

Ottawa, Wednesday, December 20, 1995

Appeal Nos. AP-94-160 and AP-94-163

IN THE MATTER OF appeals heard on July 13, 1995, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF two decisions of the Minister of National Revenue dated May 20, 1994, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

VAN CITY CULTURED MARBLE PRODUCTS LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-94-160 and AP-94-163

VAN CITY CULTURED MARBLE PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 81.19 of the Excise Tax Act of two determinations of the Minister of National Revenue that rejected the appellant's two applications for refunds of the federal sales tax portion of bad debts written off by the appellant in the years 1989 to 1991. The issue in these appeals is whether the respondent correctly determined that the appellant was not entitled to these refunds.

HELD: *The appeals are dismissed. Subsection 68.21(2) of the Excise Tax Act is clear in requiring that an application for refund with respect to bad debts written off must be made "in the two years after the end of [the] fiscal period during which the debt was ... written off." With respect to the two applications at issue, the fiscal periods ended May 31, 1990, and May 31, 1991. As such, no amounts could be paid to the appellant unless applications had been made before May 31, 1992, and May 31, 1993, respectively. It was acknowledged on behalf of the appellant that its applications for refund were filed outside the statutorily imposed time limits. As such, the Tribunal can only conclude that refunds are proscribed by the terms of the Excise Tax Act.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: July 13, 1995

Date of Decision: December 20, 1995

*Tribunal Members: Anthony T. Eyton, Presiding Member
Robert C. Coates, Q.C., Member
Lyle M. Russell, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Nicole Pelletier

*Appearances: Alexander P. Augustyniak, for the appellant
Brian Tittlemore, for the respondent*

Appeal Nos. AP-94-160 and AP-94-163

VAN CITY CULTURED MARBLE PRODUCTS LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ANTHONY T. EYTON, Presiding Member
ROBERT C. COATES, Q.C., Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

These are appeals under section 81.19 of the *Excise Tax Act*¹ (the Act) of two determinations of the Minister of National Revenue that rejected the appellant's two applications for refunds of the federal sales tax (FST) portion of bad debts written off by the appellant in the years 1989 to 1991. The issue in these appeals is whether the respondent correctly determined that the appellant was not entitled to these refunds.

The appellant is a licensed manufacturer of cultured marble products, including Jacuzzi tubs, bathtubs, countertops, sinks, shower panels, window sills and bathroom accessories. In March 1990, the respondent conducted an investigation of the appellant's operations, which resulted in certain records for the period from 1986 to 1989 being seized. The seized records were returned to the appellant by March 1991.

By letter dated November 19, 1992, the appellant was informed by the Excise Appeals Directorate of the Department of National Revenue (Revenue Canada) of the two-year limitation for claiming a refund in respect of the bad debts written off. The appellant was advised that it was required to file an application before May 31, 1993, to claim a refund of the FST portion of bad debts written off for the year ending May 31, 1991. However, by letter dated August 25, 1993, the appellant requested an extension of 100 days to file its refund applications.

On August 26, 1993, the appellant applied for a refund in the amount of \$5,791.46 for FST paid in respect of bad debts written off for the fiscal period ending May 31, 1990. On the same date, the appellant applied for a second refund in the amount of \$4,543.15 for FST paid in respect of bad debts written off for the fiscal period ending May 31, 1991. However, in determinations dated September 17, 1993, the applications were rejected on the basis that they were not filed within the two-year limitation period prescribed by the Act.

By notices of objection dated October 29, 1993, the appellant objected to the two determinations, which were confirmed by the respondent in decisions dated May 20, 1994. On July 29 and August 4, 1994, Van City Cultured Marble Products Ltd. appealed the two determinations to the Tribunal.

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

Mr. George Stathis, President and Manager of Van City Cultured Marble Products Ltd., told the Tribunal that, on approximately March 28, 1990, Revenue Canada seized the appellant's records. It was not until approximately March 20, 1991, that the records were returned. Thereafter, the appellant was subjected to 10 audits by Revenue Canada and provincial authorities.

The appellant's representative told the Tribunal that the appellant had filed an application for a refund of FST paid on bad debts written off some time prior to the filing of the applications that resulted in the present appeals.² Though it was not filed using Revenue Canada's form N-15 entitled "Application for Refund/Deduction of Federal Sales and/or Excise Taxes," he believed that the application was filed on time. As such, he believed that the appellant should be entitled to the refund.

The appellant's representative submitted that the deadline for filing the refund applications was missed because Revenue Canada seized the relevant records from the appellant. Thereafter, the documents were used for an ongoing provincial sales tax audit, after which the documents were reorganized to suit the provincial auditor's needs. In addition, the documents were needed to commence legal action against the appellant's former auditor. Because of the nature of a small business and the ongoing audits and legal action, the appellant had insufficient time to prepare the applications for refund.

Counsel for the respondent submitted that, for the appellant to be entitled to refunds of FST paid in respect of bad debts written off, it must establish that the conditions of subsection 68.21(2) of the Act have been met. One of those conditions of entitlement is that the application must be made within two years after the end of the fiscal period during which the debt was written off. The appellant's refund applications were in respect of the fiscal periods ending May 31, 1990, and May 31, 1991. Therefore, the refund applications were required to be filed by May 31, 1992, and May 31, 1993, respectively. However, both applications were dated August 26, 1993, and date-stamped as received by Revenue Canada on August 30, 1993.

Counsel for the respondent added that the Tribunal and the respondent have no authority to alter, waive or extend the two-year limitation period prescribed by the Act. Nor does the Tribunal have the jurisdiction to grant equitable relief from the operation of the Act. With respect to the appellant's claim that it lacked the time to prepare its applications, in part because the relevant documents were seized by Revenue Canada, counsel explained that the records were returned by March 1991, well before the expiration of the two-year limitation period prescribed by the Act.

As argued by counsel for the respondent, the Tribunal acknowledges that its powers are strictly limited by statute and that it does not have the authority to render a decision based on equity or fairness. Subsection 68.21(2) of the Act is clear in requiring that an application for refund with respect to bad debts written off must be made "in the two years after the end of [the] fiscal period during which the debt was ... written off." With respect to the two applications at issue, the fiscal periods ended May 31, 1990, and

2. From Exhibit A-2, it appears that the issue of bad debts written off was raised by the appellant in a notice of objection served with respect to an unrelated assessment. The objection was allowed in part, in a decision dated June 11, 1993. An adjustment was allowed for bad debts written off for the 5-month period ending July 31, 1988, and the 10-month period ending May 31, 1989. An adjustment was not allowed for bad debts written off for the periods ending May 31, 1990, and May 31, 1991, as these items were outside the audit period of the assessment. However, the appellant was informed that it could apply for a refund of the moneys "within two years of the fiscal period end date."

May 31, 1991. As such, no amounts could be paid to the appellant unless applications had been made before May 31, 1992, and May 31, 1993, respectively. It was acknowledged on behalf of the appellant that its applications for refund were filed outside the statutorily imposed time limits. As such, the Tribunal can only conclude that refunds are proscribed by the terms of the Act.

As for the appellant's earlier "applications" for the refunds at issue, the Tribunal is satisfied that, at that time, the respondent was without authority to grant the refunds to the appellant. There is no evidence that the applications were made in prescribed form, as required by section 72 of the Act. Furthermore, Exhibit A-2 indicates that no adjustment was made for these sums, as they covered periods outside the audit period in that assessment.

Accordingly, the appeals are dismissed.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Lyle M. Russell

Lyle M. Russell
Member