

Docket: 2008-287(GST)APP

BETWEEN:

9122-5789 QUÉBEC INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on April 10, 2008, at Montréal, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Applicant: Louis-Frédéric Côté

Counsel for the Respondent: Maryse Nadeau-Poissant

ORDER

The application for an order extending the time for serving the notice of objection to an assessment made by the Respondent on August 19, 2005, under the *Excise Tax Act*, is dismissed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 20th day of May 2008.

"Paul Bédard"

Bédard J.

Translation certified true
on this 3rd day of July 2008.

Brian McCordick, Translator

Citation: 2008TCC279
Date: 20080520
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REASONS FOR ORDER

Bédard J.

[1] This is an application for an extension of time to file a notice of objection to an assessment¹ made by the Minister of Revenue of Quebec ("the Minister") on behalf of the Respondent under the *Excise Tax Act* ("the Act"), bearing the number 03403852, notice of which is dated August 19, 2005 ("the assessment").

[2] The Respondent submits that:

- (1) the notice of assessment was sent to the Applicant;
- (2) the Applicant did not file a notice of objection with the Minister within 90 days after the day on which notice of the assessment was sent to it, as provided in subsection 301(1.1) of the Act;
- (3) in this case, the 90-day time period for filing a notice of objection expired on November 17, 2005;

¹ *Exhibit I-5*

- (4) the time period for making an application to the Minister to extend the time for filing a notice of objection expired on November 17, 2006, in this case, as set out in paragraph 303(7)(a) of the Act;
- (5) because the Applicant filed its application for an extension of time on July 20, 2007 (eight months after the deadline), the Court has no jurisdiction to grant the application for an extension of time, as set out in paragraph 304(5)(a) of the Act.

[3] The Applicant further argued that the Minister never sent it the notice of assessment and that an assessment for which notice is not sent by the Minister is an incomplete and invalid assessment. It should be noted that the parties have agreed that the only issue in this matter is whether the notice of assessment was sent to the Applicant by the Minister, because the Applicant has admitted that if I were to find that the notice was sent to it, the Court would have no jurisdiction to grant its application for an extension.

[4] In the case at bar, Josée Savard, the Applicant's sole director and shareholder, and Normand Pitre, a GST specialist who made the application for an extension to the Minister on the Applicant's behalf, testified for the Applicant. In addition, Marie-Andrée Perreault, the auditor who made the assessment for the Minister, Louise Christophe, the secretary who typed the notice of assessment (Exhibit I-5), and Johanne Lamoureux, a shipping and courier service manager for the Minister of Revenue of Quebec, testified for the Minister.

[5] The Applicant's evidence, which was that it had still not received the notice of assessment on the date of the hearing, was based essentially on the testimony of Josée Savard, the sole director, shareholder and head of the Applicant. She essentially testified that before September 2006 she was unaware that there had been a GST audit of the Applicant and she had never received the draft assessment prepared after that audit, let alone a notice of assessment. Ms. Savard's testimony on that point was directly contradicted by the very credible testimony given by Ms. Perreault, the auditor who prepared the draft assessment and notice of assessment. In that regard, Ms. Perreault testified that she had communicated with Ms. Savard by telephone on seven occasions during the period between March 18, 2004, and the end of November 2004, and in writing on at least six occasions during that period. I would note that the documents submitted in evidence as Exhibit I-3 support Ms. Perreault's testimony on this point. I therefore find it difficult to assign any probative value to Ms. Savard's testimony. In addition, Ms. Savard's hesitant testimony, the time she

took to answer and her demeanour only added to my doubts as to her credibility. It should also be noted that Ms. Savard testified that:

- (a) she lived in an apartment at 1061 rue Jean-Paul Vincent in Longueuil until July 2003;
- (b) from July 2003 to July 2005 she lived at 160 rue Guimond in Longueuil;
- (c) after July 2005 she lived at 446 rue Beique in Chambly.

[6] I would also note, based on documents filed in evidence as Exhibit I-6, that Ms. Savard informed the federal tax authorities on October 10, 2006, that as of that date the Applicant's mailing address (which had been 160 rue Guimond, Longueuil, before that date, that being Ms. Savard's home address) would be 446 rue Beique in Chambly. I also note, based on documents filed in evidence as Exhibit I-8, that on January 6, 2006, Ms. Savard informed the Société d'assurance-automobile du Québec that as of that date her home address would be 446 rue Beique in Chambly.

[7] Moreover, Ms. Christophe explained her role in the making and sending of a GST assessment as follows. She typed the notice of assessment (or reassessment) from the information set out in the draft assessment given to her by the auditor who made the assessment. Once the assessment was typed, she placed it in an envelope on which she typed the name and address of the taxpayer in respect of whom the assessment was made, as shown on the notice of assessment. She then gave the envelope to the internal mail service in the Longueuil office where she worked, so that it could forward it to the central courier service office of the Minister of Revenue of Quebec at Place Desjardins, Montréal. Ms. Christophe also explained that she had to record each notice of assessment (or reassessment) in a log book, which she typed. She also testified that the relevant portion of her log book (filed in evidence as Exhibit I-9) shows that she typed the notice of assessment in question on July 8, 2005, and that on the same date she gave her internal mail service the envelope (bearing the address and name shown on the notice of assessment) containing the notice of assessment.

[8] Ms. Lamoureux, a manager in the courier and shipping service of Revenu Québec, then explained in detail not only each of the steps in the delivery of the envelope (given to the internal mail service by the secretary) to Canada Post to be delivered by regular mail to the taxpayer in respect of whom the assessment was

made, but also the security measures taken by Revenu Québec to ensure that the envelope did not get lost along the way.

[9] The Minister's log book, filed in evidence as Exhibit I-7, shows that on October 10, 2006, Canada Post returned the mail sent by the Minister to the Applicant at 160 rue Guimond in Longueuil for the first time.

Analysis and Conclusion

[10] Certainly the Minister had an obligation in this case to prove, on a balance of probabilities, that he sent the notice of assessment to the Applicant. Because it is practically impossible, in a large organization such as a government department, to find a witness who can swear that he or she left an envelope addressed to a particular person at the post office, the best the Minister could do to prove that he had sent the notice of assessment was to call his employees to describe the steps followed in relation to making and sending a notice of assessment. In this case, the Minister called Ms. Christophe and Ms. Lamoureux, who described in detail each of the steps followed in that regard. The evidence submitted by the Applicant to rebut the Minister's evidence was based on the testimony of Ms. Savard (which I described earlier as having little credibility) and Exhibit I-8, which allegedly establishes indirectly that the notice of assessment was never sent to the Applicant at 160 rue Guimond in Longueuil in August 2005. Counsel for the Applicant argued that if the Minister had sent the notice of assessment to the Applicant at 160 rue Guimond in Longueuil in August 2005, Canada Post would necessarily have returned the notice of assessment to the Minister (because Ms. Savard had not been living at 160 rue Guimond since July 2005) and the Minister would necessarily have recorded in his log book that the notice of assessment was returned to him in August 2005. In my opinion, that reasoning can stand only if Ms. Savard's testimony that she moved in July 2005 is credible. On that point, the documents filed in evidence as Exhibit I-6 and Exhibit I-8 lead the Court to conclude that Ms. Savard left 160 rue Guimond around the end of 2005 or early 2006 and that this explains why the mail was not returned to the Minister in August 2005.

[11] Having regard to the evidence submitted by both parties, I find that it is more probable than not that the notice of assessment was sent to the Applicant by the Minister in August 2005. Accordingly, I have no jurisdiction in this case to grant the application for an extension, as set out in paragraph 304(5)(a) of the Act.

[12] For these reasons, the application is denied.

Signed at Ottawa, Canada, this 20th day of May 2008.

"Paul Bédard"

Bédard J.

Translation certified true
on this 3rd day of July 2008.

Brian McCordick, Translator

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DATE OF HEARING: April 10, 2008

REASONS FOR ORDER BY: The Honourable Justice Paul Bédard

DATE OF ORDER: May 20, 2008

APPEARANCES:

 Counsel for the Applicant: Louis-Frédéric Côté

 Counsel for the Respondent: Maryse Nadeau-Poissant

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