



Ottawa, Friday, September 9, 1994

Appeal No. AP-93-352

IN THE MATTER OF an appeal heard on July 11, 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 3, 1993, with respect to a
notice of objection served under section 81.17 of the *Excise
Tax Act*.

BETWEEN

GEORGE JOHN KOVACS

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

Charles A. Gracey

Charles A. Gracey
Member

Nicole Pelletier

Nicole Pelletier
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-352

GEORGE JOHN KOVACS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of determinations of the Minister of National Revenue dated January 29, 1992. The issue in this appeal is whether the appellant is entitled, under subsection 68.16(1) of the Excise Tax Act, to a refund of excise tax paid in respect of gasoline.

HELD: *The appeal is dismissed. No evidence was submitted to the Tribunal to substantiate the amount of gasoline that the appellant purchased and the purpose for which it was purchased. As a result, the Tribunal is unable to determine the amount of gasoline purchased, if any, for which the appellant would be entitled to a refund of excise tax.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: July 11, 1994

Date of Decision: September 9, 1994

*Tribunal Members: Lise Bergeron, Presiding Member
Raynald Guay, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Anne Jamieson

Appearance: Lyndsay Jeanes, for the respondent

Appeal No. AP-93-352

GEORGE JOHN KOVACS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
RAYNALD GUAY, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of determinations of the Minister of National Revenue dated January 29, 1992. The issue in this appeal is whether the appellant is entitled, under subsection 68.16(1) of the Act, to a refund of excise tax paid in respect of gasoline.

The appellant did not appear at the hearing, but had filed a brief with the Tribunal. The Tribunal, therefore, proceeded to consider the appellant's submission and to give it whatever weight is appropriate in accordance with rule 22 of the *Canadian International Trade Tribunal Rules*.²

On January 6, 1992, the Department of National Revenue (Revenue Canada) received three applications, signed by the appellant and dated December 2, 1991, for refunds of excise tax paid in respect of gasoline. The first of these applications was for the period from January 1, 1986, to December 31, 1987, in the amount of \$9,107, the second was for the period from January 1 to December 31, 1988, in the amount of \$4,778 and the third was for the period from January 1, 1989, to December 31, 1990, in the amount of \$10,309.

The appellant was later informed by a Revenue Canada official that he had not completed the proper application form for a refund of excise tax and had failed to include the gasoline purchase receipts. The proper form was received by Revenue Canada on February 5, 1992, for the period from January 1, 1987, to December 31, 1989, in the amount of \$303.75.

Counsel for the respondent submitted that the appellant could only be entitled to refunds of excise tax in respect of the gasoline that he purchased two years prior to the date on which he filed his applications. She submitted, therefore, that, if the Tribunal considered that the appellant had filed his applications on January 6, 1992, the appellant would only be entitled to a refund for the period from January 7 to December 31, 1990.

1. R.S.C. 1985, c. E-15.

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

Notwithstanding her submissions with respect to the time limit for filing a refund application, counsel for the respondent submitted that the appellant had made an error in calculating the amounts that he was claiming as refunds of excise tax paid in respect of gasoline in his applications dated December 2, 1991. She submitted that the application form received by Revenue Canada on February 5, 1992, more accurately reflected the amount to which the appellant might be entitled as a refund of excise tax, but that even the amount of \$303.75 was incorrect, based on the number of litres reported. She submitted that, from her calculations, the appellant had multiplied the number of litres by 13.5 cents as opposed to 1.5 cents, which is the amount permitted under subsection 68.16(1) of the Act.

In order for the appellant to be entitled to a refund of excise tax paid in respect of gasoline, it must be demonstrated that the requirements of subsection 68.16(1) of the Act have been met. Subsection 68.16(1) of the Act provides that, where tax has been paid in respect of gasoline purchased by a person for commercial or business purposes, for the sole use of the purchaser and not for resale, that person is entitled to a refund equal to 1.5 cents per litre, provided that person applies for the refund within two years after the gasoline was purchased.

In the Tribunal's view, the word "applies" under subsection 68.16(1) of the Act should be given the same meaning as the word "filed." For the purpose of determining when the appellant's applications were filed, the Tribunal relied on several of its recent decisions³ in which it was found that an application for a refund may be considered to be filed when it is mailed and that a postmark may be evidence of the date of mailing. As there is no evidence of the postmark or of the date of mailing of the applications in this appeal, the Tribunal can only conclude that the applications were mailed sometime between the date on which they were signed, that is, December 2, 1991, and the date on which they were received by Revenue Canada, that is, January 6, 1992. No matter which of these dates is chosen as the date on which the appellant filed his applications, it is clear that the appellant has not applied within two years of all of the gasoline purchases in respect of which he is applying for a refund. At most, the amounts at issue can only relate to purchases of gasoline made during the period from December 2, 1989, to December 31, 1990.

However, as no evidence was submitted to the Tribunal to substantiate the amount of gasoline that the appellant purchased during any of the period from December 2, 1989, to December 31, 1990, and the purpose for which it was purchased, the Tribunal is unable to determine the amount of gasoline purchased, if any, for which the appellant would be entitled to a refund of excise tax.

3. See, for example, *Lakhani Gift Store v. The Minister of National Revenue*, Appeal No. AP-92-167, November 15, 1993; *Vern Glass Company (1976) Limited v. The Minister of National Revenue*, Appeal No. AP-92-221, December 13, 1993; *603852 Ontario Inc. o/a Tropicana Pet Shop v. The Minister of National Revenue*, Appeal No. AP-93-037, February 3, 1994; *Moto Optical Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-283, February 23, 1994; *M-M Electric - A Division of Rio De Janeiro Holdings Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-169, April 28, 1994; and *Hergert Electric Ltd. v. The Minister of National Revenue*, Appeal No. AP-93-089, June 7, 1994.

Accordingly, the appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Charles A. Gracey
Charles A. Gracey
Member