

Docket: 2018-860(GST)I

BETWEEN:

1882320 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 10, 2019, at Hamilton, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Agent for the Appellant: Obaro Akpomena

Counsel for the Respondent: John Maskine

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**JUDGMENT**

The appeal from an assessment made under Part IX of the *Excise Tax Act* for the period of September 1, 2015 to August 31, 2016 is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 26th day of April 2019.

“Rommel G. Masse”

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Masse D.J.

Citation: 2019 TCC 81  
Date: 20190426  
Docket: 2018-860(GST)I

BETWEEN:

1882320 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Masse D.J.

[1] The Appellant was at all material times an Ontario corporation based in Oakville Ontario. It carried on the business of selling used cars and vehicle parts. The Appellant is a registrant for the purposes of Part IX of the *Excise Tax Act*, R.S.C. 1985, c E-15, as amended (the “Act”). As a Goods and Services Tax/Harmonized Sales Tax (“GST/HST”) registrant, the Appellant was required to file its GST/HST returns on an annual basis.

[2] The sole shareholder and director of the Appellant was Mr. Obaro Akpomena. Mr. Akpomena testified that the Appellant was in the business of buying and exporting automobiles. During the period in question, September 1, 2015 to August 31, 2016 (the “Period”), the Appellant had total sales of approximately \$53,000. This was in relation to five used cars that were purchased in Canada and purportedly exported to Nigeria. The Appellant did not collect and remit GST/HST on the sale of these vehicles since, according to the Appellant, they were purchased in Canada for export to Nigeria and thus they were zero-rated supplies which means that GST/HST was not exigible.

[3] By Notice of Assessment dated April 10, 2017, the Minister of National Revenue (the “Minister”) assessed the Appellant for additional GST/HST in the amount of \$7,951.80, and disallowed input tax credits (“ITCs”) in the amount of \$2,986.34 for the Period plus the Minister assessed interest and a failure to file penalty. This was on the grounds that the Appellant had not provided adequate

documentation to substantiate that the vehicles were exported to Nigeria by the Appellant. On June 21, 2017, the Appellant filed a Notice of Objection to the Assessment. On February 22, 2018, the Minister confirmed the assessment. Hence the appeal to this Court.

[4] Mr. Akpomena produced five documentary exhibits which he submits prove that the Appellant purchased these vehicles in Canada and exported them to Nigeria, thus making them zero-rated.

[5] Exhibit A-1 consists of five pages. There is a Bill of Lading issued by the Mediterranean Shipping Company S.A. bearing number MSCUM9872690, a rider page to the Bill of Lading, a two-page tracking document, and an invoice in relation to the sale of a 2008 Toyota Camry from Allomet Logistic Services Ltd. (“Allomet”), of Lagos, Nigeria, to Mr. and Mrs. Tunji Badmus, also of Lagos. The rider page to the Bill of Lading refers to the shipping of four vehicles including the 2008 Toyota Camry (which is one of the vehicles, the subject of this appeal), and described in the invoice from Allomet already referred to. All of these vehicles are identified on the rider page by their Vehicle Identification Number (“VIN”). The Bill of Lading indicates that the shipper is Zion Auto Sales of Brampton Ontario. The forwarding agent is International Freight Forwarders of Etobicoke Ontario. The consignee is Paul Agiliga Ubabudike of Lagos, Nigeria. It is noteworthy that the Appellant is nowhere identified as an interested party in any of these documents, nor is Mr. Akpomena.

[6] Exhibit A-2 consists of eight pages. There is a Bill of Lading issued by Mediterranean Shipping Company S.A. bearing number MSCUM9801913, a rider page to this Bill of Lading referencing four vehicles identified by make, model, year and VIN, two tracking pages and four invoices in relation to the sale of the vehicles described in the rider page. These invoices indicate that the four vehicles were sold by Allomet to persons in Nigeria. The shipper noted on the Bill of Lading is noted as being Obaro Akpomena of Toronto. The consignee is Vinefield Estates Ltd. of Lagos, Nigeria, and the forwarding agent is Absa Canada International. Again, it is noteworthy that nowhere in any of these documents is the Appellant indicated as an interested party.

[7] Exhibit A-3 is a Certificate of Incorporation indicating that Allomet is a Nigerian company incorporated under the laws of Nigeria as of November 18, 2009. Mr. Akpomena testified that Allomet is wholly owned by him.

[8] Exhibit A-4 is an Agency Agreement, undated, between the Appellant and Mr. Akpomena whereby the Appellant authorizes Mr. Akpomena to perform certain services on its behalf. Those services involve the “Sourcing and buying/shipping automobile and parts to Nigeria.” The scope of the authority is described as: “Agent is permitted to sign purchase orders and also arrange shipping and any other process to have the cars shipped and sold where ever it can be profitable sold” [exact wording in both excerpts]. Mr. Akpomena explains that the purpose of this Agency Agreement was to facilitate the Appellant in exporting vehicles and getting another entity to complete the sales transactions in Nigeria. Allomet is the entity that transacts business in Nigeria for the Appellant. Mr. Akpomena asserts that the Appellant is not a legal entity in Nigeria since it is not registered there and so is unable to transact business in that country. Allomet does not buy the cars from the Appellant – it simply facilitates the sale of the cars to the ultimate purchasers in Nigeria.

[9] Exhibit A-5 consists of seven pages. Mr. Akpomena indicated that Exhibit A-5 is illustrative of how the Appellant purchases and exports its vehicles. This Exhibit includes a rider page to a Bill of Lading bearing number MSCUM9839376 — the Bill of Lading itself was not produced to the Court. This is in relation to four used cars (not the subject of this appeal). There are two tracking pages. The last four pages are individual Bills of Sale in relation to these four used cars purportedly evidencing their purchase by the Appellant here in Canada. However, the Appellant is not indicated as the purchaser. All of these Bills of Sale indicate Mr. Obaro Akpomena as the purchaser and Max Mayuku as the vendor. Mr. Akpomena purchased these vehicles in May, July and August of 2016 and it is indicated on the Bills of Sale that the vehicles were sold as is and intended to be exported. He testified that he purchased these vehicles as agent for the Appellant and not on his own behalf. However, the Bills of Sale indicate that Mr. Akpomena was the purchaser in his personal capacity. Nowhere is it indicated that the purchaser was the Appellant nor is it indicated that Mr. Akpomena was acting as agent for the Appellant.

[10] In cross-examination, Mr. Akpomena testified that he purchased all of the vehicles here in Canada, including the subject vehicles, as agent for and on behalf of the Appellant. He paid for the vehicles by cash and the Appellant reimbursed him for these purchases by cash as well. However, it is to be noted that neither the Appellant nor Mr. Akpomena has produced any documentation tracing the flow of cash from the Appellant’s business bank account to Mr. Akpomena. It is also to be noted that there are no records showing how money goes from the ultimate purchasers in Nigeria back to the Appellant in Canada. Mr. Akpomena indicated

that Allomet, his company in Nigeria, collected the money on the sale of the vehicles and remitted it back to him. It is then sent back to the Appellant by way of money changers. This is all done on a cash basis. No records have been produced in support of this assertion.

[11] Mr. Akpomena says that he has invoices to show that the Appellant paid to ship the cars but they have not been produced and are therefore not available for examination by the Court.

[12] Overall, there are no records at all such as bank statements, bank drafts, money orders, cheques, receipts for cash, e-transfers, wire-transfers or debit/credit memos, to show that the Appellant paid for the vehicles here in Canada or received the proceeds of sale of these vehicles from Nigeria.

[13] It is of some importance to note that none of the Bills of Lading bear a signature, a date or customs stamps. None of the Bills of Lading make any reference at all to the Appellant. There is no indication on the Bill of Lading included in Exhibit A-1 that Zion Auto Sales, shown as the shipper, has any connection with or is acting on behalf of the Appellant. Nowhere is it indicated on the Bill of Lading included in Exhibit A-2 that Mr. Akpomena, shown as the shipper, is acting as agent on behalf of the Appellant. There is no documentation from the Nigerian customs authorities regarding the importation into Nigeria of the subject vehicles.

#### Appellant's position

[14] The Appellant takes the position that it bought used cars here in Canada and paid the HST on those purchases. These vehicles were then exported to Nigeria by the Appellant to be sold there. Tangible Personal Property (the vehicles here in question) that is exported outside Canada is zero-rated and therefore pursuant to paragraph 142(2)(a) of the *Act*, the Appellant was not obliged to collect and remit HST/GST on the sales of these vehicles in Nigeria. It is also the position of the Appellant that it is entitled to the input tax credits ("ITCs") claimed during the Period in question.

[15] Therefore, the Appellant argues that it should not have been assessed GST/HST of \$7,951.80 and that it properly claimed the disallowed ITCs of \$2,986.34. The Appellant therefore urges the Court to allow its appeal and remit the matter back to the Minister for reconsideration and reassessment accordingly.

Respondent's position

[16] The Respondent takes the position that the documentation provided by the Appellant is not adequate and sufficient enough to prove that the subject vehicles were purchased in Canada and were exported by the Appellant to Nigeria. It is up to the Appellant to maintain and provide documentation that is adequate and sufficient and also satisfactory to the Minister to prove that the vehicles have in fact been exported by the Appellant from Canada to Nigeria. The documentation provided makes no mention whatsoever of the Appellant or of Mr. Akpomena acting as agent for the Appellant.

[17] Accordingly, the Appellant's supplies are not zero-rated supplies within the meaning of that term, as set out in subsection 123(1) of the *Act*.

[18] The Appellant was required pursuant to subsection 221(1) of the *Act* to charge and collect GST/HST on the sale price of its supply of used cars and vehicle parts which amounts to \$7,951.80. The Appellant did not do so and is therefore liable for that amount pursuant to subsection 225(1) of the *Act*. In addition, the Appellant was not entitled to claim ITCs amounting to \$2,986.34 on the purchase price of the subject vehicles. The Respondent submits that prior to filing the return in which the ITCs were claimed, the Appellant failed to obtain beforehand documentation containing the information prescribed by section 3 of the *Input Tax Credit Information (GST/HST) Regulations* (SOR/91-45) (the "*Regulations*"). Also, the Appellant has not produced any documentation in support of its claim for ITCs. Accordingly, the Appellant is not entitled to claim ITCs pursuant to subsection 169(4) of the *Act*.

[19] The Respondent therefore urges this Court to dismiss the Appellant's appeal.

The issue

[20] The issues to be decided in this appeal are:

- a. whether the Appellant is liable for uncollected HST/GST under the *Act* on the sale of used vehicles during the Period, and
- b. whether the Appellant is entitled to claim ITCs in the amount of \$2,986.34 for the Period.

## Discussion

[21] The relevant provisions of the *Excise Tax Act*, R.S.C. 1985, c E-15, as amended, *Part V of Schedule VI* of the *Act* and *Regulations* are set out in “Appendix A” to these Reasons for Judgment.

### A. Zero-rated supplies

[22] Pursuant to subsection 165(1) of the *Act*, 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 obliges the supplier, as agent for Her Majesty the Queen in Right of Canada, to collect the taxes payable by the recipient of the supply and remit the tax collected to the Receiver General of Canada.

[23] Some supplies are zero-rated. Subsection 165(3) provides that the tax rate of a zero-rated supply is 0%. What constitutes zero-rated supplies is set out in *Schedule VI*. Supplies made in Canada that are exported are generally zero-rated. 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 *Act*.

[24] Section 142 is the general provision used to determine whether a supply is deemed to be made inside or outside of Canada. Paragraph 142(1)(a) of the *Act* provides that a supply by way of sale of tangible personal property (“TPP”) is deemed to be made in Canada if the TPP is, or is to be, delivered or made available in Canada to the recipient of the supply. Paragraph 142(2)(a) of the *Act* provides that a supply by way of sale of TPP shall be deemed to be made outside Canada if the TPP is, or is to be, delivered or made available outside Canada to the recipient of the supply.

[25] Section 12 of *Part V of Schedule VI* of the *Act* provides that a supply of a TPP is a zero-rated supply if the supplier ships the property to a destination outside Canada that is specified in a contract for carriage of the property, or if the supplier transfers possession of the property to a consignee or common carrier that has been retained by the recipient of the supply, to ship the property to a destination outside Canada. Where a supply of TPP by way of sale is made in Canada and the supplier is the party that arranges for the export of the TPP, rather than the recipient, the supply is zero-rated under section 12 of *Part V of Schedule VI* to the *Act* if the supplier does one of the following:

- a. ships the TPP to a destination outside Canada that is specified in the contract of carriage of the TPP;
- b. transfers possession of the TPP to a common carrier or consignee that has been retained by the supplier on behalf of the recipient or the recipient's employer to ship the TPP to a destination outside Canada; or
- c. sends the TPP by mail or carrier to an address outside Canada.

[26] The keeping of detailed and accurate records under the *Act* is absolutely essential. Subsection 286(1) of the *Act* mandates that every person who carries on business or is engaged in a commercial activity in Canada, every person required to file a return and every person who makes an application for a rebate or refund must keep records in such form and containing such information as will enable the determination of a person's liabilities and obligations or the amount of any rebate or refund to which the person is entitled. Specifically, the importance of maintaining satisfactory evidence that the TPP has been sent outside of Canada cannot be overemphasized. According to section 1(e) of *Part V of Schedule VI* of the *Act*, evidence of the exportation of the property by the recipient must be evidence satisfactory to the Minister. The evidence of exportation must enable the shipment of the TPP to be traced from its origin in Canada to its destination outside Canada.

[27] Documentation satisfactory to the Minister establishing that the recipient has exported the TPP from Canada will vary depending on all of the circumstances including the mode of transportation used to export the TPP and the nature of the TPP. Satisfactory documentary evidence may include but is not limited to:

- a. sales invoices or purchase contracts identifying the TPP and the recipient, which should match up with the shipping or delivery instructions on the purchase order;
- b. bills of lading issued by or on behalf of the carrier evidencing a contract of carriage as well as proof of delivery of the goods on board a vessel;
- c. customs brokers or freight forwarders invoices;



- d. import documentation required by the country where the TPP's are exported;
- e. copies of the registration from the foreign regulatory authority where the property such as vehicles need to be licensed;
- f. any other evidence not enumerated above that is satisfactory to the Minister.

[28] Proper record keeping is important because in Canada, our tax system is a self-assessing and self-reporting system. In proceedings before this Court, the burden of proof is upon the Appellant and generally, an Appellant can only discharge this burden of proof by producing cogent, relevant and convincing documentary evidence. It is up to the Appellant in the instant case to provide the Court with sufficient and reliable documentary evidence that establishes on a balance of probabilities that the vehicles sold during the Period were exported - either because the Appellant sold the vehicles to a recipient other than a consumer, who intended to export the vehicles (s. 1) or because the Appellant exported the vehicles itself by shipping them or delivering them to a common carrier for export (s. 12).

[29] In *B.E.S.T. Linen Supply and Services Ltd. v. The Queen*, 2007 TCC 468, [2007] G.S.T.C. 123, Justice Paris of this Court was dealing with paragraph 1(e) of *Part V* of *Schedule VI* of the *Act* which provides that in order to establish that a supply is zero-rated, the person must “maintain evidence satisfactory to the Minister of the exportation of the property by the recipient”. In discussing “evidence satisfactory to the Minister”, Justice Paris had the following to say at paragraph 33 of his reasons for decision:

[33] The Minister's decision that the evidence of exportation is not satisfactory is a discretionary decision. In *Uranus Auto Sales v. The Queen* [2002] G.S.T.C. 39, this Court held that the Minister is the only person who can decide whether or not the evidence of exportation provided by a taxpayer is satisfactory. The Court cannot intervene unless the evidence demonstrated that, in reaching his decision, the Minister took into account extraneous factors, failed to take account relevant factors, violated a legal principle or acted in bad faith.

[30] Justice Paris was of the view that, in the circumstances of the case he had to decide, the Appellant had not successfully demonstrated that the Court could intervene in the Minister's decision that the evidence of exportation provided by the Appellant was not satisfactory. Of some importance was the fact that invoices

produced by the Appellant lacked details such as the purchaser's address and often even the name of the purchaser.

[31] In the matter of *Nwaukoni v. The Queen*, 2018 TCC 252, rendered December 13, 2018, Justice Lafleur of this Court was also dealing with a taxpayer who was purportedly shipping motor vehicles to Nigeria and Ghana, and sometimes to Cameroon. Justice Lafleur ruled that, in the case she was dealing with, the Appellant had not maintained evidence satisfactory to the Minister of the exportation of the vehicles as required by paragraph 1(e). She observed that as provided by subsection 286(1) of the *Act*, every person who carries on 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 *Act*. An Appellant simply cannot argue that supplies sold during the period were exported without providing adequate and reliable evidence of the exportation of the supplies and be allowed to charge no GST/HST on these sales. Justice Lafleur gave examples of situations where insufficient evidence was provided to prove exportation; for example, when a rider to a Bill of Lading is provided without the actual Bill of Lading, or when the Bill of Lading is defective (e.g., not stamped, not dated, or incomplete, the Appellant's name is missing) or when documents are provided but cannot be traced to the sale of the supply purportedly exported.

[32] In the case at bar, I am of the view that the Appellant has not provided the Court with sufficient and reliable evidence showing that the subject vehicles were exported by the Appellant from Canada to Nigeria.

[33] The following is a list of factors that I have considered in arriving at my decision:

- a. There is no evidence that the Appellant purchased the vehicles in Canada. All the evidence suggests that Mr. Akpomena purchased the vehicles in his own capacity. Mr. Akpomena states that he was at all times acting as agent for the Appellant yet this is not so indicated in any of the documentation relating to the subject vehicles.
- b. The purchase of the vehicles here in Canada was by cash transactions. Mr. Akpomena states that the Appellant reimbursed him for these purchases with cash. However, there is no documentation whatsoever tracing the flow of cash from the Appellant's business bank account to Mr. Akpomena.

- c. There are no records showing how money goes from the ultimate purchasers in Nigeria back to the Appellant in Canada. If, as Mr. Akpomena states, this was done through money changers, there should be records so indicating and referencing this to the exported vehicles but no such records have been produced (again, because this was supposedly all done on a cash basis).
- d. The Bills of Lading that were produced to the Court are deficient in material respects. None of the Bills of Lading bear a signature. None of them bear any customs stamp. None of the Bills of Lading are dated. Exhibit A-1 indicates that Zion Auto Sales is the shipper and Exhibit A-2 indicates that Mr. Akpomena himself is the shipper. Of great importance is the fact that none of the Bills of Lading make any reference at all to the Appellant. On the face of these documents the Appellant does not appear to have any connection to the exportation of the vehicles at all. Mr. Akpomena states that he was at all times acting as agent for the Appellant but his status as agent is not indicated anywhere on the exportation documents.
- e. There is no documentary evidence establishing that the Appellant paid for the cost of shipping.
- f. There is no Nigerian customs declaration or other Nigerian government documentation indicating that the vehicles entered the country.

[34] The Appellant simply cannot argue that the vehicles sold were exported without providing adequate and reliable evidence of the exportation and therefore be exempted from charging and remitting GST/HST. This Court has continuously and consistently indicated that what is needed is adequate and reliable evidence. Where that is not provided, then the Appellant will have failed to discharge its burden of proof.

[35] I am not satisfied that the Appellant has produced adequate and reliable evidence to show that it exported the vehicles in question. In addition, in the present case, I cannot conclude that, in reaching his decision, the Minister took into account extraneous factors, failed to take account of relevant factors, violated a legal principle or acted in bad faith.

B. Claim for Input Tax Credits

[36] In the instant case, the Appellant has not demonstrated that it is entitled to claim ITCs in the amount of \$2,986.34. No documentation at all has been provided to support this claim.

Conclusion

[37] In conclusion and for the foregoing reasons the Appellant's appeal is dismissed.

Signed at Kingston, Ontario, this 26th day of April 2019.

“Rommel G. Masse”

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Masse D.J.

**APPENDIX “A”**

The relevant provisions of the *Excise Tax Act*, R.S.C. 1985, c E-15, as amended, are as follows:

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

[...]

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

142(1) For the purposes of this Part ... a supply shall be deemed to be made in Canada if

- (a) in the case of a supply by way of sale of tangible personal property, the property is, or is to be, delivered or made available in Canada to the recipient of the supply;
- (b) in the case of a supply of tangible personal property otherwise than by way of sale, possession or use of the property is given or made available in Canada to the recipient of the supply;

[...]

(2) (a) For the purposes of this Part, a supply shall be deemed to be made outside Canada if

- (a) in the case of a supply by way of sale of tangible personal property, the property is, or is to be , delivered or made available outside Canada to the recipient of the supply;
- (b) in the case of a supply of tangible personal property otherwise than by way of sale, possession or use of the property is given or made available outside Canada to the recipient of the property;

[...]

165(1) 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) 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 that supply.

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

[...]

169(4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

- (c) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and
- (d) where the credit is in respect of property or a service supplied to the registrant in circumstances in which the registrant is required to report the tax payable in respect of the supply in a return filed with the Minister under this Part, the registrant has so reported the tax in a return filed under this Part.

221(1) 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) subject to this Subdivision, the net tax for a particular reporting period of the person is the positive or negative amount determined by the formula

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 that 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) 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) where the net tax for the reporting period of the 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) 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.

Schedule VI of the Act deals with zero-rated supplies. Sections 1 and 12 of Part V of Schedule VI deal with exports. Pursuant to these sections, exported supplies of tangible personal property are zero-rated if they are goods purchased for immediate export (section 1) or goods supplied for delivery outside Canada (section 12). According to these sections, a zero-rated supply is:

1 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) [...]

- (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 A supply of tangible personal property ... 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 to an address outside Canada.

The relevant provisions of the Input Tax Credit Information (GST/HST) Regulations, SOR/91-45 are as follows:

2 In these Regulations,

[...]

***Supporting documentation*** means the form in which information prescribed by section 3 is contained, and includes

- (a) an invoice,
- (b) a receipt,
- (c) a credit-card receipt,
- (d) a debit note,
- (e) a book or ledger of account,
- (f) a written contract or agreement,

- (g) any record contained in a computerized or electronic retrieval or data storage system, and
- (h) any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable;

3 For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:

- (a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than \$30,
  - i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business,
  - ii) where an invoice is issued in respect of the supply or the supplies, the date of the invoice,
  - iii) where an invoice is not issued in respect of the supply or the supplies, the date on which there is tax paid or payable in respect thereof, and
  - iv) the total amount paid or payable for all the supplies;
- (b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$30 or more and less than \$150,
  - i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, and the registration number assigned under section 241 of the Act to the supplier or the intermediary, as the case may be,
  - ii) the information set out in subparagraphs (a)(ii) to (iv),

- iii) where the amount paid or payable for the supply or the supplies does not include the amount of tax paid or payable in respect thereof,
  - (A) the amount of tax paid or payable in respect of each supply or in respect of all of the supplies, or
  - (B) where provincial sales tax is payable in respect of each taxable supply that is not a zero-rated supply and is not payable in respect of any exempt supply or zero-rated supply,
    - (I) the total of the tax paid or payable under Division II of Part IX of the Act and the provincial sales tax paid or payable in respect of each taxable supply, and a statement to the effect that the total in respect of each taxable supply includes the tax paid or payable under that Division, or
    - (II) the total of the tax paid or payable under Division II of Part IX of the Act and the provincial sales tax paid or payable in respect of all taxable supplies, and a statement to the effect that the total includes the tax paid or payable under that Division,
- iv) where the amount paid or payable for the supply or the supplies includes the amount of tax paid or payable in respect thereof and one or more supplies are taxable supplies that are not zero-rated supplies,
  - (A) a statement to the effect that tax is included in the amount paid or payable for each taxable supply,
  - (B) the total (referred to in this paragraph as the “total tax rate”) of the rates at which tax was paid or payable in respect of each of the taxable supplies that is not a zero-rated supply, and

- (C) the amount paid or payable for each such supply or the total amount paid or payable for all such supplies to which the same total tax rate applies, and
- v) where the status of two or more supplies is different, an indication of the status of each taxable supply that is not a zero-rated supply; and
- (c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$150 or more,
  - i) the information set out in paragraphs (a) and (b),
  - ii) the recipient's name, the name under which the recipient does business or the name of the recipient's duly authorized agent or representative,
  - iii) the terms of payment, and
  - iv) a description of each supply sufficient to identify it.

CITATION: 2019 TCC 81

COURT FILE NO.: 2018-860(GST)I

STYLE OF CAUSE: 1882320 ONTARIO INC. v.  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: January 10, 2019

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse, Deputy  
Judge

DATE OF JUDGMENT: April 26, 2019

APPEARANCES:

Agent for the Appellant: Obaro Akpomena

Counsel for the Respondent John Maskine

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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