an undated application which the appellant's representative personally delivered to the respondent on January 2, 1992, the appellant claimed a rebate of \$3,266.78 with respect to its tax-paid inventory held on January 1, 1991. The respondent advised the appellant by letter dated January 31, 1992, that the application had been rejected on the basis that it was filed outside the statutorily prescribed time limit. The appellant responded to this on July 6, 1992, by serving a notice of objection claiming that there had been a misunderstanding with its accountant and that, as soon as the non-filing had been discovered, the application was completed and delivered. The respondent issued a formal notice of determination on October 20, 1993, that rejected the appellant's rebate application. Then, on November 24, 1993, the respondent issued a notice of decision rejecting the objection and confirming the determination on the basis that the application was not filed with the Minister before 1992 and that there was no statutory basis on which to allow the appellant's objection. On December 1, 1993, Grand Valley Mechanical Ltd. appealed the determination to the Tribunal.

In his brief, the appellant's representative submitted that the appellant relied on its accounting firm to ensure that the application for the FST inventory rebate was filed on time. However, during 1991, the accounting firm gave the responsibility of the appellant's account to a different chartered accountant. The new accountant was unaware that the rebate application had not been filed. When this fact was discovered, the application was filed as soon possible. The representative acknowledged that there is no statutory provision that supports the appellant's case. However, because the application was filed less than eight hours late (January 1 being a holiday), the representative asked for

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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.
 3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

a just and fair resolution of the matter.

It was submitted in the respondent's brief that any right of recovery that the appellant may have against the respondent must be found within the terms of an act of Parliament. To establish entitlement to the rebate claimed, the appellant must show that every statutory condition necessary to be entitled to the rebate has been met. Subsection 120(8) of the Act clearly provides that no rebate shall be paid unless the application for rebate is filed with the Minister before 1992. In addition, the Tribunal lacks the jurisdiction to waive, extend or alter the time limitation for filing FST inventory rebate applications. Nor does it have the jurisdiction to apply equitable principles or grant equitable relief in determining appeals.

The facts of this case are agreed between the appellant and the respondent, and the central fact is that the application for an FST inventory rebate was filed with the Minister by means of personal delivery on January 2, 1992.

The extenuating circumstance which the appellant says led to this late filing was a misunderstanding between itself and its accountant, which led the appellant to believe that the application had been filed earlier. The appellant's representative concedes that there is no statutory provision that supports the appellant's case, but appeals on the grounds of justice and fairness, noting that the appellant's application was filed less than eight hours late.

The Tribunal is aware of the circumstances which led to the late filing. It is also aware that the filing deadline was missed by a very short margin and that the appellant's representative took the trouble to personally deliver the application on January 2, 1992. However, the Tribunal's powers are strictly limited by statute, and it does not have the authority to render decisions based on equity or fairness. The Tribunal must apply the law. In this case, there is no ambiguity or doubt as to the fact that the rebate application was not filed before 1992, as required by subsection 120(8) of the Act. Therefore, the Tribunal cannot do otherwise but dismiss the appeal.

Accordingly, the appeal is dismissed.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Lise Bergeron

Lise Bergeron
Member