

Docket: 2010-3715(GST)I

BETWEEN:

SERVICES D'ENTRETIEN L.C. INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on November 7, 2012, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant: Marie-Christine Leboeuf
Counsel for the respondent: Joëlle Bitton

JUDGMENT

The appeal from the reassessment made under Part IX of the *Excise Tax Act*, notice of which is dated September 7, 2010, and bears no number, for the period from December 1, 2008, to December 31, 2008, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 6th day of February 2013.

“Réal Favreau”

Favreau J.

Translation certified true
on this 20th day of March 2013
Daniela Guglietta, Reviser

Citation: 2013TCC46
Date: 20130206
Docket: 2010-3715(GST)I

BETWEEN:

SERVICES D'ENTRETIEN L.C. INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from a reassessment dated September 7, 2010, under Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the ETA), for the period from December 1, 2008 to December 31, 2008 (the relevant period).

[2] On April 29, 2009, the Minister of Revenue of Quebec, acting as agent for the Minister of National Revenue (the Minister), issued an assessment against the appellant for the relevant period under which the Minister assessed the following amounts:

Total GST/HST and adjustments	\$3,637.04
Total ITCs and adjustments	<u>(\$662.51)</u>
Net tax as assessed	\$2,974.53
Arrears interest	<u>\$40.94</u>
Total [amount owing]	\$3,015.47

[3] The amount of net tax that should have been declared by the appellant for the relevant period was \$2,974.53, that is:

ITCs claimed	(\$3,075.99)
Adjustment (ITCs disallowed)	<u>\$6,050.52</u>
Total	\$2,974.53

[4] In response to the notice of objection filed by the appellant for the relevant period, the Minister issued a reassessment dated September 7, 2010, by which the amounts previously assessed were reduced by \$474.12 (that is, \$449.65 as an adjustment in the calculation of the reported net tax and \$24.47 in interest), so that the amount of net tax that should have been declared by the appellant for the relevant period is \$2,524.88 (\$2,974.53 - \$449.65).

[5] The issue is whether the Minister was justified in disallowing the input tax credits (ITCs) claimed by the appellant in the amount of \$2,524.88.

[6] In making the reassessment under appeal, the Minister relied on the following findings and assumptions of fact described in paragraph 26 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) The facts admitted above;
- (b) The appellant is a registrant for the purposes of Part IX of the ETA;
- (c) The appellant operates a business that provides janitorial and maintenance services;
- (d) The appellant filed its net tax returns with the Minister for the relevant period;
- (e) The appellant acquired taxable supplies of property and services for consumption, use or supply in the course of its commercial activities during the relevant period for which the GST was payable by the appellant to the suppliers;
- (f) The appellant recorded in its records the GST payable as an ITC and claimed said ITC amount in the calculation of the net tax that it reported to the Minister for the relevant period;

- (g) Of the total amount of ITCs claimed in the calculation of its net tax for the relevant period, the appellant claimed an amount totalling \$6,713.03 for supplies of services it acquired during the relevant period, including \$6,050.52 in ITCs from supplier Jorge Barcelona, which were disallowed;
- (h) The appellant did not provide the Minister, when required to do so, with information sufficient, including any such information as may be prescribed, to enable the amount of \$6,050.52 in ITCs mentioned in the previous subparagraph that it claimed and obtained in the calculation of the net tax for the relevant period;
- (i) Specifically, the appellant provided the Minister with supporting documents and records to determine said ITC amount, supporting documents that did not meet the requirements of the ETA and its regulations;
- (j) The supporting documents provided in support of the disallowed ITCs in the amount of \$6,050.52 for supplies of property or services it allegedly acquired during the relevant period are not consistent with the regulations as they contain no tax number, no tax amount or no mention that the tax is included;
- (k) Conversely, ITCs in the amount of \$449.25 were allowed for the supplier's invoices for 2008;
- (l) Consequently, the appellant owes the Minister the amount of the adjustments made to its net tax reported for the relevant period, plus penalties and interest.

[7] Alcino Carreira, owner of the appellant, testified at the hearing and stated that Jorge Barcelona was hired as a subcontractor to provide janitorial services. According to Mr. Carreira, Mr. Barcelona began providing services in 2004 on a temporary basis and became permanent in 2005 or 2006. Mr. Barcelona was employed by the appellant until July 2008. According to Mr. Carreira, a verbal agreement existed between the parties to the effect that Mr. Barcelona would receive \$2,100 per month, including taxes, for the services he provided, once he became permanent.

[8] Seeing as Mr. Carreira could not remember the amount paid by the appellant for the services provided by Mr. Barcelona in 2004, counsel for the respondent produced three invoices submitted by Mr. Barcelona in 2004, which showed that the amount paid for the provision of his services was \$1,218 per month, that the tax numbers were indicated and that the taxes were claimed.

[9] Counsel for the appellant filed in a bundle Jorge Barcelona's invoices for the period from January 2005 to July 2008, which showed that the amount paid for the provision of services was of \$2,100 per month. These invoices had no tax number nor any mention of taxes.

[10] Nadine Fischer, who had acted as the appellant's accountant since March 4, 2008, testified at the hearing and stated that she had been informed by Francine Lebel, an auditor for Revenue Québec, that Mr. Barcelona had been the subject of a tax audit and that he was a registrant for the purposes of the goods and services tax. Upon checking the accounting records and finding that no ITC claim had been filed, Ms. Fischer undertook, therefore, to claim the taxes for the services paid to Jorge Barcelona from January 2005 to mid-July 2008 in his GST/HST and QST Returns for the period from December 1, 2008, to December 31, 2008.

[11] Seeing as Jorge Barcelona indeed had tax numbers, Ms. Fischer assumed that the price asked for his services included the taxes because certain invoices for the months of April, May and June 2008 included the taxes, and the amount charged for the services for prior periods was identical.

Analysis

[12] Section 169(4)(a) of the ETA clearly states that a registrant may claim an ITC for a reporting period if, before filing the return in which the credit is claimed, the registrant has obtained sufficient evidence as will enable the amount of the credit to be determined, including any such information as may be prescribed. Section 3 of the *Input Tax Credit Information (GST/HST) Regulations*, SOR/91-45, as amended (the Regulations) provides that information to be provided must include the registration number assigned to the supplier.

[13] Counsel for the appellant admitted that the invoices in respect of which the ITCs were claimed by the appellant did not comply with the requirements of the ETA and the Regulations because the tax numbers of the supplier of services were not mentioned. However, she submitted that the appellant was entitled to the ITCs because the amount charged for the provision of services included the taxes.

[14] In *3922731 Canada Inc.* (Docket 2009-2966(GST)I, Rip C.J. had to address this issue and he concluded that it was irrelevant whether or not the invoice was "tax inclusive".

[15] In this case, the appellant did not meet the onus on it to produce the necessary documentation to obtain ITCs with respect to the invoices issued by Jorge Barcelona.

[16] The appeal is dismissed.

Signed at Ottawa, Canada, this 6th day of February 2013.

“Réal Favreau”

Favreau J.

Translation certified true
on this 20th day of March 2013
Daniela Guglietta, Reviser

CITATION: 2013 TCC 46

COURT FILE NO.: 2010-3715(GST)I

STYLE OF CAUSE: Services D'entretien L.C. Inc. v. Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 7, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: February 6, 2013

APPEARANCES:

Counsel for the appellant: Marie-Christine Leboeuf

Counsel for the respondent: Joëlle Bitton

COUNSEL OF RECORD:

For the appellant:

Name: Marie-Christine Leboeuf
Firm: Duplessis Robillard
Montréal, Quebec

For the respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada