

Ottawa, Friday, October 25, 1996

Appeal No. AP-95-066

IN THE MATTER OF an appeal heard on May 16, 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 10, 1995, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

THE BRITISH COLUMBIA MENTAL HEALTH SOCIETY

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-95-066

THE BRITISH COLUMBIA MENTAL HEALTH SOCIETY

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant's application for a federal tobacco tax inventory rebate was dated August 9, 1994, and received by the respondent on August 16, 1994. The issue in this appeal is whether the application for rebate is statute barred under subsection 68.162(3) of the *Excise Tax Act*.

HELD: The appeal is dismissed. The Tribunal finds that the terms of subsection 68.162(3) of the *Excise Tax Act* are clear, that a person must apply for a federal tobacco tax inventory rebate before August 9, 1994. In this case, the appellant's application was dated August 9, 1994, and not received by the respondent until August 16, 1994. As such, the Tribunal finds that the appellant did not apply for the rebate before August 9, 1994, as prescribed by the *Excise Tax Act*.

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 16, 1996
Date of Decision: October 25, 1996

Tribunal Members: Raynald Guay, Presiding Member
Robert C. Coates, Q.C., Member
Desmond Hallissey, Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Parties: Harry Y. Ching, for the appellant
Josephine A.L. Palumbo, for the respondent

Appeal No. AP-95-066

THE BRITISH COLUMBIA MENTAL HEALTH SOCIETY **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 decision of the Minister of National Revenue that rejected the appellant's application for a federal tobacco tax inventory rebate.

The appellant operates a hospital which provides specialized services for people with mental illnesses. The appellant has two retail outlets which sell, among other items, tobacco products to patients at the hospital. The appellant's application for a federal tobacco tax inventory rebate was in the amount of \$2,887.89 with respect to tax-paid inventory held as of February 9, 1994. The application was dated August 9, 1994, and received by the respondent on August 16, 1994.

In a notice of determination dated September 8, 1994, the respondent rejected the appellant's application on the grounds that the actual inventory count was not taken on February 9, 1994. The appellant served a notice of objection to the determination, which was received on November 14, 1994. In a notice of decision dated March 10, 1995, the respondent disallowed the objection and confirmed the determination on the basis that the application was not filed within the limitation period prescribed by the Act. On June 6, 1995, the appellant appealed the respondent's decision.

The issue in this appeal is whether the application for rebate is statute barred under subsection 68.162(3) of the Act.

This 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 submitted by the parties.

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

(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.

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.

In its brief, the appellant submitted that the respondent's basis for disallowing the appellant's objection was not fair and asked the Tribunal to take into consideration a number of special circumstances and allow its appeal. The special circumstances, to which the appellant referred, were that the application forms were not available in March and April 1994 and that it did not receive a copy of the form until August 1994. Furthermore, it submitted that the time period in which to apply for a rebate was inadequate and significantly shorter than in the case of other refund or rebate claims.

The respondent submitted that the time limit for filing an application for a federal tobacco tax inventory rebate is specifically determined by statute and that the appellant's application was filed outside the time limit. The respondent further submitted that the time limitations set out in the Act must be strictly complied with and that the Tribunal has no jurisdiction to grant equitable remedies and is bound to apply the law.

The Tribunal finds that the terms of subsection 68.162(3) of the Act are clear, that a person must apply for a federal tobacco tax inventory rebate before August 9, 1994. In this case, the appellant's application was dated August 9, 1994, and not received by the respondent until August 16, 1994. As such, the Tribunal finds that the appellant did not apply for the rebate before August 9, 1994, as prescribed by the Act.

Although the Tribunal sympathizes with the appellant's situation, it has no jurisdiction to apply principles of equity.³ Consequently, it cannot exempt the appellant from the application of the time limitation prescribed by subsection 68.162(3) of the Act.

Accordingly, 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. See, for example, *Pelletrex Ltée v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-89-274, October 15, 1991, and the decisions mentioned therein.