

Ottawa, Tuesday, August 20, 1996

Appeal No. AP-94-003

IN THE MATTER OF an appeal heard on March 22, 1996, 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 March 31, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

HEBERT'S FLOORING LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Anthony T. Eyton
Anthony T. Eyton
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-94-003

HEBERT'S FLOORING LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the *Excise Tax Act* (the Act) of a determination of the Minister of National Revenue (the Minister) rejecting an application for a federal sales tax inventory rebate made under section 120 of the Act. The issue in this appeal is whether the appellant's application was filed with the Minister before 1992 as prescribed by subsection 120(8) of the Act and, if not, whether the appellant is entitled to the rebate, notwithstanding that the application was filed outside the limitation period.

HELD: The appeal is dismissed. As noted by counsel for the respondent, the Tribunal has held that, in the absence of evidence to the contrary, an application under section 120 of the Act is considered to be filed on the day that it was mailed, and the postmarked date on the envelope is evidence of the date of mailing. In this case, the Tribunal has been presented with no credible evidence that the application was mailed before 1992. The Tribunal has no reason to doubt that the envelope presented as evidence by counsel for the respondent was that used by the appellant to mail its application. As the postmarked date on the envelope indicates that it was mailed in 1992, the appellant is not entitled to the federal sales tax inventory rebate.

Places of Hearing: Hull, Quebec, and Moncton, New Brunswick

Date of Hearing: March 22, 1996

Date of Decision: August 20, 1996

Tribunal Members: Anthony T. Eyton, Presiding Member

Arthur B. Trudeau, Member

Lyle M. Russell, Member

Counsel for the Tribunal: David M. Attwater

Clerks of the Tribunal: Susanne Grimes and Anne Jamieson

Appearances: Laurie Hebert, for the appellant

Lyndsay K. Jeanes, for the respondent

Appeal No. AP-94-003

HEBERT'S FLOORING LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ANTHONY T. EYTON, 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*¹ (the Act) of a determination of the Minister of National Revenue (the Minister) rejecting an application for a federal sales tax (FST) inventory rebate made under section 120² of the Act. The issue in this appeal is whether the appellant's application was filed with the Minister before 1992 as prescribed by subsection 120(8) of the Act and, if not, whether the appellant is entitled to the rebate, notwithstanding that the application was filed outside the limitation period.

For purposes of this appeal, the relevant provisions of the Act read as follows:

[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);

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

Mr. Laurie Hebert, President of Hebert's Flooring Ltd., appeared as a witness. Mr. Hebert told the Tribunal that he was informed by an auditor of the Department of National Revenue (Revenue Canada) that the appellant's application for an FST inventory rebate was denied because it was filed late. He said that, before talking to his accountant, Mr. Guy Loiselle, who had filed the application, he wrote a letter to Revenue Canada, dated August 5, 1992 (Exhibit B-1), asking that the application be reconsidered because "[w]e did not realize that there was a deadline to have it sent in."

During cross-examination, Mr. Hebert told the Tribunal that he neither asked for nor received confirmation from Mr. Loiselle that the application had been mailed before 1992. On questions from the Tribunal, he did not recall having a discussion with Mr. Loiselle in January 1992 concerning the application. He also said that he did not know when the application was filed.

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 second witness was Mr. Loiselle. On questions from the Tribunal, Mr. Loiselle confirmed a statement contained in his affidavit³ that he was contacted by Mr. Hebert on January 2 or 3, 1992, for confirmation that the application had been filed before 1992. He also confirmed having a specific recollection of mailing the application before 1992, because, shortly after the mailing, Mr. Hebert told him that he had been advised by Revenue Canada that the application had been filed late.

In the appellant's brief, it was noted that two representatives from the appellant's accounting firm had signed sworn affidavits that the application was filed before 1992. In rejecting the application, the Minister has relied solely on the Canada Post Corporation (Canada Post) date stamp, postmarked February 6, 1992, on the envelope in which the application was mailed. However, the appellant suggested there may have been a delay by Canada Post in processing the mail. Furthermore, it is not apparent that the envelope on which the respondent relies is the one used to mail the appellant's application. Based on all the facts, the appellant believes there are reasonable grounds for finding that the application was filed before 1992.

Counsel for the respondent noted that the application had to have been mailed before 1992 for the appellant to be entitled to the rebate.⁴ However, the envelope was postmarked February 6, 1992. Furthermore, there is no compelling evidence that it was mailed before 1992.

With respect to the affidavit by Mr. Gene Wilson, a partner in the appellant's accounting firm, it merely states that he "discussed the fact that Mr. Guy Loiselle was mailing said report that day." Counsel for the respondent submitted that Mr. Wilson does not know, in fact, whether Mr. Loiselle mailed the application. It was noted that, in his affidavit, Mr. Loiselle does not state that he mailed the application, nor did he testify to that fact. Similarly, Mr. Hebert testified that he was not present at the time the application was mailed. After highlighting inconsistencies in the evidence presented by the appellant, counsel concluded that there is no clear evidence as to when the application was filed except for the postmarked envelope.

Counsel for the respondent submitted that the appellant has not established that the rebate application was filed before 1992, as required by the Act. Therefore, the appellant is not entitled to the FST inventory rebate. Furthermore, the Tribunal has no authority to waive, extend or alter the time limitation established by the Act.

As noted by counsel for the respondent, the Tribunal has held that, in the absence of evidence to the contrary, an application under section 120 of the Act is considered to be filed on the day that it was mailed, and the postmarked date on the envelope is evidence of the date of mailing. In this case, the Tribunal has been presented with no credible evidence that the application was mailed before 1992. The Tribunal has no reason to doubt that the envelope presented as evidence by counsel for the respondent was that used by the

3. Submitted as part of the appellant's brief.

4. Counsel noted that, in *Lakhani Gift Store v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-92-167, November 15, 1993, the Tribunal declared that, in the absence of evidence to the contrary, an application under section 120 of the Act is filed on the day that it was mailed, and the postmarked date on the envelope is evidence of the date of mailing.

appellant to mail its application. As the postmarked date on the envelope indicates that it was mailed in 1992, the appellant is not entitled to the FST inventory rebate.

Accordingly, the appeal is dismissed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Lyle M. Russell
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Member