



Ottawa, Thursday, September 22, 1994

Appeal No. AP-93-345

IN THE MATTER OF an appeal heard on August 4, 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 December 14, 1993, with respect to a  
notice of objection served under section 81.17 of the  
*Excise Tax Act*.

**BETWEEN**

**ORLEANS GLASS INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Lyle M. Russell  
Lyle M. Russell  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-345**

**ORLEANS GLASS INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the appellant's application for a federal sales tax inventory rebate was filed before 1992. The Tribunal has accepted that an application is filed on the date that it is mailed.*

**HELD:** *The appeal is dismissed. Based on the evidence before it, the Tribunal is not persuaded that the appellant's application for a federal sales tax inventory rebate was filed before 1992. The several inconsistencies in the evidence tendered on behalf of the appellant have rendered the Tribunal unable to accept the evidence that the application was mailed before 1992.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: August 4, 1994  
Date of Decision: September 22, 1994*

*Tribunal Members: Lise Bergeron, Presiding Member  
Arthur B. Trudeau, Member  
Lyle M. Russell, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Paul Dioguardi, Q.C., for the appellant  
Anne M. Turley, for the respondent*

**Appeal No. AP-93-345**

**ORLEANS GLASS INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: LISE BERGERON, Presiding Member  
ARTHUR B. TRUDEAU, Member  
LYLE M. RUSSELL, 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 (the Minister) that rejected an application for a federal sales tax (FST) inventory rebate made under section 120<sup>2</sup> of the Act. The issue in this appeal is whether the application was filed with the Minister before 1992.

By application dated February 19, 1991, the appellant claimed a rebate of \$7,214.92 with respect to its tax-paid goods held in inventory as of January 1, 1991. However, the respondent had no record of having received a rebate application from the appellant before December 10, 1992. Thereafter, the respondent incorrectly issued a notice of assessment dated December 22, 1992, that rejected the appellant's rebate application on the basis that it was filed outside the statutorily prescribed time limit. The appellant responded to this notice of assessment on January 5, 1993, by serving a notice of objection on the Minister, claiming that the application was filed at the end of August or beginning of September 1991. By notice of determination dated July 8, 1993, the respondent replaced the notice of assessment and rejected the rebate application on the same basis. After receiving a letter from counsel for the appellant, who confirmed that the appellant's objection also applied to the determination, the respondent issued a notice of decision on December 14, 1993, confirming the determination. Orleans Glass Inc. then appealed the determination to the Tribunal on January 31, 1994.

For purposes of this appeal, the relevant provisions of the Act state:

*120.(3) Subject to this section, where a person who, as of January 1, 1991 ... 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).*

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

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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.

The appellant's first witness was Ms. Suzanne Potvin, who has been, since at least 1991, the appellant's bookkeeper. Ms. Potvin told the Tribunal that, when the appellant received the FST inventory rebate application forms in May or June of 1990, she contacted Mr. Charlebois, the appellant's accountant at that time.<sup>3</sup> Mr. Charlebois advised that a complete inventory of the appellant's holdings be taken and, once completed, that it should be sent to him, along with the FST inventory rebate application forms. Ms. Potvin stated that Mr. Rhéal Jean, Owner and President of Orleans Glass Inc., and his son took a complete inventory commencing on July 1, 1990. Once the inventory was completed, the documents were sent to the accountant at the beginning of January 1991.

Ms. Potvin explained that, some time toward the end of February 1991 or on March 1, 1991, the documents were returned by the accountant. The application for an FST inventory rebate had been completed by the accountant and dated February 19, 1991. She stated that Mr. Jean signed the application on August 30, 1991, and that she left the office at 5:00 p.m. that evening and mailed the application at the Youville Drive post office. Ms. Potvin was positive of the date of mailing, as she was about to leave on holidays and needed to complete some outstanding work before her departure.

Ms. Potvin explained that a copy of the completed application was not made, as she was convinced that the accountant had made a copy, though it was later discovered that he had not done so. She explained, however, that a copy of the inventory list was made and that it is her practice to make copies of the forms filed in respect of the appellant's Goods and Services Tax (GST) returns to the Department of National Revenue (Revenue Canada).

During cross-examination, counsel for the respondent questioned many of the dates given in testimony by Ms. Potvin. When Ms. Potvin was asked why she had made a solemn declaration on December 11, 1992, stating that the application for an FST inventory rebate was mailed "either at the end of August or the beginning of September, 1991," though, at the hearing, she could remember the exact date, she explained that she had double-checked the date in her payroll book.

On questions from the Tribunal, Ms. Potvin stated that she is in charge of accounts receivable and pursues any debts owed to the appellant. She explained that inquiries were not made to Revenue Canada as to why the appellant had not received its FST inventory rebate because the appellant was behind in some of its GST payments, and she assumed that Revenue Canada would make an adjustment and send the balance to the appellant. Ms. Potvin told the Tribunal that Mr. Jean asked her, in early 1992, if the appellant had yet received the FST inventory rebate. In addition, she could not recall the envelope used to mail the rebate application.

The appellant's second witness, who was summoned to attend the hearing by subpoena, was Mr. Peter Speak who is a labour relations officer with Canada Post Corporation. Mr. Speak told the Tribunal that the Canadian Union of Postal Workers conducted a rotating postal strike that directly affected Ottawa, Ontario, between August 24 and 28, and on September 4, 1991.

The appellant's third witness, who was also summoned to attend the hearing by subpoena, was Mr. Paul Sprague who is a senior policy officer in the Staff Relations Division at Revenue Canada. Mr. Sprague told the Tribunal that Revenue Canada's unionized employees

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3. At the time of the hearing, Mr. Charlebois was no longer the appellant's accountant.

were on strike across Canada from September 9 to 18, 1991, and from September 27 to October 3, 1991.

Counsel for the respondent called Mr. Randy Vanvolkingburgh who has been working as an appeals officer with Revenue Canada since October 1992. In this capacity, Mr. Vanvolkingburgh has the authority to issue notices of decision on behalf of the Minister. He was the appeals officer assigned to the appellant's file.

Mr. Vanvolkingburgh explained Revenue Canada's policy with respect to FST inventory rebate applications claimed to be lost in the mail. He noted that an affidavit filed by an applicant in support of its contention that its FST inventory rebate application had been filed before 1992 was not a sufficient basis on which to allow an FST inventory rebate. Revenue Canada, he noted, looks at the reasonableness of an applicant's claim and the consistency in its story. In so doing, there are other factors to be considered.

Revenue Canada looks at the compliance history of the applicant. Mr. Vanvolkingburgh told the Tribunal that eight of the appellant's first nine quarterly GST returns had been filed late, ranging from a few days to approximately five months. In considering the consistency of the appellant's story, he noted that the application was dated February 1991, although it was claimed to have been filed in August or September 1991. In addition, the appellant could not indicate an exact date when the application was mailed. The time that it takes an applicant to query about the status of its claim is also considered. Mr. Vanvolkingburgh explained Revenue Canada's computer system for logging such inquiries. He noted that the first indication that the appellant was claiming that an FST inventory rebate application had been filed was in September 1992. He told the Tribunal that, based on an assessment of these factors, Revenue Canada decided that the appellant had most likely not filed the application before 1992.

In argument, counsel for the appellant reminded the Tribunal that it has previously determined that an application is "filed" on the date that it is mailed and that the date of the postmark is evidence of the date of mailing.<sup>4</sup> Counsel argued that Revenue Canada set the procedures by which the appellant filed its FST inventory rebate application. As such, Revenue Canada bears the responsibility to ensure that the procedures are sufficient to ascertain that an application is received at the location to which it is sent. The Tribunal was reminded of the postal and public service strikes, which may have affected receipt of the appellant's application. In addition, Ms. Potvin swore under oath that the application was mailed on August 30, 1991.

Counsel for the respondent submitted that the Tribunal must resolve the issue in this appeal based on an assessment of the credibility of the evidence tendered on behalf of the appellant. In challenging this evidence, counsel noted that no copy of the rebate application was made. Mention was also made of the inconsistency between the solemn declaration made by Ms. Potvin and her testimony at the hearing. Counsel urged the Tribunal to consider the same factors adopted by Revenue Canada in assessing the appellant's claim. In addition, it was argued that the Tribunal should accord no weight to the evidence led on the postal and public service strikes, as there was no evidence that they had an adverse impact on the appellant.

Based on the evidence before it, the Tribunal is not persuaded that the appellant's FST inventory rebate application was filed before 1992. The several inconsistencies in the

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4. See, for example, *Lakhani Gift Store v. The Minister of National Revenue*, Appeal No. AP-92-167, November 15, 1993.

evidence tendered on behalf of the appellant have rendered the Tribunal unable to accept the evidence that the application was mailed on August 30, 1991. In this regard, the Tribunal found it significant that the appellant's witness could recall the minute detail of the application alleged to have been mailed in 1991, yet could not remember the envelope in which it was mailed; that the affidavit and the testimony of the appellant's witness were inconsistent; that no inquiry was made as to the status of the application for more than a year, though accounts receivable would be pursued; and that no copy of the application was made.

Accordingly, the appeal is dismissed.

Lise Bergeron

Lise Bergeron  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Lyle M. Russell

Lyle M. Russell  
Member