Citation: 2012TCC11
Date: 20120110
Docket: 2011-1242(GST)I

BETWEEN:

GOLF CANADA'S WEST LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on November 3, 2011, in Ottawa, Ontario.)

V.A. Miller J.

[1] The issue in this appeal is whether the Appellant is entitled to claim deductions of $22,760.38 pursuant to the Foreign Convention and Tour Incentive Program ("FCTIP"). The periods under appeal are May 1, 2007 to October 31, 2007 and May 1, 2008 to October 31, 2008.

[2] Under the FCTIP, non-resident persons are entitled to claim a rebate in respect of GST/HST paid on eligible tour packages. Non-residents who purchase eligible tour packages may receive the rebate amount at the point of sale from the registrant supplier who charged the GST/HST[1] and the registrant supplier may claim a deduction under subsection 234(2) of the *Excise Tax Act* (the "*ETA*") in respect of the amount paid or credited to the non-resident. In this appeal, the Appellant claimed a deduction of $22,760.38 for rebate amounts credited to his non-resident customers. This deduction was disallowed by the Minister of National Revenue (the "Minister") on the basis that the tour packages offered by the Appellant did not include a "service" and the Appellant's customers were not eligible for the FCTIP rebate.

[3] The Appellant is a golf vacation tour operator who provides luxury golf vacations throughout Western Canada to both residents and non-residents of Canada. These vacations are sold as an all-inclusive price and they include hotel

accommodations, a rental car, green fees at the golf courses and a "meet and greet" at the airport. I will refer to the golf vacations as the Vacation Packages.

[4] The purchasers of the Vacation Packages arrange and pay for their own air travel. They also drive a rental car or arrange for their own transportation from the airport to their hotel.

[5] A tour package as defined in subsection 163(3) of the *ETA* must offer a combination of two or more services, or of property and at least one service. As well, to be eligible for the FCTIP deductions, the tour package must provide short-term accommodation or camping accommodation to a non-resident recipient in accordance with subsection 252.1(8) of the *ETA*. As such, a tour package cannot consist solely of property; the package must also include a service to be an eligible tour package under the FCTIP.

[6] It is the Minister's position that the "meet and greet" portion of the Vacation Packages is not a service but is an amenity which is a minor part of the Vacation Package. In communication with the Appellant, the Minister stated that the "meet and greet" at the airport did not qualify as a service because it could not be sold separately and no part of the cost of the tour package could reasonably be attributed to the "meet and greet". As such, the Minister found that the Vacation Packages could not be characterized as tour packages pursuant to subsection 252.1(8) of the *ETA*.

[7] I disagree with the Minister's position. There is no statutory support for the Minister's distinction between an amenity and a service. The term "amenity" is not defined in the *ETA*.

[8] The definition of "service" in section 123 reads:

> "service" means anything other than
>
> (*a*) property,
>
> (*b*) money, and
>
> (*c*) anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person;

[9] The "meet and greet" meets the definition of "service". No property, money or supplies between employers and employees are transferred in the context of the "meet and greet". In addition the *ETA* does not impose a value threshold for services and does not require that services must be capable of being supplied on a stand alone basis.

[10] I note that in this appeal the "meet and greet" usually lasted between 1 to 1.5 hours at the airport and the Appellant paid an independent supplier $75 to $100 to provide the "meet and greet" services.

[11] As stated by D'Arcy J. in *Jema International Travel Clinic Inc.*, 2011 TCC 462 at paragraph 25:

> … A "service" is defined even more broadly to mean anything other than property, money and certain services supplied to an employer by an employee, an officer and certain other persons. The definition of "service" is extremely broad. If something is not property, money or an "employee service", then it will be deemed to be a "service".

[12] For all of the above reasons, the appeal is allowed.

Signed at Ottawa, Canada, this 10th day of January 2012.

"V.A. Miller"

V.A. Miller J.

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[1] Subsection 252.1(8) of the *Excise Tax Act*

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APPEARANCES:

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