

Ottawa, Thursday, October 31, 1996

Appeal No. AP-95-171

IN THE MATTER OF an appeal heard on September 9, 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 September 7, 1995, with respect to a
notice of objection served under section 81.17 of the *Excise Tax
Act*.

BETWEEN

WAITE AIR PHOTOS INC.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Lyle M. Russell

Lyle M. Russell
Member

Charles A. Gracey

Charles A. Gracey
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-171

WAITE AIR PHOTOS INC.

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 rejecting an application for a federal sales tax refund on the basis that the application was not filed within two years after the payment of the moneys pursuant to section 68 of the *Excise Tax Act*. The issue in this appeal is whether the Tribunal has the authority to waive or extend this time limit. In an effort to expedite this matter, the Tribunal held a hearing by way of a telephone conference on September 9, 1996, to hear argument on this issue.

HELD: The appeal is dismissed. Although the appellant's circumstances are regrettable, there is no legal basis upon which the federal sales tax refund can be granted. There is no provision in the *Excise Tax Act* which grants authority to the Tribunal to waive, extend or alter the prescribed time limit for filing an application pursuant to section 68 of the *Excise Tax Act*. The Tribunal's jurisdiction in determining appeals is very limited and does not include applying equitable remedies. The Tribunal must apply the law, even where such application results in financial hardship for the appellant

Places of Hearing:	Ottawa, Ontario, and Maple Ridge, British Columbia
Date of Hearing:	September 9, 1996
Date of Decision:	October 31, 1996
Tribunal Members:	Arthur B. Trudeau, Presiding Member Lyle M. Russell, Member Charles A. Gracey, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Donald E. Waite, for the appellant Josephine A.L. Palumbo, for the respondent

Appeal No. AP-95-171

WAITE AIR PHOTOS INC.

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THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
LYLE M. RUSSELL, Member
CHARLES A. GRACEY, 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 that rejected an application for a federal sales tax (FST) refund in the amount of \$5,572.96 on the basis that the application was not filed within two years after the payment of the moneys pursuant to section 68 of the Act. The appellant served a notice of objection dated February 20, 1995, that was disallowed by the respondent in a decision dated September 7, 1995.

The appellant is engaged in the business of photography in Maple Ridge, British Columbia. Before the coming into force of the Goods and Services Tax, the appellant operated under a manufacturer's sales tax licence. The appellant's application for an FST refund was for taxes paid in error between March 1990 and December 31, 1990. The application was dated January 24, 1995, and was received by the respondent on January 30, 1995. It was agreed by the parties that the application was filed outside the time limit prescribed by the Act. The issue in this appeal, therefore, is whether the Tribunal has the authority to waive or extend the time limit prescribed by the Act. In an effort to expedite this matter, the Tribunal held a hearing by way of a telephone conference on September 9, 1996, to hear argument on this issue.

The appellant's representative explained that he did not file the application for an FST refund on time because he was not made aware that the appellant was eligible for such a refund and, once he was made aware of this by one of the appellant's competitors, he ran into some difficulty in attempting to file the application. For example, the appellant's accountant, who was trying to modernize his computer equipment, told him that it would be better if they dealt with one problem at a time. In addition, the appellant's accountant suffered a mild heart attack and things were once again delayed. The appellant's representative asked the Tribunal to exercise some sort of discretion and grant the appellant its refund even though the application was not filed within the time limit prescribed by the Act. Counsel for the respondent argued that the appeal must fail because the Tribunal has no authority to grant equitable relief to the appellant or extend the time limit prescribed by the Act.

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

For the purposes of this appeal, the relevant legislative provision is section 68 of the Act, which reads as follows:

Where a person, otherwise than pursuant to an assessment, has paid any moneys in error, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account as taxes, penalties, interest or other sums under this Act, an amount equal to the amount of those moneys shall, subject to this Part, be paid to that person if he applies therefor within two years after the payment of the moneys.

(Emphasis added)

It is clear to the Tribunal that, under section 68 of the Act, an application for an FST refund must be filed within two years after the payment of the moneys. It was agreed by the parties that the application was filed outside the time limit prescribed by the Act. The Tribunal is of the same opinion. Although the appellant's circumstances are regrettable, there is no legal basis upon which the federal sales tax refund can be granted. There is no provision in the Act which grants authority to the Tribunal to waive, extend or alter the prescribed time limit for filing an application pursuant to section 68 of the Act. The Tribunal's jurisdiction in determining appeals is very limited and does not include applying equitable remedies.² The Tribunal must apply the law, even where such application results in financial hardship for the appellant.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Lyle M. Russell

Lyle M. Russell
Member

Charles A. Gracey

Charles A. Gracey
Member

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