Docket: 2017-2728(GST)G

BETWEEN:

IKECHUKWU NWAUKONI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Ikechukwu Nwaukoni* (2017-2729(GST)G) on June 4, 5 and 6, 2018, at Hamilton, Ontario, and on September 11 and 12, 2018, at Toronto, Ontario

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Meaghan Mahadeo

JUDGMENT

The appeal from the reassessment made under Part IX of the *Excise Tax Act* for the reporting period from January 1, 2012, to December 31, 2012, is allowed, but only to the extent of permitting the concessions made by the Respondent at the hearing, that is, that 13% of the Appellant's sales representing an amount of $144,332.38, were export sales and accordingly zero-rated supplies under section 1 or section 12 of Part V of Schedule VI of Part IX of the *Excise Tax Act*.

The reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

One set of costs for this appeal and the appeal of *Ikechukwu Nwaukoni* (2017-2729(GST)G) in accordance with Tariff B of Schedule II of the *Tax Court of Canada Rules (General Procedure)* shall be awarded to the Respondent.

Signed at Ottawa, Canada, this 13th day of December 2018.

"Dominique Lafleur"

Lafleur J.

Docket: 2017-2729(GST)G

BETWEEN:

IKECHUKWU NWAUKONI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Ikechukwu Nwaukoni* (2017-2728(GST)G) on June 4, 5 and 6, 2018, at Hamilton, Ontario, and on September 11 and 12, 2018, at Toronto, Ontario

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Meaghan Mahadeo

JUDGMENT

The appeal from the reassessment made under Part IX of the *Excise Tax Act* for the reporting period from January 1, 2011, to December 31, 2011, is allowed, but only to the extent of permitting the concessions made by the Respondent at the hearing, that is, that 13% of the Appellant's sales representing an amount of $150,649.26, were export sales and accordingly zero-rated supplies under section 1 or section 12 of Part V of Schedule VI of Part IX of the *Excise Tax Act*.

The reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

One set of costs for this appeal and the appeal of *Ikechukwu Nwaukoni* (2017-2728(GST)G) in accordance with Tariff B of Schedule II of the *Tax Court of Canada Rules (General Procedure)* shall be awarded to the Respondent.

Signed at Ottawa, Canada, this 13th day of December 2018.

"Dominique Lafleur"

Lafleur J.

Citation: 2018 TCC 252
Date: 20181213
Dockets: 2017-2728(GST)G
2017-2729(GST)G

BETWEEN:

IKECHUKWU NWAUKONI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lafleur J.

I. OVERVIEW

[1] These appeals, which were heard together on common evidence, concern reassessments made under Part IX of the *Excise Tax Act* (R.S.C., 1985, c. E-15, as amended) (the "ETA") by the Minister of National Revenue (the "Minister"), notices of which are dated March 30, 2017, for the annual reporting periods from January 1, 2011, to December 31, 2011, (the "2011 Period") and from January 1, 2012, to December 31, 2012, (the "2012 Period").

[2] The Minister reassessed the Appellant on the basis that only 5.91% of the Appellant's sales were export sales (representing an amount of $68,548.63 for the 2011 Period and an amount of $65,588.09 for the 2012 Period) which were zero-rated supplies under the ETA, and not 70% to 80% as the Appellant contended.

[3] In the Notice of Reassessment for the 2011 Period, adjustments were made to increase the amount of GST/HST collectible under the ETA by an additional amount of $89,198.04 (for a total of $99,029.63) and to allow additional input tax credits ("ITCs"), resulting in a net tax liability of $29,415.13. In the Notice of Reassessment for the 2012 Period, adjustments were made to increase the amount of GST/HST collectible under the ETA by an additional amount of $74,140.17 (for a total of $90,182.93) and to allow additional ITCs, resulting in a net tax liability

of $29,187.17. For both periods in issue, interest and penalties for the Appellant's failure to file his GST/HST returns on time were also assessed.

[4] At the hearing, the Appellant testified that he came to Canada in 2002. In 2006, he joined a car sale business. In 2009, he obtained his dealer's licence, which was issued by the Ontario Motor Vehicle Industry Council (Ontario's regulator of motor vehicle sales), and then started his own business. During the 2011 Period and the 2012 Period, the Appellant carried on a business of selling used vehicles as a sole proprietorship, either under his name or under Zion Auto Sales, and 11 sales representatives worked for him. His business consisted (in a proportion of 90%) of the purchase at auction of damaged or high mileage vehicles that could not be used in Canada, and the resale of them. He testified that he exported 187 vehicles (out of 277) in 2011 and 250 vehicles (out of 316) in 2012. Most of these vehicles would be shipped by him (under his personal name or Zion Auto Sales) to Africa, and more specifically to Nigeria and Ghana, and sometimes to Cameroon.

[5] The Appellant testified that he would pay the purchase price of the vehicle, plus GST/HST at the auction; auction fees would also be paid. He would also incur important towing costs. After the purchases, the vehicles would then either be stored at his place of business (10 to 15 places) or, if a container could be filled up, the vehicles would be transported to a shipping company. In that latter case, the shipping company would issue a Loading Declaration Form to the Appellant; a Bill of Lading would also be issued by the shipping company and be remitted to the shipping agent. The shipping agent would then give a copy of the Bill of Lading to the Appellant. The Appellant explained that only one Bill of Lading is issued for each container.

[6] Mr. Cracknell, an auditor for the Canada Revenue Agency ("CRA") who works for the appeals audit referral team, testified at the hearing that he took a sample of 12 sales of vehicles made by the Appellant in 2011 to determine whether the sales were domestic or export sales. He concluded that only one vehicle purchased by the Appellant was directly exported. The other export sales had additional sales in Ontario after the Appellant had purchased the vehicles, which indicates that the vehicles were not directly exported and that they were sold in Ontario based on information from the Ministry of Transportation of Ontario ("MTO"). From MTO searches, Mr. Cracknell would get abstracts which would outline the type of vehicles and the ownership history of the vehicles registered in Ontario (Exhibit R-8). Based on his findings, Mr. Cracknell expanded his sample to sales made by the Appellant during the month of September 2011. He then used the listing of export sales that the Appellant had submitted to cross-reference the

Vehicle Identification Number ("VIN") of the vehicles with the Bills of Lading or other export documents provided by the Appellant. He was only able to match two of the vehicles with a VIN appearing on the Bills of Lading.

[7] Ultimately, based on the review of the documentation submitted by the Appellant, Mr. Cracknell could substantiate only 5.91% of the sales made by the Appellant as export sales during the month of September 2011. He decided to apply this percentage to the full period under audit (i.e., the 2011 Period and the 2012 Period) as he came to the conclusion that any further testing would not result in any significant change to that conclusion (Exhibits R-9 and R-10).

[8] After having heard the evidence and having examined additional documents submitted by the Appellant at the hearing, counsel for the Respondent conceded that 13% of the Appellant's sales in the 2011 Period and in the 2012 Period were export sales (representing an amount of $150,649.26 for the 2011 Period and an amount of $144,332.38 for the 2012 Period) being zero-rated supplies under section 1 or 12 of Part V of Schedule VI of the ETA, and that therefore the balance of the sales were taxable supplies made in Canada and subject to GST/HST.

[9] In these reasons, references to legislative provisions will be to provisions of the ETA, unless otherwise indicated.

II. ISSUE

[10] The sole issue to be decided is whether the Appellant is liable for uncollected GST/HST under the ETA on the sale of used vehicles within Canada in the 2011 Period and in the 2012 Period. In order to make that determination and in light of the concessions made by counsel for the Respondent, I have to determine whether more than 13% of the Appellant's sales (representing an amount of $150,649.26 for the 2011 Period and an amount of $144,332.38 for the 2012 Period) were zero-rated supplies as being export sales that meet the requirements of section 1 or section 12 of Part V of Schedule VI.

[11] Interest, penalties for failure to file on time and ITCs are not in issue in these appeals.

III. THE LAW

[12] The applicable legislative provisions are found in Schedule A to these reasons except for sections 1 and 12 of Part V of Schedule VI, which are reproduced below:

SCHEDULE VI — ZERO-RATED SUPPLIES

(Subsection 123(1))

. . .

PART V — Exports

1. [Goods purchased for immediate export] — A supply of tangible personal property (other than an excisable good) made by a person to a recipient (other than a consumer) who intends to export the property where

(a) in the case of property that is a continuous transmission commodity that the recipient intends to export by means of a wire, pipeline or other conduit, the recipient is not registered under Subdivision d of Division V of Part IX of the Act;

(b) the recipient exports the property as soon after the property is delivered by the person to the recipient as is reasonable having regard to the circumstances surrounding the exportation and, where applicable, to the normal business practice of the recipient;

(c) the property is not acquired by the recipient for consumption, use or supply in Canada before the exportation of the property by the recipient;

(d) after the supply is made and before the recipient exports the property, the property is not further processed, transformed or altered in Canada except to the extent reasonably necessary or incidental to its transportation; and

(e) the person maintains evidence satisfactory to the Minister of the exportation of the property by the recipient.

. . .

12. [Goods for delivery outside Canada] — A supply of tangible personal property (other than a continuous transmission commodity that is being transported by means of a wire, pipeline or other conduit) if the supplier

(a) ships the property to a destination outside Canada that is specified in the contract for carriage of the property;

> (b) transfers possession of the property to a common carrier or consignee that has been retained, to ship the property to a destination outside Canada, by
>
> (i) the supplier on behalf of the recipient, or
>
> (ii) the recipient's employer; or
>
> (c) sends the property by mail or courier to an address outside Canada.

IV. DISCUSSION

[13] Pursuant to subsection 165(1), the recipient of a taxable supply made in Canada has to pay GST/HST on the value of the consideration for the supply. Sections 221 and 228 provide that the supplier, as an agent of Her Majesty in right of Canada, has to collect the taxes payable by the recipient and remit to the Receiver General an amount calculated in accordance with rules found in the ETA. Subsection 165(3) provides that the tax rate (GST/HST) of a zero-rated supply is 0%. Zero-rated supplies are listed in Schedule VI, and the relevant provisions for exports are found in Part V. Sections 1 and 12 of Part V of Schedule VI provide specific and strict requirements that must be met for a sale to be considered an export sale and consequently, a zero-rated supply under the ETA.

[14] I find that the Appellant did not provide the Court with sufficient and reliable evidence showing, even on a *prima facie* basis, that more than 13% of his sales made during the 2011 Period and the 2012 Period were export sales under the ETA. The Appellant had the burden to provide the Court with sufficient and reliable evidence, on a balance of probabilities, that the vehicles sold were exported either because the Appellant sold the vehicles to a recipient other than a consumer who intended to export the vehicles (section 1) or because the Appellant exported the vehicles himself by shipping them or delivering them to a common carrier for export (section 12). I also find that the testimony of the Appellant was vague and unclear and on many occasions lacked credibility.

[15] More specifically, in order to avail himself of section 1, the Appellant had to, *inter alia*, "[maintain] evidence satisfactory to the Minister of the exportation of the [vehicles]" by the purchaser (para. 1(e)), a requirement that was not fulfilled by the Appellant. As indicated by this Court in *B.E.S.T. Linen Supply and Services Ltd. v. The Queen*, 2007 TCC 468, [2007] G.S.T.C. 123 at para. 33, when reviewing section 1, "the Minister is the only person who can decide whether or not the evidence of exportation provided by a taxpayer is satisfactory." The Court can intervene only if the evidence shows that, in reaching her decision, the

Minister took into account extraneous factors, failed to take into account relevant facts, violated a legal principle or acted in bad faith (see also *Style Auto G.J. v. The Queen*, 2007 TCC 597, [2007] G.S.T.C. 162 at para. 11). The Appellant did not provide this Court with evidence that would require intervention.

[16] Furthermore, as provided by subsection 286(1), every person who carries on a business in Canada has the obligation to keep adequate books and records in a format that will enable the determination of the person's liabilities and obligations under the ETA. Since the Appellant was carrying on a business during the periods in issue, he had the obligation to keep adequate books and records in accordance with the ETA, which I find the Appellant did not do. The Appellant cannot simply argue that the vehicles sold during the 2011 Period and the 2012 Period were exported without providing adequate and reliable evidence of the exportation of the vehicles and be allowed to charge no GST/HST on these sales.

[17] During argument, counsel for the Respondent provided the Court with a spreadsheet that listed all the sales made by the Appellant during the 2011 Period and the 2012 Period, whether the sale was an export sale which was a zero-rated supply under the ETA (section 1 or 12) and which documents were relied upon to make that determination. Counsel for the Respondent did a thorough examination of all the documentation submitted by the Appellant and I see no reason to conclude otherwise or modify her conclusion that only 13% of the Appellant's sales during the 2011 Period and the 2012 Period (representing an amount of $150,649.26 for the 2011 Period and an amount of $144,332.38 for the 2012 Period) were export sales that were zero-rated in accordance with section 1 or 12 of Part V of Schedule VI; more specifically, on a review of all documentation filed by the Appellant (by cross-referencing bills of sale provided by the Appellant with Bills of Lading, customs declarations, Loading Declaration Forms, etc.), counsel for the Respondent concluded that 76 out of 582 vehicles were exported and the corresponding sales were zero-rated supplies under the ETA. I find that counsel for the Respondent relied on and took into account all relevant facts and documentation in reaching her conclusion.

[18] In that regard, counsel for the Respondent refused to accept that a vehicle was exported when insufficient evidence was provided; for example, when the Appellant provided a rider to a Bill of Lading without the actual Bill of Lading; or when the Bill of Lading was defective (e.g., not stamped, not dated, or incomplete); or when documents were provided but could not be traced to the Appellant's sales. Furthermore, she did not consider the export Declaration Forms which were modified by the Appellant in advance of the hearing. In the majority of

the cases where it was accepted that a vehicle was exported, it was because the Appellant was the shipper, so section 12 would apply. This is consistent with the Appellant's testimony that most of the time he exported the vehicles himself.

[19] Mr. Cracknell also testified that there were various issues with the Bills of Lading submitted by the Appellant. Specifically, dates were missing, the Appellant's name was missing, and there were many duplicates. The package of Bills of Lading provided by the Appellant was not organized as there was no sequence to them and it was very difficult to trace the Bills of Lading to the listing of vehicles sold. Furthermore, Mr. Cracknell testified that the documentation submitted by the Appellant was not very organized as the first listing of vehicles received from the Appellant did not indicate the VIN of the listed vehicles and the amounts indicated on the second listing did not match the first listing.

[20] As mentioned above, I find that the Appellant did not provide this Court with adequate and reliable evidence establishing, even on a *prima facie* basis, the exportation of the vehicles.

[21] Mr. Cyril Obasi, the Appellant's accountant, testified at the hearing that after having reviewed various invoices and Bills of Lading, he concluded that at least 70% to 80% of the Appellant's sales were export sales and the remaining 20% were sales made within Canada (or domestic sales). Mr. Obasi prepared the ledgers filed under Exhibits A-3 (showing a total of 277 sales in 2011) and A-4 (showing a total of 316 sales in 2012) detailing the Appellant's export sales and domestic sales (collectively, the "Ledgers").

[22] In order to prepare the Ledgers, Mr. Obasi testified that he had reviewed various Bills of Lading, shipping documents, invoices of purchases and invoices of sales, and verified the dates of purchases and sales. However, Mr. Obasi did not match the VIN of the vehicles sold to the VIN appearing on the various Bills of Lading and he only reviewed approximately 50% of the vehicle sales listed on the Ledgers. He also acknowledged that some of the invoices reviewed were inaccurate—for example they listed GST/HST charged for exported vehicles, the sales of which should have been zero-rated supplies. Further, the dates indicated on the Ledgers are the dates the various vehicles were bought by the Appellant at auction and not the dates the vehicles were sold.

[23] Furthermore, the evidence shows that the Ledgers contain many errors. For example, a sale that was reported as an export sale was a domestic sale as the

vehicle was registered in Ontario after the vehicle was sold by the Appellant.[1] Also, on some occasions, the Ledgers would indicate that a sale was a domestic sale but the Appellant testified that the sale was an export sale.[2] On other occasions, the Ledgers indicated that the sale was an export sale but it was effectively a sale to an Ontario resident.[3]

[24] Given all the errors found in the Ledgers, I am of the view that the Ledgers are not reliable evidence and are not to be considered by the Court.

[25] Mr. Obasi also filed into evidence various Export Declaration Forms (B13 Forms) issued by shipping companies in a bundle (in no apparent order) under Exhibits A-1 (2011) and A-2 (2012). However, these documents were not reviewed by Mr. Obasi in his preparation of the Ledgers.

[26] Furthermore, the Appellant testified that he had forged signatures and added information on these B13 Forms in advance of the hearing. Based on a review of the B13 Forms, the signature of Rotimi Makinde on page 1 of Exhibit A-1 seems to differ from the signature of Rotimi Makinde on pages 2 and 5 of Exhibit A-1. Further, it seems that the signature of Ahmed Mohammed is the same as the signature of Rotimi Makinde (Exhibit A-1, pp. 1 and 7). Some of the B13 Forms bear a date prior to the date of sale of the vehicles: for example, the B13 Form at p. 4 of Exhibit A-2 is dated June 13, 2012, but the corresponding bill of sale at p. 357 of Exhibit R-2 is dated July 10, 2012; the B13 Form at p. 5 of Exhibit A-2 is dated June 13, 2012, but the corresponding bill of sale at p. 385 of Exhibit R-2 is dated July 24, 2012. The Appellant explained that if there is a problem with a vehicle, the invoice will be reissued. However, I do not understand how a B13 Form could be dated one month prior to the date of the sale of a vehicle given the Appellant's testimony that the B13 Form is issued only after the car is loaded in a container.

[27] Given the Appellant's testimony and given that the majority of the B13 Forms lack signatures and customs stamps, I will not give any weight to these documents.

---

[1] For example, see Exhibits R-3, p. 7 and A-3, line 152; Exhibits R-3, p. 11 and A-3, line 151; Exhibits R-3, p. 63 and A-3, line 153; Exhibits R-2, p. 334 and A-4, line 195.
[2] Exhibits R-5, p. 208 and A-3, line 211; Exhibits R-5, p. 216 and A-3, line 207; Exhibits R-5, pp. 239, 242 and 263 and A-3, lines 198, 197 and 189.
[3] Exhibits R-2, p. 329 and A-4, line 203; Exhibits R-5, p. 208 and A-3, line 211.

[28] Furthermore, I will not give any weight to the documents filed under Exhibits A-9 and A-10, which are the Customs Declaration from Nigeria as the Appellant also testified that he had added information or forged signatures on these documents in advance of the hearing.

[29] The Appellant filed five packages of Bills of Lading in a bundle and not organized in any coherent manner. During the first days of the hearing in June 2018, the Appellant filed four packages of Bills of Lading under Exhibits A-5 (2011), A-6 (2012), A-7 (2011) and A-8 (2012). Some of the Bills of Lading in Exhibits A-7 and A-8 were already included in Exhibits A-5 and A-6. When the Court reconvened in Toronto in September 2018, more than three months after the first hearing, the Appellant filed another package of Bills of Lading under Exhibit A-14—some were new Bills of Lading, but some had already been included in the previously filed packages. These documents were submitted by the Appellant in no apparent order and without any indication as to which sales they relate to. The Appellant wanted the Court to conduct an audit and match all his sales with those Bills of Lading but that is not an efficient use of judicial resources, which are limited, and this is certainly not the role of this Court.

[30] A review of these Bills of Lading showed that the majority of them are deficient. The majority of the Bills of Lading are lacking dates and signatures. Some are only riders to Bills of Lading, without the actual Bills of Lading. On some copies, there seem to be parts of two different Bills of Lading on the same document (Exhibit A-5, p. 1). Furthermore, a majority of them list a third party as the shipper/exporter. However, the Appellant testified that most of the vehicles he bought were shipped by him. As an explanation for why different names appear as the shipper on the Bills of Lading, the Appellant testified that he has multiple persons working for him in his business and they often sign documents on his behalf because he travels a lot, but none of them were called as a witness.

[31] The Appellant also filed two packages of Loading Declaration Forms in a bundle (Exhibits A-11 and A-12). On these forms, neither the Appellant nor Zion Auto Sales is stated as the exporter. On many of them, the exporter is identified as Uvic Auto Services Inc. According to the Appellant, Uvic Auto Services Inc. is a business that belongs to one of his workers, Victor. Since the Appellant travels a lot, his workers (the list of workers has been filed under Exhibit R-1) have the authority to ship used cars and complete the forms for him. However, apart from Victor from Uvic Auto Services Inc., I do not see the names of any other workers on the Loading Declaration Forms. I am of the view that the Loading Declaration Forms are not helpful for showing the export of vehicles.

[32] During cross-examination of the Appellant, counsel for the Respondent went through the Appellant's bills of sale for the months of July, August and September 2011 and 2012 in great detail.[4]

[33] As already mentioned above, the cross-examination of the Appellant on these bills of sale demonstrated that the Ledgers could not be relied upon by the Court, but it also showed the following:

(a) On some bills of sale, even if the purchaser had an address in Ontario, the Appellant would report the sale as an export sale and would not charge GST/HST. The Appellant testified that the name appearing on the bill of sale was the name of a family member of the African purchaser who had an address in Ontario; he would also sometimes indicate the name of one of his workers if he did not know the name of the African purchaser.[5] I do not find that these explanations are reasonable;

(b) Some vehicles listed as export sales had owners registered in Ontario after the Appellant sold the vehicles or were sold to other purchasers in Ontario after being allegedly sold by the Appellant for export;

(c) When the Appellant was not able to find the corresponding Bills of Lading for an export sale, he would refer the Court to a document filed under Exhibit A-13, an invoice from Best Import Performance Inc. dated April 2, 2012, indicating that 48 cars were put into containers.[6] However, that document does not indicate the VIN of the vehicles or contain a description of the vehicles or a reference to a Bill of Lading. The Appellant was not able to show which vehicles were referred to in Exhibit A-13.

Further, the Appellant referred to Exhibit A-13 to justify export sales even when the sales occurred after April 2, 2012, which is the date of the invoice from Best Import Performance Inc.[7] It is not plausible that a vehicle sold by the Appellant in July 2012 would be referenced in an invoice dated April 2, 2012, confirming that the vehicle was put in a

[4] Exhibit R-3 - July 2011 sales; Exhibit R-4 – August 2011 sales; Exhibit R-5 – September 2011 sales; Exhibit R-2 – July 2012 sales; Exhibit R-6 – August 2012 sales and Exhibit R-7 – September 2012 sales.
[5] Example: Exhibit R-3, p. 19; Exhibit R-2, pp. 382 and 425; Exhibit R-6, p. 444.
[6] Exhibit R-3, pp. 1, 7, 11, 19, 21, 32, 39 and 74; Exhibit R-4, pp. 89, 94, 97, 101, 115, 120, 130, 132, 134, 138, 141, 146 and 157; Exhibit R-5, pp. 178, 182, 185, 193, 202, 204, 211, 213, 219, 224, 226, 229, 232, 236, 242, 244, 248, 251, 259, 265 and 285.
[7] For example, Exhibit R-2, pp. 298, 306, 308, 311, 314, 327 and 329.

container. On many occasions when the Appellant was not able to refer the Court to corresponding Bills of Lading or other export documentation, he would testify that the vehicle was referenced in Exhibit A-13. I am of the view that is not plausible and that his testimony lacked credibility;

(d) For a very large portion of the bills of sale for sales that were reported as export sales, the Appellant was not able to refer the Court to the corresponding Bill of Lading or to other documents showing exportation of the vehicles.[8]

Further, with respect to the sale of vehicles for which a certain type of export documentation was provided, the documentation was either insufficient or did not show that the Appellant exported the vehicles or that the recipient exported the vehicles. On some Bills of Lading, the Appellant was not the shipper;[9] a number were riders to Bills of Lading but the actual Bills of Lading were not attached to the riders; a number of Bills of Lading had no dates or were not stamped by the shipping company as indicated above, suggesting that the documents were draft Bills of Lading; and some Bills of Lading cannot be traced to the Appellant's sales. Consequently, given the state of these documents, it is not possible to determine who the exporter of the vehicles was and it is not possible to determine whether the supply is a zero-rated supply under the ETA.

[34] Furthermore, in cross-examination, the Appellant testified that when he sells a vehicle at a loss, when he sells vehicle parts or when he sells a scrap car, he does not charge GST/HST. He also testified that he does not charge GST when the purchaser resides in Alberta (Exhibit R-4, p. 81). By proceeding in that way, the Appellant did not follow the provisions of Part IX of the ETA.

[35] Since there is a large portion of the vehicles sold for which no documentation has been provided to show that the vehicles were exported, counsel for the Respondent asked the Court to draw an adverse inference against the Appellant, the inference being that no such documentation existed because the vehicles were not exported. In counsel's view, it is appropriate to draw such an

[8] Exhibit R-3, pp. 1, 7, 11, 19, 21, 32, 39 and 74; Exhibit R-4, pp. 89, 94, 97, 101, 115, 120, 130, 132, 134, 138, 141, 146 and 157; Exhibit R-5, pp. 178, 182, 185, 193, 202, 204, 211, 213, 219, 224, 226, 229, 232, 236, 242, 244, 248, 251, 259, 265 and 285.
[9] Exhibits R-3, p. 43 and A-7, p. 1; Exhibits R-3, p. 35 and A-7, p. 3.

adverse inference especially considering the fact that in the three months between when the hearing started and when the Court reconvened, the Appellant had ample opportunity to look for and find such documentation and has not provided further support but for Exhibit A-14, which contains a few new Bills of Lading. I agree that an adverse inference against the Appellant is appropriate.

[36] Finally, the Appellant argued that the audit was not properly conducted as Mr. Cracknell had no experience in the area of the purchase and resale of used vehicles for export. Also, the Appellant took issue with the fact that a clerk did the MTO searches. The Appellant also argued that it was unfair to take only a sample of one month (September 2011) to assess him for both periods in issue. Furthermore, the Appellant argued that it would not be fair to assess him since the CRA has full knowledge of the vehicles shipped out of the country as the CRA has access to records of exportation.

[37] I cannot accept the Appellant's arguments. As it was explained to the Appellant at the hearing, this Court is not a court of equity. The Tax Court of Canada's jurisdiction, as a statutory court, is found in and limited by section 12 of the *Tax Court of Canada Act* (R.S.C., 1985, c. T-2), its enabling statute. As to GST appeals, section 12 of the *Tax Court of Canada Act* provides this Court with exclusive and original jurisdiction to determine the validity and correctness of the assessment of taxes under Part IX of the ETA (*Ereiser v. The Queen*, 2013 FCA 20 at para. 31, 2013 DTC 5036). In addition, the actions of the CRA cannot be taken into account in an appeal of an assessment (*Main Rehabilitation Co. v. The Queen*, 2004 FCA 403 at paras. 7 and 8, 2004 DTC 6762). I find that the Appellant did not meet his burden as he did not provide this Court with adequate and reliable evidence establishing, even on a *prima facie* basis, the exportation of the vehicles.

V. CONCLUSION

[38] For the foregoing reasons, the appeals are allowed but only to the extent of permitting the concessions made by counsel for the Respondent at the hearing, namely that 13% of the Appellant's sales (representing an amount of $150,649.26 for the 2011 Period and $144,332.38 for the 2012 Period) were export sales and accordingly zero-rated supplies under section 1 or section 12 of Part V of Schedule VI, with one set of costs in accordance with Tariff B of Schedule II of the *Tax Court of Canada Rules (General Procedure)* to the Respondent.

Signed at Ottawa, Canada, this 13th day of December 2018.

"Dominique Lafleur"

Lafleur J.

SCHEDULE A

123(1) Definitions — In section 121, this Part and Schedules V to X,

. . .

zero-rated supply means a supply included in Schedule VI.

. . .

165(1) Imposition of goods and services tax — Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

(2) Tax in participating province — Subject to this Part, every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply.

(3) Zero-rated supply — The tax rate in respect of a taxable supply that is a zero-rated supply is 0%.

. . .

221(1) Collection of tax — Every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect the tax under Division II payable by the recipient in respect of the supply.

. . .

225(1) Net tax — Subject to this Subdivision, the net tax for a particular reporting period of a person is the positive or negative amount determined by the formula

A - B

where

A is the total of

(*a*) all amounts that became collectible and all other amounts collected by the person in the particular reporting period as or on account of tax under Division II, and

(*b*) all amounts that are required under this Part to be added in determining the net tax of the person for the particular reporting period; and

B is the total of

(*a*) all amounts each of which is an input tax credit for the particular reporting period or a preceding reporting period of the person claimed by the person in the return under this Division filed by the person for the particular reporting period, and

(*b*) all amounts each of which is an amount that may be deducted by the person under this Part in determining the net tax of the person for the particular reporting period and that is claimed by the person in the return under this Division filed by the person for the particular reporting period.

. . .

228(1) Calculation of net tax — Every person who is required to file a return under this Division shall, in the return, calculate the net tax of the person for the reporting period for which the return is required to be filed, except where subsection (2.1) or (2.3) applies in respect of the reporting period.

(2) Remittance [of net tax] — Where the net tax for a reporting period of a person is a positive amount, the person shall, except where subsection (2.1) or (2.3) applies in respect of the reporting period, remit that amount to the Receiver General,

> (*a*) where the person is an individual to whom subparagraph 238(1)(a)(ii) applies in respect of the reporting period, on or before April 30 of the year following the end of the reporting period; and
>
> (*b*) in any other case, on or before the day on or before which the return for that period is required to be filed

. . .

286(1) Keeping books and records — Every person who carries on a business or is engaged in a commercial activity in Canada, every person who is required under this Part to file a return and every person who makes an application for a rebate or refund shall keep records in English or in French in Canada, or at such other place and on such terms and conditions as the Minister may specify in writing, in such form and containing such information as will enable the determination of the person's liabilities and obligations under this Part or the amount of any rebate or refund to which the person is entitled.

CITATION:	2018 TCC 252
COURT FILE NOS.:	2017-2728(GST)G 2017-2729(GST)G
STYLE OF CAUSE:	IKECHUKWU NWAUKONI AND HER MAJESTY THE QUEEN
PLACES OF HEARING:	Hamilton, Ontario Toronto, Ontario
DATES OF HEARING:	June 4, 5 and 6, 2018 and September 11 and 12, 2018
REASONS FOR JUDGMENT BY:	The Honourable Justice Dominique Lafleur
DATE OF JUDGMENT:	December 13, 2018

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Meaghan Mahadeo

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada