



Ottawa, Wednesday, October 5, 1994

Appeal No. AP-93-378

IN THE MATTER OF an appeal heard on August 10, 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 10, 1993, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

LUCIEN TURCOTTE & FILS INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron

Lise Bergeron
Presiding Member

Raynald Guay

Raynald Guay
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-378

LUCIEN TURCOTTE & FILS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act. On January 23, 1992, the appellant filed an application for a federal sales tax inventory rebate in respect of goods held in inventory as of January 1, 1991. The rebate application was rejected, this determination being subsequently confirmed by the Minister of National Revenue on the basis that the application was filed outside the time limitation prescribed by the Excise Tax Act. The issue in this appeal is whether the appellant's application for a federal sales tax inventory rebate is statute-barred under subsection 120(8) of the Excise Tax Act.

HELD: *The appeal is dismissed. Since the appellant's rebate application was filed on January 23, 1992, it was not filed before 1992 pursuant to subsection 120(8) of the Excise Tax Act and is therefore statute-barred.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: August 10, 1994

Date of Decision: October 5, 1994

Tribunal Members: Lise Bergeron, Presiding Member

Raynald Guay, Member

Desmond Hallissey, Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Appearance: Maryse Picard, for the respondent

Appeal No. AP-93-378

LUCIEN TURCOTTE & FILS INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
RAYNALD GUAY, Member
DESMOND HALLISSEY, 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 the appellant's application for a federal sales tax (FST) inventory rebate under section 120² of the Act.

The appellant is in the business of selling iron and steel products at the retail and wholesale levels in Warwick, Quebec, and has been a Goods and Services Tax registrant since January 1, 1991. On January 23, 1992, the appellant filed an application for an FST inventory rebate in respect of goods held in inventory as of January 1, 1991. In a notice of determination dated February 28, 1992, the appellant's application was rejected on the grounds that it was filed outside the time limitation prescribed by the Act. The appellant served a notice of objection to the determination on March 24, 1992. In a notice of decision dated December 10, 1993, the Minister rejected the objection and confirmed the determination.

The issue in this appeal is whether the appellant's application for an FST inventory rebate is statute-barred under subsection 120(8) of the Act. The appellant did not attend the hearing of this appeal.

Paragraph 120(3)a) and subsection 120(8) of the Act state that:

(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.

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.

In its brief, the appellant asked the Tribunal to take into consideration a number of special circumstances relating to administrative problems which, in the appellant's opinion, were the reason that the application was filed in 1992 and not earlier. The appellant mentioned that human error was involved and asked that the Tribunal be understanding. In her presentations to the Tribunal, the respondent's representative referred to jurisprudence according to which the Tribunal has no jurisdiction to apply principles of equity, but is bound to apply the law.

The Tribunal finds that the terms of subsection 120(8) of the Act are clear; a rebate application must be filed before 1992. The appellant admitted in its brief that the rebate application was filed on January 23, 1992, and was not, therefore, filed before 1992 as prescribed by the Act.

Although the Tribunal sympathizes with the appellant's situation, it has no jurisdiction to apply principles of equity.³ Consequently, it cannot exempt the appellant from application of the time limitation prescribed by subsection 120(8) of the Act.

Therefore, the appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Desmond Hallissey
Desmond Hallissey
Member

3. See, for example, *Pelletrex Ltée v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-89-274, October 15, 1991, and the decisions mentioned therein.