Docket: 2016-1617(GST)I

BETWEEN:

ROSS A. ANDREWS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 27, 2016, at London, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jack Warren

JUDGMENT

The appeal from the Notices of Assessment dated March 16, 2012 made under the *Excise Tax Act* for the annual reporting periods from January 1, 2006 to December 31, 2010 is dismissed.

Signed at Ottawa, Canada, this 13th day of February 2017.

"V.A. Miller"

V.A. Miller J.

Citation: 2017TCC23
Date: 20170213
Docket: 2016-1617(GST)I

BETWEEN:

ROSS A. ANDREWS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] The issue in this appeal is whether, during the annual reporting periods January 1, 2006 to December 31, 2010 (the "period"), the Appellant provided a "freight transportation service" within the meaning of subsection 1(1) of Part VII of Schedule VI of the *Excise Tax Act* (the "*Act*").

Preliminary Matter

[2] In his Notice of Appeal, the Appellant wrote that the periods at issue were January 1, 2007 to December 31, 2010. At the hearing, he asked that his Notice of Appeal be amended so that it also included the period January 1, 2006 to December 31, 2006. His request was granted.

[3] The net tax in issue is as follows:

Periods: January 1 to December 31	Sales	GST/HST Collectible	Input Tax Credits	Net Tax
2006	$47,548	$3,091	$339	$2,752
2007	$52,244	$3,983	$1,965	$2,018
2008	$69,510	$3,862	$1,535	$2,327
2009	$65,275	$3,476	$1,478	$1,998
2010	$68,845	$3,736	$1,302	$2,434
Total				$11,529

Facts

[4] During the period, the Appellant operated Canadian Auto Transport ("Canadian Auto") as a sole proprietorship. The business of Canadian Auto involved arranging for the delivery of vehicles from the United States to Canada. It operated on a seasonal basis between November and April.

[5] The Appellant described Canadian Auto's business. He stated that very often medical and travel insurance policies cover the cost of returning a vehicle to Canada when there was a medical emergency which prevented the owner of the vehicle from operating it. Canadian Auto received requests from two insurance companies for the return of vehicles. The requests were received by email or by telephone. The vehicles were Canadian owned and registered. Once Canadian Auto received the request from the insurance company, all subsequent communications with respect to the return of the vehicle were between Canadian Auto and the owner of the vehicle.

[6] Canadian Auto then arranged for the vehicle to be brought back to Canada. Most often, it sub-contracted with an individual (the "driver") to drive the vehicle from the pick-up point in the United States to its destination in Canada. Canadian Auto reimbursed the driver for all expenses associated with driving the vehicle to Canada. These expenses included the driver's costs to travel to the United States to pick-up the vehicle (such as the flight from Canada to the United States) as well as any expenses incurred to drive the vehicle to its final destination in Canada. On rare occasions, the Appellant drove the vehicle himself.

[7] Alternatively, on occasion, Canadian Auto sub-contracted the pick-up and delivery of the vehicle with a third-party trucking company. The trucking company did not charge GST/HST to Canadian Auto.

[8] Based on the agreement between Canadian Auto and the vehicle owner, it appeared that the vehicle owner was not aware which of the above methods would be used to deliver the vehicle. The agreement read: "I/We [name] hereby authorize Canadian Auto Transport Inc. or its contracted representative to arrange delivery of my/our vehicle described below".

[9] The Appellant stated that Canadian Auto assumed full responsibility for the safe delivery of the vehicle only. It was not responsible for the contents of the vehicle and there were no passengers allowed in the vehicle.

[10] The Appellant stated that Canadian Auto is "self-insured". It does not have an insurance policy to cover any damage which might be sustained by the vehicle when it is in transit because he "was unable to find someone to underwrite it". Instead, if there was damage to a vehicle during the trip to Canada, the Appellant personally paid for the repairs. To support his evidence, the Appellant provided communications between Canadian Auto and certain vehicle owners where the Appellant paid the vehicle owner an amount to cover the cost of repairs when damage was sustained while delivering the vehicle.

[11] The Appellant stated that he was prepared to cover damage to the vehicles up to the amount of $250,000. However, if there had been a loss of life or a catastrophic accident, he would have relied on the vehicle owner's insurance policy because most policies have third party insurance.

[12] I note that no vehicle owner's insurance policy was submitted in evidence.

[13] The delivery of the vehicle was considered complete when the vehicle was brought to the designated recipient or his or her representative, who signed the Vehicle Delivery Record. In signing the Vehicle Delivery Record, the recipient acknowledged the successful delivery of the vehicle in the same condition as documented at the time of pick-up and with an equivalent or greater fuel content. At this point, Canadian Auto was relieved of any further responsibility.

[14] The insurance company was billed after the vehicle was delivered to its destination in Canada.

Position of the Parties

[15] It was the Appellant's position that the services provided by Canadian Auto were zero-rated. He stated that Canadian Auto provided a "freight transportation service" because he assumed full liability for the delivery of the services.

[16] The Appellant stated that at least two employees of the Canada Revenue Agency concluded that the services provided by Canadian Auto were zero-rated. He operated on this basis and did not collect GST/HST.

[17] It was also the Appellant's position that it is "unfair and inequitable" to zero-rate the services of one segment of providers and not another based on the mode of movement.

[18] It was the Respondent's position that the Appellant provided a driving service.

[19] The term "driving services" is not defined in the *Act*. It is an expression used in Guide RC4080 - GST/HST Information for Freight Carriers. The reference to "driving services" is with respect to "freight transportation services" and it reads:

> **Freight transportation services**
>
> Freight transportation service means the service of transporting goods. In certain circumstances, other services may also be considered freight transportation services. Before determining whether a freight transportation service is taxable at 0%, 5%, 12%, 13%, 14%, or 15%, you have to determine if the service you provide is a freight transportation service. You also have to determine if the property and services you provide are incidental to, or part of, a freight transportation service.
>
> **Driving services**
>
> The service of a driver is usually not a freight transportation service. This is the case when, for example, a self-employed driver does not use his or her own truck and does not assume responsibility for the supply of the freight transportation service. The driver is then supplying a driving service.

Law

[20] Zero-rated supplies with respect to transportation services are provided in Part VII of Schedule VI of the *Act*. Section 8 of Part VII provides that "inbound freight" is zero-rated as follows:

> SCHEDULE VI
>
> Zero-Rated Supplies
>
> PART VII
> Transportation Services
>
> 8 A supply of a freight transportation service in respect of the transportation of tangible personal property from a place outside Canada to a place in Canada.

[21] There are four conditions that must be met for the supply to be zero-rated under section 8:

a) The supply was a "service" as defined in subsection 123(1). This condition was met.

b) The service must be a supply of a "freight transportation service". This was the issue before the Court.

c) The supply consisted of the "transportation" of tangible "personal property". The term "transportation" is not defined in the *Act* but the term "personal property" is defined in subsection 123(1).

d) The supply in respect of the transportation of goods must be "from a place outside Canada to a place in Canada". This condition was met in this case.

[22] The definition of "freight transportation service" is also contained in Part VII of Schedule VI of the *Act* at subsection 1(1). It reads:

> *freight transportation service* means a particular service of transporting tangible personal property and, for greater certainty, includes
>
> (a) a service of delivering mail, and
>
> (b) any other property or service supplied to the recipient of the particular service by the person who supplies the particular service, where the other property or service is part of or incidental to the particular service, whether there is a separate charge for the other property or service,
>
> but does not include a service provided by the supplier of a passenger transportation service of transporting an individual's baggage in connection with the passenger transportation service;

[23] The phrase "freight transportation service" is referenced in the definition of "carrier" in subsection 123(1) of the *Act* which reads:

> "**carrier**" means a person who supplies a freight transportation service within the meaning assigned by subsection 1(1) of Part VII of Schedule VI.

Analysis

[24] The Appellant stated that the services offered by Canadian Auto were not "driving services" as that phrase is defined by the Minister in Guide RC4080. It was his view that his services could be distinguished from "driving services" because he assumed liability for the vehicles.

[25] I disagree with the Appellant. The evidence before me showed that the Appellant assumed liability for small dents or scrapes to the vehicles he was delivering. His testimony disclosed that the Appellant did not and would not assume complete responsibility for the vehicles. The services offered by Canadian Auto are indistinguishable from "driving services" in this regard.

[26] In *Vuruna v R*, 2010 TCC 365, Bedard J., as he then was, found that a truck driver who did not use his own truck and who did not assume liability for the supply of the freight transportation service was providing a driving service.

[27] Whether the service provided by Canadian Auto was a "freight transportation service" depends on whether it was a "particular service of transporting" tangible personal property.

[28] When interpreting tax statutes, the Supreme Court of Canada, in *Canada Trustco Mortgage Co v The Queen*, 2005 SCC 54 stated at paragraph 10:

> 10 It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see 65302 *British Columbia Ltd. v. R.*, [1999] 3 S.C.R. 804 (S.C.C.), at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[29] In order to ascertain the ordinary sense of the word "transporting", I have consulted two dictionaries. The online *Oxford* dictionary defines the verb "transport" as "take or carry (people or goods) from one place to another by means of a vehicle, aircraft, or ship". The *Black's Law Dictionary (10th Edition)* defines "transport" as "to carry or convey (a thing) from one place to another". As a result of these definitions, I have concluded that a "freight transportation service" means

a particular service of carrying personal property from one place to another. The personal property can be carried by means of a vehicle, aircraft rail or ship. However, there must be mode of carrying the personal property. Contrary to the Appellant's arguments, the vehicle cannot be both the personal property and the means of carrying it at the same time.

[30] It is my view that the service provided by Canadian Auto was not a "particular service of transporting" and therefore, it was not a "freight transportation service". Its services were not zero rated. Canadian Auto provided a driving service to the insurance companies and the owners of the vehicles.

[31] The appeal is dismissed.

Signed at Ottawa, Canada, this 13th day of February 2017.

"V.A. Miller"

V.A. Miller J.

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COURT FILE NO.:	2016-1617(GST)I
STYLE OF CAUSE:	ROSS A. ANDREWS AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	London, Ontario
DATE OF HEARING:	October 27, 2016
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
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APPEARANCES:

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COUNSEL OF RECORD:

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