

Docket: 2011-2206(GST)I

BETWEEN:

DAVID S. HOLLINGSWORTH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 21, 2012 at Vancouver, British Columbia

Before: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The appellant himself

Counsel for the Respondent: Amandeep K. Sandhu

JUDGMENT

It is ordered that:

- (a) the appeal with respect to assessments made under the *Excise Tax Act* for periods beginning January 1, 2007 and ending December 31, 2007 is dismissed;
- (b) the appeal with respect to assessments made under the *Excise Tax Act* for periods beginning January 1, 2008 and ending September 30, 2008 is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) penalties for late filing of returns should be deleted, and (2) arrears interest should be adjusted so that a

payment made on January 9, 2009 is applied to amounts assessed starting with the earliest reporting periods in 2008; and

- (c) each party shall bear their own costs.

Signed at Ottawa, Ontario this 29th day of March 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 102
Date: 20120329
Docket: 2011-2206(GST)I

BETWEEN:

DAVID S. HOLLINGSWORTH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] David Hollingsworth has carried on business as a sole proprietor since 1999. This appeal relates to assessments made under the *Excise Tax Act* in respect of net tax, interest and late-filing penalties. The periods at issue are for the quarterly reporting periods beginning January 1, 2007 and ending September 30, 2008.

Background

[2] The appellant filed goods and services tax (GST) returns for the periods at issue on August 16, 2010. Net tax in an aggregate amount of \$5,861.29 was reported.

[3] Assessments for these periods were issued by notices dated September 13, 2010. In the assessments, the net tax was accepted as filed, arrears interest in the aggregate amount of \$944.20 was charged, and penalties for the failure to file returns on time were imposed in the aggregate amount of \$234.38.

[4] By way of background, when the appellant commenced business in 1999, he filed quarterly GST returns for two or three reporting periods, but then he filed very

few returns for approximately 10 years. He submits that he paid the net tax with his income tax returns and thought that this was sufficient.

[5] There is no dispute as to when the relevant returns were filed. The 2007 returns were clearly filed late.

[6] The quarterly returns for 2008 were also filed late but this is not the end of the story. The appellant attempted to file an annual return for that year on January 2, 2009. It was within the deadline for annual returns. The return was rejected by the Canada Revenue Agency (CRA) because their records indicated that in 2000 the appellant requested to file quarterly GST returns.

[7] Further to CRA requests in 2009 to file returns, the appellant filed quarterly returns on August 16, 2010 which appear to relate to most reporting periods since 2001. The returns included all quarterly periods that are at issue in this appeal.

[8] As for payments of net tax, it appears that no payments were made with the returns filed in August 2010, but that the appellant had made some payments on account of GST in prior years.

[9] According to CRA's records, the appellant made a payment on account of GST on January 29, 2008 in the amount of \$2,467.02 and another payment on January 9, 2009 in the amount of \$3,066.50.

[10] According to the litigation officer who testified on behalf of the respondent, it is CRA's practice not to apply amounts that are paid on account of GST until returns are filed.

[11] The payment made on January 29, 2008 was applied by the CRA to amounts owing for reporting periods in 2001 and 2002.

[12] The payment made on January 9, 2009 was applied by the CRA to the quarterly reporting period ending December 31, 2008. When the quarterly returns were filed on August 16, 2010 this payment was reapplied based on the amounts as assessed on September 13, 2009. Accordingly, on August 16, 2010, an amount of \$555.42 was applied to the amount assessed for the reporting period ending December 31, 2008 (i.e., it was not reapplied), and the balance in the amount of \$2,508.08 was reapplied to reporting periods in 2007.

Analysis

[13] The appellant acknowledges that he filed the quarterly GST returns late but he submits that he has done enough to comply with his GST obligations and should not be penalized further. He also submits that the payments were wrongly held in limbo and should have been applied to amounts owing.

[14] In general, the appellant's testimony was far too brief and vague to warrant making any adjustment based on the testimony alone. However, there is support for some of the appellant's testimony in documents introduced by the respondent. The main document in support is the statement of arrears (Ex. R-2). The evidence as a whole warrants some adjustment to the assessments.

[15] First, the attempted filing of a 2008 annual return justifies the deletion of late filing penalties for reporting periods beginning January 1, 2008 and ending September 30, 2008.

[16] It is inappropriate to impose a late filing penalty for the 2008 reporting periods in these circumstances. The appellant attempted to comply with the reporting obligation but the return was rejected. In my view, the appellant was sufficiently diligent with respect to this period that the penalties should not have been imposed. It is understandable that the appellant did not remember that he had requested a quarterly filing almost ten years earlier.

[17] Counsel for the respondent submits that the appellant was not diligent with respect to this return because it was only filed after the CRA requested returns.

[18] The evidence as a whole does not support this submission. The appellant testified that he was contacted by the CRA sometime in 2009 and that this led him to file returns going back 10 years. The annual return was attempted to be filed on January 2, 2009. It is not realistic to think that a return filed on that date would be made in response to a CRA request made sometime in 2009. I would conclude that the return on January 2, 2009 was filed before the appellant was contacted by the CRA. In any event, the return was filed on time if the reporting period was annual. It is irrelevant whether the return was filed pursuant to a CRA request.

[19] The second adjustment that should be made relates to interest for the 2008 reporting periods that are at issue. As mentioned above, the appellant made a payment to the CRA on January 9, 2009 in the amount of \$3,066.50. This payment was first applied to the quarterly period ending December 31, 2008 and subsequently a portion was reapplied to periods ending in 2007.

[20] In my view, this payment should have been applied to all quarters in 2008 because it is sufficiently clear that this is what the appellant had intended. The payment and the annual return were probably made together or at approximately the same time.

[21] According to the evidence of the litigation officer, the CRA applies payments to the periods requested by taxpayers. In this case, the CRA should have applied the entire amount to the four quarters in 2008 instead of only the fourth quarter.

[22] Arrears interest for assessments for periods beginning January 1, 2008 and ending September 30, 2008 should be adjusted to take the January 9, 2009 payment into account. For simplicity, interest assessed should be adjusted on the basis that the entire amount paid on January 9, 2009, \$3,066.50, should be applied to net tax as ultimately assessed starting with the earliest quarterly periods in 2008.

[23] These are the only adjustments to the assessments that are warranted in my view.

[24] There is insufficient evidence to support an adjustment to net tax. It was accepted by the Minister as filed.

[25] As for the late filing penalty for 2007, the appellant submits that he thought it was sufficient to pay the GST with his income tax returns. He suggests that the CRA should have asked him to file GST returns.

[26] I disagree with this submission. Taxpayers are required to take sufficient steps to ensure compliance with their GST obligations under the *Excise Tax Act*. This includes the filing of returns. I am not satisfied that the appellant exercised appropriate care in respect of the 2007 GST returns.

[27] As for interest for 2007, there was a payment made on January 29, 2008. It is not reasonable to expect that this payment be applied to 2007 because no returns for 2007 were filed until much later. There is insufficient evidence that the appellant intended this payment to apply to amounts owing for 2007.

[28] In the result, the appeal with respect to assessments for the periods beginning January 1, 2007 and ending December 31, 2007 will be dismissed. The appeal with respect to assessments for the periods beginning January 1, 2008 and ending September 30, 2008 will be allowed on the basis that the penalties for late filing

should be deleted and interest should be adjusted to apply a payment made on January 9, 2009 to amounts assessed starting with the earliest reporting periods in 2008.

[29] Each party shall bear their own costs.

Signed at Ottawa, Ontario this 29th day of March 2012.

“J. M. Woods”

Woods J.

CITATION: 2012 TCC 102

COURT FILE NO.: 2011-2206(GST)I

STYLE OF CAUSE: DAVID S. HOLLINGSWORTH v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATES OF HEARING: March 21, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: March 29, 2012

APPEARANCES:

For the Appellant: The appellant himself

Counsel for the Respondent: Amandeep K. Sandhu

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
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