

Ottawa, Monday, June 15, 1998

**Appeal No. AP-94-352**

IN THE MATTER OF an appeal heard on February 10, 1998,  
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 July 28, 1994, with respect to a notice of  
objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**RAYMOND RIOUX DISTRIBUTION**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Raynald Guay  
Raynald Guay  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-352

**RAYMOND RIOUX DISTRIBUTION**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* from a decision rejecting the appellant's application for a federal sales tax inventory rebate. Paragraph 120(4)(c) of the *Excise Tax Act*, combined with subparagraph 27(b)(i) of GST-Memorandum 900, provides that, to be entitled to a federal sales tax inventory rebate, the appellant had to have taken an inventory between April 1, 1990, and March 31, 1991, of the goods for which it applied for a rebate. The appellant did not provide the respondent with the inventory needed to review the appellant's application.

The appellant alleged that, due to illness, it was unable to draw up such a physical inventory within the prescribed period. The respondent contended, on the other hand, that the appellant's application could not be considered because the appellant had failed to provide the documents needed to review its application. The issue in this appeal is whether the respondent's decision to reject the application for a federal sales tax inventory rebate was justified.

**HELD:** The appeal is dismissed. Despite numerous requests by the respondent and the continuances granted by the Tribunal, the appellant failed to provide an inventory establishing the value of the goods described therein to reflect the amount of its application for a federal sales tax inventory rebate.

The appellant's only argument was that illness had prevented it from taking the inventory. The appellant's unfortunate situation cannot exempt it from the obligation to provide the necessary documents in support of its rebate application. The Tribunal must reiterate that it has no jurisdiction to apply principles of equity to modify the impact of a statutory provision.

Since the appellant failed to provide the necessary documents, the respondent was, therefore, justified in rejecting the appellant's application for a federal sales tax inventory rebate.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	February 10, 1998
Date of Decision:	June 15, 1998
Tribunal Member:	Raynald Guay, Presiding Member
Counsel for the Tribunal:	Philippe Cellard
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Louis Sébastien and Mélanie Vincent, for the respondent

Appeal No. AP-94-352

**RAYMOND RIOUX DISTRIBUTION**

**Appellant**

and

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: RAYNALD GUAY, Presiding Member

**REASONS FOR DECISION**

This is an appeal, heard by one member of the Tribunal,<sup>1</sup> under section 81.19 of the *Excise Tax Act*<sup>2</sup> (the Act) from a decision of the Minister of National Revenue dated July 28, 1994, which confirmed a determination dated October 5, 1992, rejecting the appellant's application for a federal sales tax (FST) inventory rebate.

The appellant sells automobile parts and maintenance products. On December 31, 1991, the appellant filed an application for an FST inventory rebate in the amount of \$3,094.20. On June 4, 1992, the Department of National Revenue (Revenue Canada) notified the appellant that its case file was to be audited and requested that a list of its inventory be provided.

On October 5, 1992, the respondent issued a notice of determination rejecting the appellant's application for rebate on the basis that its physical inventory had not been taken within the period prescribed by the Act, namely, April 1, 1990, to March 31, 1991.<sup>3</sup> On December 4, 1992, the appellant served a notice of objection to the respondent's determination, alleging that, due to illness, it was unable to prepare its physical inventory within the prescribed period. On July 28, 1994, the respondent rendered a decision rejecting the appellant's objection and confirming the previously issued determination.

On March 13, 1995, the appellant appealed this decision to the Tribunal. On August 11, 1995, a few days before the initial date of the hearing, the appellant submitted part of a detailed inventory list to the respondent. Once this document was filed, the hearing was postponed to a later date at the respondent's request. The hearing was postponed once more at the appellant's request, because of illness. On December 17, 1997, the Tribunal notified the appellant that the appeal would be heard on February 10, 1998. On February 9, 1998, the appellant indicated, in writing, that it would not be able to attend the hearing. Since the hearing had already been postponed several times throughout the proceedings

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1. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to section 81.19 of the *Excise Tax Act* in respect of an application for a rebate under section 120 of the *Excise Tax Act*.

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

3. Contrary to the implication of the notice sent by the respondent, the time period is not directly prescribed by the Act, but rather, as the Act provides, by GST-Memorandum 900 issued by Revenue Canada.

and the appellant did not seek a new date for the hearing, the Tribunal decided to proceed with the hearing as scheduled, in spite of the appellant's absence.

The following are the relevant sections of the Act:

120. (1) In this section,

“inventory” of a person as of any time means items of tax-paid goods that are described in the person's inventory in Canada at that time and that are

(a) held at that time for sale, lease or rental separately, for a price or rent in money, to others in the ordinary course of a commercial activity of the person.

(3) Subject to this section, where a person who, as of January 1, 1991, is registered under Subdivision d of Division V or Part IX 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); and

(b) where the tax-paid goods are used goods, the goods shall be deemed, for the purposes of section 176, to be used tangible personal property supplied in Canada by way of sale on January 1, 1991 to the person in respect of which tax was not payable by the person and to have been acquired for the purpose of supply in the course of commercial activities of the person for consideration paid on that day equal to 50% of the amount at which the goods would be required to be valued on that date for the purpose of computing the person's income from a business for the purposes of the *Income Tax Act*.

(4) For the purposes of subsection (3), the inventory of a person shall be determined as of the beginning of January 1, 1991, and may be determined

(a) on January 1, 1991;

(b) where the business of the person is not open for active business on January 1, 1991, on the first day after January 1, 1991, or the last day before January 1, 1991, on which the business is open for active business; or

(c) on a day before or after January 1, 1991 where the Minister is satisfied that the inventory system of the person is adequate to permit a reasonable determination of the person's inventory as of January 1, 1991.

289. (1) Notwithstanding any other provision of this Part, the Minister may ..., by notice served personally or by registered or certified mail, require any person to provide the Minister, within such reasonable time as is stipulated in the notice, with

(a) any information or additional information, including a return under this Part; or

(b) any document.

The following are the relevant subsections of GST-Memorandum 900<sup>4</sup> (the Memorandum):

16. Registrants will not be asked to submit documents with their completed application forms. However, they will be required to keep sufficient documentation on file to allow departmental officials to verify the amounts claimed.

27. For other categories of goods, firms will be permitted to estimate their FST-paid inventories without the need for a physical inventory count, under the following circumstances:

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4. *Federal Sales Tax Inventory Rebates*, Department of National Revenue, Customs and Excise, March 25, 1991.

- (b) inventories are valued at \$70,000 or less, excluding gasoline (other than aviation gasoline) fuel oil and diesel fuel, and a perpetual inventory system does not exist:
- (i) applicants who have a total inventory value of \$70,000 or less will be allowed to use any inventory taken between April 1, 1990 and March 31, 1991, and used for income tax purposes, to claim an FST inventory rebate provided the business is substantially the same on January 1, 1991 as when the actual physical stocktaking was done.

The issue in this appeal is whether the respondent's decision to reject the appellant's application for an FST inventory rebate was justified.

The appellant's only argument was a statement that, due to illness, it was unable to draw up a physical inventory within the prescribed period.

In its letter filed with the Tribunal on February 9, 1998, the appellant reaffirmed having been unable to complete its inventory due to illness.

On the other hand, the respondent contended that the appellant's FST inventory rebate application could not be considered because the appellant had failed to provide the documents needed to review its application.

The respondent indicated that numerous attempts were made to obtain the said documents. The respondent apparently communicated with the appellant six times after it served its notice of objection. It was only following repeated requests, to no avail, that the respondent rejected the appellant's objection and confirmed the determination.

The respondent contended that the documents finally provided by the appellant in August 1995 were illegible and incomplete and did not, therefore, permit a review of the appellant's application.

In support of this last affirmation, the respondent produced an affidavit by Mr. Martin Kirk, a Revenue Canada appeals officer, in which Mr. Kirk declares that the inventory list presented by the appellant in August 1995 was illegible. It is also indicated that Mr. Kirk called the appellant and asked that a legible inventory list be sent, but to no avail.

Subsection 120(4) of the Act provides that, to be entitled to an FST inventory rebate, the appellant had to have drawn up an inventory of the goods for which it applied for a rebate. Paragraph 120(4)(c) of the Act, combined with subparagraph 27(b)(i) of the Memorandum, indicates that this inventory had to be drawn up between April 1, 1990, and March 31, 1991.

Despite numerous requests by the respondent and the continuances granted by the Tribunal, the appellant failed to provide an inventory establishing the value of the goods described therein to reflect the amount of its application for an FST inventory rebate.

The appellant's only argument was that illness had prevented it from drawing up the inventory. The appellant's unfortunate situation cannot exempt it from the obligation to provide the necessary documents in

support of its rebate application. The Tribunal must reiterate that it has no jurisdiction to apply principles of equity to modify the impact of a statutory provision.<sup>5</sup>

Since the appellant failed to provide the necessary documents, the respondent was justified in rejecting the appellant's application for an FST inventory rebate.

For the foregoing reasons, the Tribunal dismisses the appeal.

Raynald Guay  
Raynald Guay  
Presiding Member

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5. See *Smith's Marine Instruments Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-342, December 16, 1997; *Arnold Forsythe v. The Minister of National Revenue*, Appeal No. AP-93-273, September 9, 1996; and *Pelletrex Ltée v. The Minister of National Revenue*, Appeal No. AP-89-274, October 15, 1991, and the decisions referenced therein.