

Ottawa, Tuesday, January 14, 1997

Appeal No. AP-94-335

IN THE MATTER OF an appeal heard on October 29, 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 November 17, 1994, with respect to a notice of
objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

ÉPICERIE CHEZ LÉONARD

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

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

Desmond Hallissey
Desmond Hallissey
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-335

ÉPICERIE CHEZ LÉONARD

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 that rejected an application for a tobacco tax inventory rebate in the amount of \$381.13 on the grounds that the application was not filed before August 9, 1994, in accordance with paragraph 68.162(3)(b) of the *Excise Tax Act*. The appellant's application dated September 6, 1994, was received by the Department of National Revenue on September 12, 1994. The issue in this appeal is whether the appellant is entitled to a tax rebate on the tobacco held in inventory at the beginning of February 9, 1994.

HELD: The appeal is dismissed. It is clear to the Tribunal that, under paragraph 68.162(3)(b) of the *Excise Tax Act*, an application for a tobacco tax inventory rebate had to be filed before August 9, 1994. The two parties agree on this point, and the Tribunal concludes that the application for a tobacco tax inventory rebate was not filed within the prescribed time. The appellant's representative argued that the Tribunal should grant relief based on equity. The Tribunal's jurisdiction in determining appeals is limited and does not include altering a statutory deadline or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 29, 1996
Date of Decision:	January 14, 1997
Tribunal Members:	Raynald Guay, Presiding Member Robert C. Coates, Q.C., Member Desmond Hallissey, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Parties:	Edith Lessard, for the appellant Anick Pelletier, for the respondent

Appeal No. AP-94-335

ÉPICERIE CHEZ LÉONARD

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding Member
ROBERT C. COATES, Q.C., 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 dated September 23, 1994, that rejected an application for a tobacco tax inventory rebate in the amount of \$381.13 on the grounds that the application was not filed before August 9, 1994, in accordance with paragraph 68.162(3)(b) of the Act. The appellant's application dated September 6, 1994, was received by the Department of National Revenue on September 12, 1994. On October 21, 1994, the appellant served a notice of objection. The respondent confirmed the determination in a notice of decision dated November 17, 1994. The issue in this appeal is whether the appellant is entitled to a tax rebate on the tobacco held in inventory at the beginning of February 9, 1994.

The appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*² on the basis of the Tribunal's record, including an agreed statement of facts and briefs filed by the two parties.

The appellant's representative stated that the appellant had not been made aware of the possibility of applying for a tobacco tax inventory rebate and had not received any forms. She mentioned that the appellant's sales had dropped significantly because of the smuggling of cigarettes and that it needed this tax rebate. She maintained that section 68.162 came into force on June 23, 1994, giving the appellant only approximately six weeks to file its application for a rebate. According to her, it is unreasonable to believe that the appellant and all other small businesses would have been informed in time about the possibility of applying for such a rebate. She asked that the Tribunal reconsider the respondent's decision, given the circumstances.

Counsel for the respondent stated that paragraph 68.162(3)(b) of the Act indicates clearly that the respondent would only provide a tax rebate if an application were received before August 9, 1994 and that, since the appellant's application dated September 6, 1994, was not received until September 12, 1994, the appeal must be dismissed. Counsel mentioned that the government had informed all taxpayers through the media and in a newsletter called *The Excise/GST News* about the possibility of applying for a rebate of tax on the tobacco held in inventory at the beginning of February 9, 1994. Counsel stated that the Tribunal is bound by the law and must apply it. It does not have the authority to waive or extend a statutory deadline or to grant relief based on equity.

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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.

Section 68.162 of the Act provides, in part, as follows:

(2) The Minister may pay to a person who held tax-paid manufactured tobacco in the person's inventory at the beginning of February 9, 1994 a tax rebate equal to the total of

- (a) \$0.025 multiplied by the number of cigarettes and tobacco sticks in that inventory, and
- (b) \$0.025 multiplied by the number of grams of manufactured tobacco, other than cigarettes and tobacco sticks, in that inventory.

(3) To qualify to receive a rebate under subsection (2), a person must

- (a) determine the inventory of tax-paid manufactured tobacco held by the person at the beginning of February 9, 1994; and
- (b) apply to the Minister for the rebate before August 9, 1994 in any form and manner that is authorized by the Minister.

According to the Tribunal, it is clear that, under paragraph 68.162(3)(b) of the Act, an application for a tobacco tax inventory rebate had to be filed before August 9, 1994. The two parties agree on this point, and the Tribunal concludes that the application for a tobacco tax inventory rebate was not filed within the prescribed time. The appellant's representative argued that the Tribunal should grant relief based on equity. The Tribunal's jurisdiction in determining appeals is limited and does not include altering a statutory deadline or applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant.³

Consequently, the appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

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

Desmond Hallissey
Desmond Hallissey
Member

3. *Joseph Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.