Docket: 2002-978(GST)I

BETWEEN:

DIANE PAYETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Let the Reasons for Judgment, delivered orally from the bench at the Tax Court of Canada, 500, Place d'Armes, Montréal, Quebec, on February 12, 2003, and revised on March 12, 2003, be filed.

Signed at Ottawa, Canada, this 12th day of March 2003.

"P. R. Dussault"

J.T.C.C.

Translation certified true
on this 19th day of April 2004.

Sophie Debbané, Revisor

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REASONS FOR JUDGMENT

(Delivered orally from the bench at Montréal, Quebec, on February 12, 2003, and revised on March 12, 2003)

P.R. Dussault, J.T.C.C.

[1] My decision is to allow the appeal solely in order to cancel the penalty. The Goods and Services Tax (the **GST**) was initially assessed in accordance with the presumption set out in section 191 of the *Excise Tax Act* (the ***Act***), which applies to the self-supply of a residential complex, on the basis of the fair market value of the complex, which is no longer disputed. The assessment was also made on the basis of the input tax credits claimed, some of which were disallowed on the ground that the vouchers required under the *Act* and the *Regulations* were not provided.

[2] Essentially, the evidence adduced by the appellant consisted of establishing the total expenses incurred and of stating that the tax was always paid on all these expenses. In my opinion, that evidence is not sufficient in light of subsection 169(1) of the *Act* and the requirements set out in the *Regulations* concerning the information required to claim the input tax credit. Here, the situation is not one where certain specific required information would be missing but one where there is a complete absence of invoices for expenses totalling approximately $60,000, some of them

apparently incurred for major items, such as brick, aluminium, vinyl, and structural lumber.

[3] As counsel for the respondent noted, a lump-sum claim was made on the basis of total expenses, without it being possible to determine even indirectly or approximately how much was spent on what. I consider that the requirements of the *Act* and the *Regulations* have simply not been met.

[4] The appellant's spouse worked in the construction industry and looked after the construction of the complex. His testimony on the reasons for the complete absence of invoices, which were for expenses apparently incurred for major items and on which the tax was apparently paid regularly, did not provide much clarification. The need to keep receipts should have been obvious, if only in order to validate the applicable warranties, as counsel for the respondent emphasized.

[5] As well, in the context it is hard to understand why neither the appellant nor her spouse saw the need to keep receipts for the purposes of the applicable tax legislation, on the GST, the Quebec Sales Tax or possibly income tax, under which tax legislation, in my view, keeping vouchers is essential. This situation is all the more surprising when a person works in the trade and does business in the construction industry.

[6] The appellant testified that she asked her accountant whether she was subject to the GST and accepted that person's answer that she was not with no further explanation. I note here that it has been determined that simply consulting an accountant does not necessarily establish due diligence. If the appellant consulted her accountant, we can at least infer from that fact, since she asked the question, that she might have considered it possible that she was subject to the GST. In my view, minimal precaution would have required that she keep strict accounting records of the costs of building the complex, being careful to ensure that she obtained and kept all the vouchers.

[7] Nevertheless, since the tax payable was assessed mainly on the basis of a presumption and of the difference between the total credits claimed and the credits disallowed on the ground that vouchers were missing, I consider that the penalty should be cancelled since the appellant nevertheless did state under oath that she consulted her accountant about her tax liability resulting from the construction of the complex and because she is perhaps not entirely responsible for failing to adduce the vouchers, or at least some of them, several years after the fact.

[8] That said, given the requirement under subsection 286(3) of the *Act* to keep records for a six-year period, I emphasize that it is nonetheless odd that no vouchers could be found from a number of suppliers for amounts that are in fact quite substantial. Lastly, where the penalty is concerned, I consider this to be a borderline case.

[9] For the foregoing reasons, the appeal is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment, solely in order to cancel the penalty and to adjust the interest accordingly.

Signed at Ottawa, Canada, this 12th day of March 2003.

"P. R. Dussault"

J.T.C.C.

Translation certified true
on this 19th day of April 2004.

Sophie Debbané, Revisor