

Ottawa, Tuesday, August 25, 1998

Appeal No. AP-95-130

IN THE MATTER OF an appeal heard on May 5, 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 May 18, 1995, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

UNITED POWER LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Raynald Guay
Raynald Guay
Member

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-130

UNITED POWER LTD.

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 federal sales tax (FST) inventory rebate on the basis that it was received outside the time limit specified under the *Excise Tax Act*. The appellant's representative filed an application for an FST inventory rebate in the amount of \$20,761.92 in respect of the appellant's tax-paid goods held in inventory as of January 1, 1991. The application was dated November 8, 1994, and received by the respondent on November 14, 1994. The issue in this appeal is whether the appellant is entitled to an FST inventory rebate notwithstanding that its application for the rebate was filed outside the limitation period set out in subsection 120(8) of the *Excise Tax Act*.

HELD: The appeal is dismissed. Unfortunately, no evidence was presented to show that the appellant filed an application for an FST inventory rebate before 1992. Indeed, the parties agreed that the application was not filed within the statutory time limit. Consequently, the Tribunal cannot find in favour of the appellant. The Tribunal is bound by the law. It has no authority to waive or extend statutory time limits and no authority to grant equitable relief in determining appeals.

Place of Hearing: Vancouver, British Columbia

Date of Hearing: May 5, 1998

Date of Decision: August 25, 1998

Tribunal Members: Charles A. Gracey, Presiding Member
Raynald Guay, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Margaret Fisher

Appearances: George W. Ingham, for the appellant
Frederick B. (Rick) Woyiwada, for the respondent

Appeal No. AP-95-130

UNITED POWER LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
RAYNALD GUAY, 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 November 22, 1994, that rejected an application for a federal sales tax (FST) inventory rebate filed under section 120² of the Act on the basis that it was received outside the time limit specified under the Act. The appellant served a notice of objection dated January 30, 1995, which was disallowed in a notice of decision dated May 18, 1995.

The appellant is an electrical contractor. The appellant's representative filed an application for an FST inventory rebate in the amount of \$20,761.92 in respect of the appellant's tax-paid goods held in inventory as of January 1, 1991. The application was dated November 8, 1994, and received by the respondent on November 14, 1994.

The issue in this appeal is whether the appellant is entitled to an FST inventory rebate notwithstanding that its application for the rebate was filed outside the limitation period set out in subsection 120(8) of the Act.

At the hearing, the appellant was represented by its president and owner, Mr. George W. Ingham. He explained that his firm went through business difficulties during the years leading up to the institution of the Goods and Services Tax (GST). For example, at some point between 1984 and 1987, the bank called the appellant's loan of approximately \$1 million. This caused the appellant's stock to go down from \$1.50 to \$0.12. Mr. Ingham also explained that he went through family and health problems. He testified that he thought that the new GST was merely an extension of the FST and that he could simply deduct the GST owing from the FST inventory rebate that he expected to receive. He did not realize that the GST and the FST were two separate taxes. Mr. Ingham explained that he began making enquiries and seeking assistance in relation to the appellant's rebate application prior to the end of 1991. He presented a letter to that effect in evidence. Unfortunately, there was no date on the letter. He also testified that he was not informed by any of the officials of the Department of National Revenue with whom he dealt that the GST and FST were two separate taxes and that he had to file an application for an FST inventory rebate before 1992.

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

2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27, s. 6.

Mr. Ingham testified that he took this matter and the matter of the GST to the Tax Court of Canada. The judge indicated that the FST rebate issue was beyond the jurisdiction of the Tax Court of Canada, but confirmed the GST assessment. In his judgement, the judge stated the following: “While there is no power in this Court to order that collections not be put into effect until these other matters are dealt with, it is recommended that some arrangement be made with G.W. Ingham, the president of the Appellant.”³ Subsequent to the decision of the Tax Court of Canada, Mr. Ingham received a letter from the Deputy Minister of National Revenue which stated, in part, as follows: “should the CITT not provide a favourable decision to your appeal and you still want to apply for a remission order, the Department will review your submission and respond in a fair and impartial manner.”⁴

Mr. Ingham argued that he and many other business people were confused about the GST at the time that it was introduced and that he honestly believed that he would be allowed to deduct the GST owing from the FST inventory rebate. Mr. Ingham asked that the Tribunal grant him a rebate in the amount of \$31,836.27.

Counsel for the respondent noted that there is no dispute that the FST inventory rebate was made after 1992. Accordingly, he argued that the Tribunal has no jurisdiction to grant the relief requested.

For the purposes of this appeal, the relevant FST inventory rebate provisions are found in subsections 120(3) and (8) of the Act, which state, in part, as follows:

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

(8) No rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992.

Unfortunately, no evidence was presented to show that the appellant filed an application for an FST inventory rebate before 1992. Indeed, the parties agreed that the application was not filed within the statutory time limit. Consequently, the Tribunal cannot find in favour of the appellant. The Tribunal is bound by the law. It has no authority to waive or extend statutory time limits and no authority to grant equitable relief in determining appeals.⁵

The Tribunal notes, however, that the evidence shows that the appellant was not seeking to avoid paying tax by seeking to deduct the amount of GST owing from the FST inventory rebate that it expected to receive. Unfortunately, no legislative provision permitted it to do so. The Tribunal also notes that the Deputy Minister of National Revenue has indicated that the matter may be reviewed in the event of an unfavourable ruling by the Tribunal.

3. 4 G.T.C. 3052 at 3053 and [1996] T.C.J. No. 80 at para. 10.

4. Exhibit B-1.

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

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Raynald Guay

Raynald Guay
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member