CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, January 20, 1998

Appeal No. AP-94-187

IN THE MATTER OF an appeal heard on June 17, 1997, 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 February 11, 1994, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

TIMOTHY H. MAGNUS **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-94-187

TIMOTHY H. MAGNUS **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of a determination of the Minister of National Revenue dated April 20, 1993, which rejected an application for a federal sales tax rebate under section 68.2 of the *Excise Tax Act*. The application was rejected on the basis that it was filed outside the time limit specified by the *Excise Tax Act*.

HELD: The appeal is allowed. The Tribunal believes that the following conclusion reached by it in *De Mers Electric Limited* v. *The Minister of National Revenue* applies equally to this appeal: the respondent had a duty to provide the appellant with the proper form so that he could apply for a rebate. The Tribunal is of the view that, given that the application form for a rebate is prescribed by the respondent and, further, that the appellant repeatedly attempted to secure the proper form, but was unsuccessful due to the failure of the Department of National Revenue to make it available, the appeal should be allowed. Had the appellant been able to secure the form when he first requested it, the Tribunal believes that the appellant would have applied for the rebate within the prescribed limitation period, and it is prepared, based on the appellant's repeated attempts to secure the application form, to deem the application filed on time.

Places of Video Conference Hearing:	Hull, Quebec, and Calgary, Alberta
Date of Hearing:	June 17, 1997
Date of Decision:	January 20, 1998
Tribunal Members:	Charles A. Gracey, Presiding Member Patricia M. Close, Member Robert C. Coates, Q.C., Member
Counsel for the Tribunal:	Heather A. Grant
Clerks of the Tribunal:	Margaret Fisher and Anne Jamieson
Appearances:	Timothy H. Magnus, for the appellant Janet Ozembloski, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-94-187

TIMOTHY H. MAGNUS **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
PATRICIA M. CLOSE, Member
ROBERT C. COATES, Q.C., 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 dated April 20, 1993, which rejected an application for a federal sales tax (FST) rebate under section 68.2 of the Act. The application was rejected on the basis that it was filed outside the time limit specified by the Act. On July 2, 1993, the appellant served a notice of objection on the respondent. The respondent subsequently issued, on February 11, 1994, a notice of decision confirming the determination.

The appellant appeared on his own behalf at the hearing of this appeal, which proceeded by way of video conference in Hull, Quebec, and Calgary, Alberta. Counsel for the respondent indicated that the respondent did not take issue with the statement of facts as set out in the appellant's brief. These facts are summarized in the following two paragraphs.

The appellant operates a sole proprietorship, Magnus Diversified, in Calgary, which provides computer hardware, software and support to clients who are largely faculty and staff of the University of Calgary. Between May 13, 1988, and November 28, 1990, goods were sold by the appellant to an FST-exempt purchaser, the University of Calgary. As a result of having filed previous FST rebate applications, the appellant was aware that he was required to file an application using form N 15. The appellant made the following attempts to obtain the requisite form from the Department of National Revenue (Revenue Canada): he contacted the branch offices of Revenue Canada, Customs and Excise, located at the Calgary airport and in downtown Calgary. He was informed by both branches that they were not involved in the administration of rebate applications and, consequently, did not have the form available. It was suggested to him that he call Revenue Canada's "Request for Forms" number. In calling this number, the appellant was informed that nothing was known about form N 15, and it was suggested that the appellant call Customs and Excise. The appellant subsequently called the federal government's "General Information" number, as the local telephone book did not indicate an obvious department to call for information regarding the form. In spite of repeated calls to this number in 1988 and 1989, the appellant was never put in contact with anyone who could help him obtain the form.

Finally, in 1990, when he made another call to the "General Information" number, the appellant was transferred to a local number. During this conversation, the appellant was informed that the form was now in

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

stock and would be mailed to him. However, the appellant never received the form. In 1992, the appellant was contacted by a compliance officer at Revenue Canada regarding outstanding tax returns. The appellant told the officer that he would not file the returns until he received copies of form N 15. The officer offered to locate the form for the appellant and, in December 1992, a new version of form N 15, N 15(E) (1/89) was mailed to the appellant. The appellant applied for an FST rebate in the amount of $1,386.84 on March 25, 1993, three months after receipt of the form.

At the hearing, the appellant indicated that, in the course of numerous conversations with officials at Revenue Canada, he was never informed that there was a two-year filing deadline for applications for FST rebates made under section 68.2 of the Act. Moreover, no statutory deadline is indicated either on the prescribed form or in literature published by Revenue Canada. He did point out that, on the current form N 15, it states that a claim for over $200 can be filed at any time. In response to questions from the Tribunal, the appellant also indicated that, at one point, he was told by an official at Revenue Canada that the two-year deadline for filing Goods and Services Tax rebate applications did not apply to FST rebate applications.

The appellant submitted that there are two main points on which his case rests: (1) he was never informed about the two-year deadline for filing his application; and (2) Revenue Canada did not make the requisite form available to him in order that he could file his application on time. With respect to the first point, the appellant argued that Revenue Canada officials have a responsibility to inform individuals preparing rebate applications of statutory time limits for filing and that this was not done in his case. On the second point, the appellant argued more specifically that, where the Act indicates that an application "shall be made in the prescribed form and contain the prescribed information," as stated in subsection 72(2) of the Act, the responsibility rests with Revenue Canada to provide the appropriate form upon request.[2] The appellant further submitted that he took all reasonable steps to obtain the necessary form well within two years of the sale of the goods. His repeated attempts to obtain the form should, in his view, be considered a verbal registration of his intent to file his application within the two-year period. The failure on his part to submit the form within the two-year period can be wholly attributed to Revenue Canada's failure to provide him with the form.

In responding to the appellant's arguments, counsel for the respondent submitted that the key fact in this appeal is that the appellant admits to having filed his rebate application after the deadline for filing specified in the Act. The issue, therefore, is whether the limitation period specified in the legislation can be extended on equitable grounds. Counsel submitted that any right to recovery that the appellant may have must be found within the terms of an act of Parliament and that the Tribunal would have no jurisdiction to consider principles of common law or equity. Furthermore, the onus lies with the appellant to show that the respondent's determination was incorrect.

In this case, the legislation clearly specifies that the rebate application must be filed within two years of the sale of the goods to a purchaser under exempt circumstances in respect of which the rebate is being claimed. Counsel for the respondent submitted that it is an undisputed fact that the appellant's rebate application was filed outside the statutory time limit and that Revenue Canada is required to enforce the law, as it is written, even where the circumstances may seem unfair or create a hardship for an applicant.

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2. In support of this argument, the appellant relied, in part, on the dissenting opinion of Member Gracey in *De Mers Electric Limited* v. *The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-93-051, April 12, 1994.

Furthermore, the Tribunal does not have the equitable jurisdiction to waive, alter or extend the limitation period.

With respect to the appellant's allegation that an official at Revenue Canada implied that a two-year deadline did not apply, counsel for the respondent argued that the appellant could not say, with absolute certainly, that such a statement was made, but that, in any event, the appellant should have known, as a business person, that a deadline would have been imposed at some point. Counsel further argued that the prescribed deadline is set out in legislation within the public domain and that the appellant could have obtained this information himself. A final point made by counsel was that, even if the appellant was misinformed by officials at Revenue Canada regarding the applicable deadline, which is not admitted, the Crown is not bound by representations of its officials.

In the Tribunal's view, the main point of the appellant's argument is that, even if there is a statutory duty on an applicant to apply for a rebate within a two-year period from the date of sale of the goods in respect of which the rebate is claimed, there is a duty on the respondent to make the appropriate form available to potential claimants where the form is prescribed. The Tribunal agrees with the appellant in that a duty to provide the prescribed form rests with the respondent. Subsection 72(2) of the Act requires that an application be made "in the prescribed form and contain the prescribed information." The form, "Application for Refund/Deduction of Federal Sales and/or Excise Taxes,[3]" specifies that "[t]his form and the Supplement are the authorized and prescribed forms for submitting an application under the *Excise Tax Act*. Forms are available at your local Excise office."

In its decision in *De Mers* , the Tribunal found that there was a duty on the respondent to provide the appellant in that case with the proper application form so that it could apply for an FST inventory rebate before 1992. Subsection 72(2) of the Act similarly applied in that case. In reaching this conclusion, the Tribunal relied on the decision of the Federal Court of Appeal in *Dai Nguyen of Groupe Solidarité and Luong Manh Nguyen* v. *The Minister of Employment and Immigration*.[4] That appeal was in respect of a motion for an order compelling a statutory duty owed to the applicant. The Court held in *Dai Nguyen* that, based on past practice and the general scheme of the *Immigration Act*[5] and regulations, there was a duty on the respondent to provide an application for landing to a person upon request in order for that person to come to Canada as a refugee, even though there was no explicit statutory requirement that the respondent send such a form. In support of this decision, the Court referred to its decision in *Yee Chuen Choi* v. *The Minister of Employment and Immigration and the Secretary of State for External Affairs*.[6] In that case, the Court found that the applicant had suffered prejudice from not being given the proper form immediately, which would have resulted in the applicant receiving a more favourable assessment if the form had been timely filed. In explaining its reasons for decision in *Yee Chuen Choi*, the Court cited from an earlier decision in which it was determined that there existed a duty to provide a form to a person seeking to sponsor someone for admission to Canada where such a right could not be exercised unless the prescribed form could be obtained from the immigration authorities. In this context, the Court went on to make the following statement:

> when the Canadian Government, through its agents, undertakes to supply information to immigration applicants as to how to become immigrants, it assumes a duty to provide this information accurately.

3. N 15(E) (1/89).
4. [1994] 1 F.C. 232.
5. R.S.C. 1985, c. I-2.
6. [1992] 1 F.C. 763.

> This does not imply that Canadian authorities must provide a detailed exegesis of Canadian immigration law and procedures, or legal advice to prospective immigrants as to the legal significance of the available options, but it does mean that the immigration authorities have an obligation in fairness to provide basic information on the methods of application, and to make available the appropriate forms.[7]

The Tribunal believes that the following conclusion reached by it in *De Mers* applies equally to this appeal: the respondent had a duty to provide the appellant with the proper form so that he could apply for a rebate. Although the Tribunal did not allow the appeal in *De Mers*, the Tribunal reaches the opposite conclusion in this case. The Tribunal is of the view that, given that the application form for a rebate is prescribed by the respondent and, further, that the appellant repeatedly attempted to secure the proper form, but was unsuccessful due to the failure of Revenue Canada to make it available, the appeal should be allowed. Had the appellant been able to secure the form when he first requested it, the Tribunal believes that the appellant would have applied for the rebate within the prescribed limitation period, and it is prepared, based on the appellant's repeated attempts to secure the application form, to deem the application filed on time.

For the foregoing reasons, the appeal is allowed.

Charles A. Gracey
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Presiding Member

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Member

7. *Ibid.* at 769-70.