



Ottawa, Tuesday, September 5, 1995

Appeal No. AP-93-334

IN THE MATTER OF an appeal heard on March 22, 1995, 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 25, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**EARL A. ABAS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

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

Nicole Pelletier  
Nicole Pelletier  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-334**

**EARL A. ABAS**

**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 August 24, 1992, that rejected an application for a federal sales tax inventory rebate in the amount of \$9,687.85 in respect of tax-paid goods held in inventory as of January 1, 1991, on the basis that it was filed outside the time limit specified by the Excise Tax Act. The appellant served a notice of objection on August 29, 1992, that was disallowed by the respondent in a notice of decision dated November 25, 1993. The issue in this appeal is whether the appellant is entitled to a federal sales tax inventory rebate, although his application was not filed within the statutory time limit.*

**HELD:** *The appeal is dismissed. Both parties agreed that the application for a federal sales tax inventory rebate was not filed within the statutory time limit. 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.*

*Place of Hearing: Winnipeg, Manitoba*  
*Date of Hearing: March 22, 1995*  
*Date of Decision: September 5, 1995*

*Tribunal Members: Lyle M. Russell, Presiding Member*  
*Arthur B. Trudeau, Member*  
*Robert C. Coates, Q.C., Member*

*Counsel for the Tribunal: Joël J. Robichaud*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Kenneth R. Mussell, for the appellant*  
*Jennifer Oulton, for the respondent*

**Appeal No. AP-93-334**

**EARL A. ABAS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: LYLE M. RUSSELL, Presiding Member  
ARTHUR B. TRUDEAU, Member  
ROBERT C. COATES, Q.C., 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 August 24, 1992, that rejected an application for a federal sales tax (FST) inventory rebate, filed under section 120<sup>2</sup> of the Act, on the basis that it was filed outside the time limit specified by the Act. The appellant served a notice of objection on August 29, 1992, that was disallowed by the respondent in a notice of decision dated November 25, 1993.

The appellant operates a number of businesses: a grocery store, a gas station, a liquor store and a medicinal aids store. The appellant's representative filed an application for an FST inventory rebate in the amount of \$9,687.85 in respect of tax-paid goods held in inventory as of January 1, 1991. The application form was dated March 1992 and was sent to the respondent with a cover letter dated March 26, 1992. The application was received by the respondent on April 2, 1992. The issue in this appeal is whether the appellant is entitled to an FST inventory rebate, although his application was not filed within the statutory time limit.

Mrs. Karen Abas and Mr. Earl A. Abas testified on behalf of the appellant. They explained that they had received numerous pamphlets from the Department of National Revenue (Revenue Canada), but nothing with respect to FST inventory rebates. As such, they were not aware of the deadline for filing the application. Mrs. Abas, who did the bookkeeping for the appellant, testified that she only became aware that she could file an application for an FST inventory rebate in January 1992. Mr. and Mrs. Abas gave a history of their business problems and of their many unsuccessful attempts to obtain the rebate. They explained that the rebate would help them reduce the financial hardship that they currently face.

The appellant's representative argued that the whole file was handled unfairly. He argued that it was Revenue Canada's duty to provide the appellant with the proper application forms so that he could apply for an FST inventory rebate before 1992. He explained the difficulties of taxpayers in interpreting the changes that occurred as a result of the FST being replaced with the Goods and Services Tax and argued that the appellant should not be penalized. The representative basically made a sympathetic plea to the Tribunal to grant the FST inventory rebate although it was not filed before 1992.

Counsel for the respondent argued that subsection 120(8) of the Act clearly provides that no rebate shall be paid under section 120 unless the application for rebate is filed before 1992. Since the application was received on April 2, 1992, the appeal must fail. The Tribunal has no authority to waive or extend statutory time limits and no authority to apply principles of equity or grant equitable relief in determining

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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.

appeals. Furthermore, taxing statutes cannot be construed to avoid the effects of legislation, no matter how great the hardship may appear to be.

For the purposes of this appeal, the relevant rebate provisions of the Act are found at 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. Both parties agreed and the Tribunal finds that the application for an FST inventory rebate was not filed within the statutory time limit. The appellant's representative argued that the Tribunal should grant the appellant equitable relief. Although it could be said that it was the respondent's duty to provide the appellant with the proper application forms so that he could apply for an FST inventory rebate before 1992,<sup>3</sup> the Tribunal's jurisdiction in determining appeals is limited and does not include varying a statutory limitation period or applying equitable remedies. The Tribunal must limit itself to determining the real issue of this appeal, that is, whether the appellant filed the application for an FST inventory rebate before 1992. In this case, he clearly did not. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.<sup>4</sup>

Accordingly, the appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

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

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3. See, for example, *Dai Nguyen of Groupe Solidarité and Luong Manh Nguyen v. The Minister of Employment and Immigration*, unreported, Federal Court of Appeal, File No. A-120-91, July 12, 1993.

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