

Docket: 2004-1295(GST)G

BETWEEN:

RICHARD BETCHER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 26 and 27, 2008, at Winnipeg, Manitoba
By: The Honourable Justice C.H. McArthur

Appearances:

Counsel for the Appellant: Kris Janovcik

Counsel for the Respondent: Lyle Bouvier

JUDGMENT

On consent of the parties, the appeal from the assessment made under the *Excise Tax Act*, notice of which is dated December 16, 2002, and bears number 09DR0123387, for the period April 1, 1999 to June 30, 1999, is allowed, and referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the 1999 Chevrolet Silverado purchased by the Appellant is excluded from the definition of “automobile”, as set out in subsection 248(1) of the *Income Tax Act*.

Signed at Ottawa, Canada, this 30th day of April 2008.

“C.H. McArthur”

McArthur J.

Citation: 2008TCC270
Date: 20080430
Docket: 2004-1295(GST)G

BETWEEN:

RICHARD BETCHER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

McArthur J.

[1] This appeal under the *Excise Tax Act* (the “*Act*”) is from a goods and services tax assessment in the amount of \$1,454.50 issued by the Minister of National Revenue for the Appellant’s reporting period from April 1, 1999 to June 30, 1999.

[2] At the commencement of the hearing, the parties informed the Court that they had settled the contentious issues. The Appellant does not oppose the Respondent’s position that the truck in question, a 1999 Chevrolet Silverado 1500 L5, extended cab, short-bed (exterior carrying box), is a passenger vehicle within the meaning of subsection 123(1) of the *Act*. The Respondent conceded that the truck is excluded from the definition of “automobile” because it was used exclusively in commercial activities. The appeal is therefore resolved on this basis.

[3] While the appeal has been dealt with at the request of counsel for the Respondent, I will consider the question whether the truck was a passenger vehicle within the meaning of subsection 123(1) of the *Act* and paragraph 248(1)(a) of the *Income Tax Act*, which states, in part, as follows:

248(1) In this *Act*

"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,

(b) ...

but does not include

...

(e) a motor vehicle

(i) ... a van or pick-up truck, or a similar vehicle, that has a seating capacity for not more than the driver and two passengers ...

(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 ...

Subsection 123(1) of the *Act* refers to subsection 248(1).

[4] The facts¹ set out by the Minister are, for the most part, not opposed by the Appellant and include the following:

- (a) The Appellant operates a grain farming operation near Swan River, Manitoba.
- (b) The Appellant is a GST registrant.
- (c) On June 22, 1999, the Appellant purchased a 1999 Silverado Extended Cab 4x4 truck (“the truck”) from Powell Motors in Swan River, Manitoba
- (d) The net price of the truck was \$39,614, plus GST of \$2,772.98, plus PST.
- (e) The Appellant sold/traded in a 1992 GMC Sierra Extended Cab 4x4 truck (“1992 truck”) to Powell Motors for \$16,570.09, plus GST of \$1,159.91

¹ These facts are an edited version of those contained in the Reply to the Notice of Appeal.

- (f) The Appellant failed to report the GST collected on the sale/trade of the 1992 truck in the amount of \$1,159.91, in filing his GST return for the April 1, 1999 to June 30, 1999 reporting period (“the reporting period”).
- (g) The Appellant claimed an input tax credit in filing his GST return for the reporting period of \$1,613.07 relating to the purchase of the truck. This amount was arrived at by taking the total GST paid of \$2,772.98 minus \$1,159.91.
- (h) The Minister assessed the Appellant by Notice of Assessment No. 09DR0123387, dated December 16, 2002.
- (i) In so assessing, the Minister increased the Appellant’s GST collected for the period by \$1,159.91 for the sale of the 1992 truck.
- (j) The Minister also increased the allowable input tax credits from \$1,613.07 to \$1,820, which resulted in a credit of \$206.93.
- (k) The total adjustments for the assessment period were \$952.98. Statutory penalties and interest were added to the adjustments resulting in a total amount owing of \$1,349.45.
- (l) The Appellant filed a Notice of Objection with the Minister on January 9, 2003 stating that he is entitled to full ITC’s of the GST paid on the purchase of the truck as the truck is not an automobile under the *Income Tax Act* and, therefore, not a passenger vehicle under the *Act*.
- (m) The Minister confirmed the Notice of Assessment by Notice of Decision dated December 19, 2003.

[5] The only evidence before me is an expert report of T.R. Kurgess, PhD, P.E., filed on behalf of the Respondent. Mr. Kurgess concluded as follows:

In my professional opinion, the vehicle under study, the 1999 Chevrolet Silverado 1500LS – Extended Cab, Short Bed is primarily designed for passenger transportation, and not primarily designed for the movement of cargo. This opinion is based on the review of a number of pertinent factors, including the vehicle

specifications, design and published capabilities; Canadian and US vehicle use surveys; as well as a review of germane archival journal articles.

Based on the above, I find that the truck is an automobile, as defined in paragraph 248(1)(a), having been designed primarily to carry individuals. While subparagraph 248(1)(e)(i) does not include a motor vehicle described as:

- (i) ... a van or pick-up truck, or a similar vehicle, that has a seating capacity for not more than the driver and two passengers...

the important exclusion is subparagraph (iii) which applies to this appeal:

- (iii) ... 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...

[6] As stated above, the Respondent acknowledged that the truck was used all or substantially all for the transportation of goods and passengers in the course of gaining or producing income, and that it is excluded from being an automobile as defined in above. Further, subsection 202(2) of the *Act* provides that a registrant who purchases a passenger vehicle used exclusively in commercial activities can claim a full input tax credit regarding the purchase.

[7] Again, on the basis that the truck is excluded from the definition of automobile, the assessment is vacated on the basis that the truck is used primarily for the transportation of goods, equipment or passengers in the course of earning or producing income. No costs are awarded.

Signed at Ottawa, Canada, this 30th day of April 2008.

“C.H. McArthur”

McArthur J.

CITATION: 2008TCC270

COURT FILE NO.: 2004-1295(GST)G

STYLE OF CAUSE: RICHARD BETCHER and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: March 26 and 27, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: April 30, 2008

APPEARANCES:

 Counsel for the Appellant: Kris Janovcik
 Counsel for the Respondent: Lyle Bouvier

COUNSEL OF RECORD:

 For the Appellant:

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 Firm: Tapper Cuddy

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