CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, September 20, 1994

Appeal Nos. AP-93-365, AP-93-366 and AP-93-367

IN THE MATTER OF appeals heard on July 26, 1994, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National Revenue dated December 17, 1993, and February 10, 1994, with respect to notices of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

STERLING AIRCRAFT PRODUCTS LIMITED
GREGG MILLS
MILLS/STERLING AEROSPACE INC. **Appellants**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal Nos. AP-93-365, AP-93-366 and AP-93-367

STERLING AIRCRAFT PRODUCTS LIMITED
GREGG MILLS
MILLS/STERLING AEROSPACE INC. **Appellants**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

These are appeals under section 81.19 of the Excise Tax Act of determinations of the Minister of National Revenue that rejected the appellants' applications for federal sales tax inventory rebates made under section 120 of the Excise Tax Act. Section 120 of the Excise Tax Act provides that certain persons who had tax-paid goods in inventory on January 1, 1991, can apply for a rebate in respect of federal sales tax paid on that inventory.

HELD: *The appeals are dismissed. The appellants' representative failed to file a brief in support of the appeals. No one appeared at the hearing on behalf of the appellants. Not having received any evidence or representations in support of the appeals, the Tribunal based its decision on the evidence in the administrative record.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*July 26, 1994*
Date of Decision:	*September 20, 1994*
Tribunal Members:	*Charles A. Gracey, Presiding Member* *Lise Bergeron, Member* *Lyle M. Russell, Member*
Counsel for the Tribunal:	*John L. Syme*
Clerk of the Tribunal:	*Anne Jamieson*
Appearance:	*Lyndsay Jeanes, for the respondent*

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-93-365, AP-93-366 and AP-93-367

STERLING AIRCRAFT PRODUCTS LIMITED
GREGG MILLS
MILLS/STERLING AEROSPACE INC. **Appellants**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
LISE BERGERON, Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

These are appeals under section 81.19 of the *Excise Tax Act*[1] (the Act) of determinations of the Minister of National Revenue (the Minister) that rejected the appellants' applications for federal sales tax (FST) inventory rebates made under section 120[2] of the Act. Section 120 of the Act provides that certain persons who had tax-paid goods in inventory on January 1, 1991, can apply for a rebate in respect of FST paid on that inventory. Both Sterling Aircraft Products Limited and Mills/Sterling Aerospace Inc. were, at all material times, holders of licences which entitled them to purchase goods free of FST. The Minister rejected those appellants' applications for FST inventory rebates on the basis that both of the appellants could have purchased goods free of FST and that neither appellant had provided any evidence to establish that its inventory consisted of tax-paid goods.

Mr. Gregg Mills' application for an FST inventory rebate was rejected on the basis of the Minister's determination that the goods in respect of which he claimed a rebate were not new or unused goods as required by section 120 of the Act. The Minister's decision noted that a person with an inventory of tax-paid goods on January 1, 1991, whose inventory was comprised of used goods, could claim a notional input tax credit under paragraph 120(3)(*b*) and section 176 of the Act. However, the Minister indicated that such a claim would be made as part of "a regular GST return."

The Tribunal decided to hear these appeals together as the individual appellant, Mr. Mills, was the principal of the two corporate appellants, all of the appeals were in respect of FST inventory rebates, and all of the appellants had the same representative.

Before moving to the substance of its decisions in these appeals, the Tribunal notes that the proceedings were marked by several irregularities. First, neither the appellants nor the appellants' representative, Mr. Ken Gratton, filed written briefs in support of the appeals, as required by subrule 34(1) of the *Canadian International Trade Tribunal Rules*.[3] Moreover, on the

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.

day prior to the hearing, following inquiries by Tribunal staff to Mr. Gratton and the appellants regarding their intentions in respect of the appeals, the Tribunal received an unsigned letter from Mr. Gratton requesting that the appeals be adjourned. In his letter, Mr. Gratton indicated that he had not communicated with Mr. Mills in several months and was, in fact, unaware of his location. He also indicated that he had only received the respondent's reply brief on July 22, 1994. Finally, no one appeared at the hearing on the appellants' behalf.

The Tribunal considered the motion for an adjournment at the outset of the hearing. Before rendering its decision, the Tribunal invited counsel for the respondent to make submissions. Counsel noted that the appellants' brief had been due on April 29, 1994. Counsel also indicated that one of the lawyers in her office had spoken with Mr. Gratton early in June and had been advised by him that he would be filing a brief on behalf of the appellants before the date of the hearing.

After hearing from counsel for the respondent, the Tribunal dismissed the motion for an adjournment. In the Tribunal's view, in seeking an adjournment, it was incumbent on the appellants' representative to advance some basis upon which an adjournment was justified, particularly in light of the fact that the request for an adjournment was made less than 24 hours before the hearing was scheduled to begin. Mr. Gratton advanced two grounds in support of his motion for an adjournment. The Tribunal finds Mr. Gratton's first ground — that he had been unable to contact the appellants — less than convincing, given the fact that, on the day before the hearing, Tribunal staff had no difficulty reaching Mr. Mills by telephone. Mr. Gratton's second ground was that he had received the respondent's brief on July 22, 1994, only two working days before the hearing. As counsel for the respondent explained, the filing of the respondent's brief was delayed in the hope that Mr. Gratton would, as promised, file a brief on behalf of the appellants. This, of course, makes complete sense, in that the respondent's brief, in the normal course, responds to the issues and arguments raised in the appellant's brief. The Tribunal considers Mr. Gratton's attempt to use, in effect, his own failure to file a brief as a ground justifying an adjournment to be without merit.

The decision to grant or deny an adjournment involves a balancing of conveniences between the parties, the Tribunal and the public interest. In this regard, section 35 of the *Canadian International Trade Tribunal Act*[4] provides that a hearing before the Tribunal shall be conducted as expeditiously as the circumstances and considerations of fairness permit. In balancing the conveniences between the parties, the Tribunal and the public interest in this case, the Tribunal had regard to (a) whether the request for an adjournment was genuine; (b) whether any party would be prejudiced if an adjournment were granted or vice versa; (c) whether the request for an adjournment was made as soon as practicably possible and at least 10 days before the commencement of the hearing; and (d) whether the request for an adjournment was reasonable in the circumstances of the case. On the basis of the facts in this case and bearing in mind the foregoing factors, the Tribunal was not prepared to grant the motion for an adjournment.

Turning now to the substance of these appeals, the Tribunal finds that it is well established that the appellants bear the onus of demonstrating that the determinations under appeal are incorrect. Neither the appellants' representative nor the appellants have provided the Tribunal with any evidence upon which it could conclude that the determinations under appeal are incorrect. Similarly, neither the appellants' representative nor the appellants have provided

4. R.S.C. 1985, c. 47 (4th Supp.).

the Tribunal with any form of representations or argument in support of these appeals. The Tribunal has considered the evidence in the administrative record in this matter. On the basis of that limited evidence, the Tribunal is satisfied that the Minister's determinations in respect of the appellants' applications for FST inventory rebates are correct.

Accordingly, the appeals are dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
Lyle M. Russell
Member