

Federal Court



Cour fédérale

Date: 20140416

Docket: T-1571-13

Citation: 2014 FC 367

Ottawa, Ontario, April 16, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MIROSLAW DRAG

Applicant

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a Manager in the Appeals Division of the Canada Revenue Agency [the Manager], pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Manager denied the Applicant's request to have Goods and Services Tax [GST] owing, various penalties and interest accrued on GST owing cancelled.

I. Issues

[2] The issues in the present application are as follows:

A. Was the Manager correct in finding she had no jurisdiction to waive the GST owed by the Applicant?

B. Was the Manager's decision not to grant additional relief from interest and penalties reasonable?

II. Background

[3] The Applicant started a massage therapy business in 1999 or 2000. On May 25, 2000, the Applicant's GST account was opened by the Canada Revenue Agency [the CRA].

[4] On July 16, 2001, the CRA sent the Applicant a letter, notifying him of his failure to file a GST return.

[5] On July 23 and 24, 2001, the Applicant spoke to a representative of the CRA. According to notes of these interactions in the CRA's logs, the Applicant stated that he did not collect GST from his clients because he was unaware that it was required for the services he provided as a massage therapist. The CRA logs also indicate that the Applicant stated that he would be speaking to his accountant to determine the extent of his GST liability. The CRA representative advised the Applicant to request a ruling to determine whether his business was taxable, and provided contact information for GST Rulings. GST Rulings is a branch of the CRA that issues rulings which determine whether an individual's business activities attract GST liability.

[6] According to the Applicant, the CRA representative that he spoke to on July 23 and 24, 2001, informed him that his massage therapy services were not subject to GST liability. Consequently, the Applicant requested his GST account be cancelled.

[7] On July 27, 2001, the CRA discontinued the Applicant's GST account.

[8] On May 27, 2009, a review by the CRA resulted in the reactivation of the Applicant's GST account.

[9] On December 23, 2009, the Applicant was issued a notice of re-assessment from the CRA which stated that he owed a total of \$19,317.47. Of this, \$423.86 resulted from failure to file penalties, \$158.74 from late remitting penalties, \$91.21 from instalment penalties, and \$2,197.06 from arrears interest. The remainder was for GST owing.

[10] In a Request for Taxpayer Relief dated August 14, 2010, the Applicant requested that the CRA cancel the outstanding interest and penalties assessed against him, on the basis that the penalties and interest arose solely because of the misinformation provided by the CRA representative whom he contacted in 2001.

[11] On June 6, 2011, a representative of the CRA spoke with the Applicant. According to the CRA's logs, the Applicant advised the representative of his belief that his massage therapy business was exempt from GST taxation. The representative declined to cancel the Applicant's

account, and advised him to obtain a GST Ruling. There is nothing in the CRA's records that show the Applicant ever sought a GST ruling.

[12] In a decision dated June 10, 2011, the CRA allowed the Applicant's Request for Taxpayer Relief in part. It agreed to cancel the arrears interest owing until June 3, 2009, on the basis that the Applicant never had the GST owing available for his personal use, as it was uncollected. However, the CRA declined to cancel any of the penalties assessed against the Applicant.

[13] The Applicant requested an administrative review of this decision in a second-level Request for Taxpayer Relief dated November 25, 2011. In this Request, the Applicant argued that he should not be obligated to pay the GST owing from December 31, 2005, to December 31, 2008, as he was told he was not obliged to collect GST by the CRA representative in 2001.

[14] In a letter dated June 7, 2013, the Manager noted that she has no jurisdiction to cancel the GST owed by the Applicant.

[15] With regard to the penalties and interest, the Manager was satisfied that the partial relief of interest arrears of \$2,144.06 was sufficient. The Manager noted that the CRA had twice recommended that the Applicant obtain a GST Ruling, but there was no evidence that the Applicant did so. Given this, the Applicant's self-assessment obligations, and the fact that massage therapy is not normally exempt from GST liability, the Manager determined that no further reduction in interest or penalties was appropriate.

III. Standard of Review

[16] The standard of review with regard to whether the Manager had no jurisdiction to waive the GST owed is correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50). The standard of review is reasonableness for the issue of whether the Manager's decision not to grant relief from interest and penalties was reasonable (*Quastal v Canada (Revenue Agency)*, 2011 FC 143 at para 21).

IV. Analysis

[17] The Applicant seeks full waiver of the uncollected GST tax, on the basis that he does not have the ability to retroactively collect it from his clients, as well as any outstanding interest and penalties assessed against him.

[18] However, subsection 281.1 of the *Excise Tax Act*, RSC 1985, cE-15 [the ETA] only grants the manager power to waive interest and penalties, not the authority to nullify underlying tax obligations.

[19] To dispute his tax liability, the Applicant should have filed a Notice of Objection, pursuant to subsection 301(1.1) of the ETA, and, if necessary, filed a Notice of Appeal to the Tax Court of Canada (*Canada (Minister of National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250).

[20] The Manager's decision that she lacked jurisdiction to cancel the GST owing was correct.

[21] I also agree that the Manager was reasonable in declining to grant the Applicant relief from the \$726.81 in late penalties and remaining interest accrual. As a recipient of supply, the Applicant is obligated to collect the GST/HST payable pursuant to subsection 221(1) of the ETA. The notations in the CRA's logs show that the Applicant was twice advised that he should obtain a GST Ruling to determine his tax liability. There is no evidence that he did so. In view of the deference owed to the Manager by this Court, I find his decision to be reasonable.

[22] Given the circumstances of this matter, there will be no order of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1571-13

STYLE OF CAUSE: DRAG V CRA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 15, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANSON J.

DATED: APRIL 16, 2014

APPEARANCES:

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ON HIS OWN BEHALF

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