

Docket: 2006-2283(GST)I

BETWEEN:

CHRIS OLSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 12, 2007 at Saskatoon, Saskatchewan

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Anne Jinnouchi

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated March 16, 2006, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 5th day of September, 2007.

"G. A. Sheridan"

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Sheridan, J.

Citation: 2007TCC508  
Date: 20070905  
Docket: 2006-2283(GST)I

BETWEEN:

CHRIS OLSON,

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and

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Respondent.

### **REASONS FOR JUDGMENT**

Sheridan, J.

[1] The Appellant, Chris Olson, is appealing the Notice of Decision of the Minister of National Revenue disallowing an Input Tax Credit for the Goods and Services Tax paid on a Chevrolet Silverado truck purchased on December 30, 2005.

[2] The facts are essentially as set out in the assumptions in paragraph 6 of the Reply to the Notice of Appeal<sup>1</sup>:

- (a) the Appellant had a farm operation in the period<sup>2</sup>;
- (b) at all material times the Appellant was a registrant for the purposes of the *Excise Tax Act* (the "ETA");
- (c) the Appellant purchased the Truck on December 30, 2005<sup>3</sup>;
- (d) the Appellant purchased the Truck for \$47,982.93 plus tax of \$3,358.81;

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<sup>1</sup> The assumption in paragraph 6(g) is not a properly assumed fact. It is a legal conclusion and the very issue in dispute in this appeal.

<sup>2</sup> The evidence showed that the Appellant's "commercial activities" also included his work as an environmental consultant in the oilfields of Saskatchewan and Alberta.

<sup>3</sup> Exhibit A-1.

- (e) the Appellant claimed an input tax credit of \$3,358.81 for the tax paid/payable on the Truck in his return filed for the period;
- (f) the Truck is an extended cab truck;
- (g) at all material times the Truck was a passenger vehicle;
- (h) the Truck was not used for business purposes in 2005;
- (i) the Appellant obtained physical possession of the Truck on January 3, 2006;
- (j) the Truck was first used in the course of the Appellant's commercial activities in the first week of 2006;
- (k) the Truck was not used all or substantially all for the transportation of goods, equipment, or passengers in the course of gaining or producing income in 2005, which is the year in which the Truck was acquired;
- (l) the Appellant intended to use the Truck more than 90% in the course of his commercial activities.

[3] The Minister disallowed the Appellant's claim for an ITC equal to the full GST paid on the basis that the Silverado had not been used in the Appellant's business until 2006. The Minister's position is that in 2005, the Silverado was a "passenger vehicle" within the meaning of subsection 123(1) of the *Excise Tax Act*. As such, its capital cost is deemed, by the applicable provisions of the *Income Tax Act* and *Excise Tax Act*, to be \$30,000 rather than the actual purchase price of \$47,982.93. Accordingly, the allowable ITC's must be likewise reduced from \$3,358.81 (the GST actually paid) to \$964.81<sup>4</sup>.

[4] Whether the Silverado was a "passenger vehicle" in 2005 depends on the interpretation of the relevant provisions in the *Excise Tax Act* and *Income Tax Act*. The starting point is the definition of "passenger vehicle" in subsection 123(1) of the *Excise Tax Act* which adopts the meaning assigned to that term by subsection 248(1) of the *Income Tax Act*:

"passenger vehicle" means an automobile acquired after June 17, 1987 (other than an automobile acquired after that date pursuant to an obligation in writing entered into before June 18, 1987) and an automobile leased under a

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<sup>4</sup> Section 201 and subsection 202(2) of the *Excise Tax Act* and subsection 248(1) and paragraphs 13(7)(g) and (h) of the *Income Tax Act* and section 7307 of the *Income Tax Regulations*.

lease entered into, extended or renewed after June 17, 1987; [Emphasis added.]

[5] The word "automobile" is defined in subsection 248(1) as:

"automobile" means

(a) a motor vehicle that is designed or adapted primarily to carry individuals on highways and streets and that has a seating capacity for not more than the driver and 8 passengers. [Emphasis added.]

[6] The term "motor vehicle" is defined in subsection 248(1) as:

"motor vehicle" means an automotive vehicle designed or adapted to be used on highways and streets but does not include

(a) a trolley bus, or

(b) a vehicle designed or adapted to be operated exclusively on rails;

[7] To this point, there is no question that the Silverado comes within the meaning of "automobile" and is, therefore a "passenger vehicle". To succeed in his appeal, the Appellant must show that the Silverado satisfies the criteria in any of the three subparagraphs of paragraph (e) which exclude from the definition of "automobile" a "motor vehicle" that is:

...

(i) of a type commonly called a van or pick-up truck, or a similar vehicle, that has a seating capacity for not more than the driver and two passengers and that, in the taxation year in which it is acquired or leased, is used primarily for the transportation of goods or equipment in the course of gaining or producing income, [Emphasis added.]

(ii) of a type commonly called a van or pick-up truck, or a similar vehicle, the use of which, in the taxation year in which it is acquired or leased, is all or substantially all for the transportation of goods, equipment or passengers in the course of gaining or producing income, or [Emphasis added.]

(iii) of a type commonly called a pick-up truck that is used in the taxation year in which it is acquired or leased primarily for the transportation of goods, equipment or

passengers in the course of earning or producing income at one or more locations in Canada that are [Emphasis added.]

(A) described, in respect of any of the occupants of the vehicle, in subparagraph 6(6)(a)(i) or (ii), and

(B) at least 30 kilometres outside the nearest point on the boundary of the nearest urban area, as defined by the last census dictionary published by Statistics Canada before the year, that has a population of at least 40,000 individuals as determined in the last census published by Statistics Canada before the year.

[8] Because paragraph (e) is written disjunctively, the Appellant need only satisfy the criteria in one of the three subparagraphs to exempt the Silverado from the definition of "automobile" and thereby, from the definition of "passenger vehicle". The Silverado does not meet the criteria in subparagraphs (i) because as an "extendicab" truck, it can accommodate more than two passengers; subparagraph (iii) does not apply because the Silverado was not used in the locations contemplated by the paragraph 6(6)(a)(i) and (ii) of the *Act*. The issue, then, is whether the Silverado is caught by the criteria in subparagraph (ii).

[9] The Appellant represented himself. His argument was essentially one of common sense: that in 2005 he paid GST on the Silverado. At the time of its purchase he intended to use it in his business and upon taking possession of it on January 3, 2006, did use it for that purpose. Although the Silverado was in a usable state when purchased on December 30, 2005, the Appellant chose to leave it with the dealership over the holiday period to have the equipment from his trade-in vehicle transferred to the new one. According to the Appellant, this interval ought to be irrelevant to the determination of the status of the Silverado as a "passenger vehicle".

[10] Counsel for the Respondent submitted that the Appellant's situation was not excluded from the definition of "passenger vehicle" by subparagraph (ii) because the Silverado had not actually been used in his commercial activities in 2005. In support of her argument, counsel referred to *McKay v. Her Majesty the Queen*<sup>5</sup> in which Rip, J. (now A.C.J.) interpreted subparagraph (ii)<sup>6</sup> as follows:

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<sup>5</sup> [2001] 1 C.T.C. 2244. (T.C.C., Informal Procedure).

<sup>6</sup> Since the *McKay* decision, subparagraph (ii) has been slightly amended to add "or leased" after the word "acquired" with the amended provision applicable to the 2005 taxation year *et seq.*

[19] The phrase "the use of which..." (or in the French language "l'utilisation ...") in the definition of "automobile" in subsection 248(1) of the *ITA* suggests the act of employing the motor vehicle, or putting it into service, for any purpose, in particular the purpose for which it is to be used. [footnote shown in original] Common sense would dictate that during the time a motor vehicle is parked in a garage or in a yard, the vehicle is not being used. Thus, the time the motor vehicle is parked (and not used) does not enter into the formula or calculation determining whether the use of the motor vehicle "is all or substantially for the transportation of goods ... in the course of gaining or producing income." It is the actual use of the motor vehicle that is relevant, even though the vehicle may be stored in a yard more than 90 per cent of the time the taxpayer owned it. The definition of "automobile" is not concerned whether or not the motor vehicle is "available for use".<sup>7</sup> [Emphasis added.]

[11] In the present case, there is no question that when the Appellant purchased the Silverado on the second-last day of December 2005, he intended to use it in his business operations<sup>8</sup>. The oilfields where he worked as an environmental consultant are located within an 80-mile radius from his farm; the farm is located some 35 miles from the major center of Rosetown, Saskatchewan and approximately 8 miles from his local town of Plenty. I accept his evidence that at the time of its acquisition in December 2005, the use of the Silverado was "for" the transport of "goods" and "equipment" such as his computer, environmental testing equipment and materials used in the oilfields; and in his farming business for the transport of agricultural goods and equipment such as tools, farm fuel and machinery parts. The one factor in subparagraph (ii) that the Appellant is unable to satisfy, however, is the "use" of the truck in the year it was "acquired". As he freely admits, the Appellant did not actually use the Silverado for that purpose in 2005 because he left it at the dealership to have equipment from the trade-in vehicle transferred to the new one. This procedure was preparatory to its actual "use" transporting goods and equipment in his businesses which, unfortunately, did not occur until 2006. Accordingly, subparagraph (ii) does not apply to his situation and the Silverado is not excluded from the definition of "passenger vehicle". While it may seem a harsh result, the relief provided in subparagraph (ii) is only available if the taxpayer can satisfy all aspects of the exclusionary provision. Common sense does not come into it. The appeal must be dismissed.

Signed at Ottawa, Canada, this 5th day of September, 2007.

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<sup>7</sup> *Supra*, at paragraph 19.

<sup>8</sup> Paragraph 6(1) of the Reply to the Notice of Appeal.

"G. A. Sheridan"

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Sheridan, J.

CITATION: 2007TCC508

COURT FILE NO.: 2006-2283(GST)I

STYLE OF CAUSE: CHRIS OLSON AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: April 12, 2007

REASONS FOR JUDGMENT: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: September 5, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Anne Jinnouchi

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada