

Docket: 2020-665(GST)I

BETWEEN:

CHRISTOPHER P. DES ROCHES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on April 6, 2023, at Hamilton, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Terence Katerynych

JUDGMENT

The appeal from the assessments made under the *Excise Tax Act* for the reporting periods from January 1, 2010 to December 31, 2010 and January 1, 2013 to December 31, 2013 is quashed, without costs.

Signed at Ottawa, Canada, this 29th day of November 2024.

“Susan Wong”

Wong J.

Citation: 2024TCC152
Date: 20241129
Docket: 2020-665(GST)I

BETWEEN:

CHRISTOPHER P. DES ROCHES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Wong J.

Introduction/Overview

[1] This appeal seeks to challenge a GST assessment from 2012. On the other hand, the respondent seeks to quash the appeal on the basis that the appellant did not file a notice of objection within the time permitted under the *Excise Tax Act*.

Preliminary matters

A. Preliminary motion to quash

[2] The Court only heard the respondent's preliminary motion to quash the appeal. The appellant advised the Court that if the respondent's motion was unsuccessful, he intended to introduce over 500 pages of documents in evidence during the appeal. There was insufficient time to accommodate the length of hearing required for the anticipated volume of evidence.

B. Validity of the respondent's affidavit

[3] At the commencement of the respondent's preliminary motion, the appellant challenged whether the respondent's affidavit (filed on March 29, 2023) was commissioned properly. During the global pandemic, this Court began accepting

remotely commissioned affidavits if they were administered in compliance with the superior court of the province in which the commissioner was located.¹

[4] The affidavit was commissioned under the *Administering Oath or Declaration Remotely* regulation² and subsection 9(2) of *Commissioner for Taking Affidavits Act*³ (both for Ontario). Subsection 4(4) of the Act says that a commissioner shall be styled “A commissioner for taking affidavits in and for the courts in Ontario” while the style used in the affidavit read “A Commissioner for Oaths in and for the Province of Ontario.” The respondent remedied the situation in any event by bringing the Canada Revenue Agency affiant to testify in person with respect to each paragraph in the affidavit.⁴

C. Reporting periods

[5] Based on the dates listed in the notice of appeal, the respondent inferred that the appellant sought to appeal the assessments of the reporting periods from January 1 to December 31, 2010 and January 1 to December 31, 2013.⁵ The respondent also inferred from the notice of appeal that the appellant sought to appeal the Minister of National Revenue’s taxpayer relief decisions.⁶

[6] The appellant’s notice of appeal lists the following assessment dates: (a) September 26, 2019, (b) October 4, 2019, and (c) February 19, 2020 and purports to also appeal “any other erroneous assessments or reassessments.”⁷

[7] The reply matches the assessment dates in the notice of appeal with the actual steps taken by the Minister of National Revenue on those dates and describes them as follows:⁸

- a. September 26, 2019 – a decision letter from the Minister with respect to the administrative waiver of interest and penalties;⁹
- b. October 4, 2019 – a notice of reassessment was issued making the adjustments to interest and penalties described in the September 26, 2019 letter; and
- c. February 19, 2020 – a decision letter from the Minister with respect to her second-level review of the decision to waive interest and penalties.

[8] After some twists and turns over the course of the hearing, the appellant clarified that he sought to appeal the Minister’s February 3, 2012 assessment of the January 1 to December 31, 2010 reporting period only.

Issues

[9] The issue in this preliminary motion to quash is whether the appeal is properly before the Court and specifically whether the appellant filed a valid notice of objection with respect to the January 1 to December 31, 2010 reporting period.

Legislative framework

[10] Subsection 301(1.1) of the *Excise Tax Act* says that a person who wishes to object to an assessment should file a notice of objection within 90 days after the day the notice of assessment is sent. Under subsections 303(1) and (7), a person may ask the Minister for a time extension to object but they must make this request within one year after the expiration of the original 90-day deadline. The mailing date of the assessment is presumed to be the date on the notice, by virtue of subsection 335(10).

[11] Neither the Court nor the Minister has the power to extend the time to object where a person does not make their request within the one year permitted by the Act.¹⁰

Factual background

[12] On February 3, 2012, the Minister of National Revenue issued a notice of assessment for the December 5 to 31, 2010 reporting period assessing the appellant for \$55,844.93 comprised of net GST, a section 285 (gross negligence) penalty, arrears interest, and a failure-to-file penalty.¹¹

[13] The appellant testified in chief that he received the February 3, 2012 assessment notice; on the other hand, he stated in cross-examination that he did not specifically remember receiving the February 3, 2012 assessment notice although he did remember thinking at the time that he did not believe he owed the amount indicated.

[14] He testified that on receiving the notice of assessment, he spoke to someone at the Canada Revenue Agency's call centre and was advised to send a letter disputing the assessment. He stated that he wrote a letter objecting to the assessment on February 28, 2012 and sent it by regular mail to the Summerside Tax Centre address on the notice. He introduced into evidence photocopies of his February 28, 2012 objection letter and the envelope in which it was mailed.¹² With respect to the photocopy of the envelope, he explained that he made it on his home fax machine before going to the post office with a friend on March 3, 2012.

[15] The appellant stated that he did not receive an acknowledgment of receipt from CRA, but began to focus on other things. He has suffered from trigeminal neuralgia since 2007 and stated that he was very ill from about 2009 to 2017.¹³

[16] He testified that the tax debt returned to the forefront when CRA began taking collection action. In cross-examination, he acknowledged that he wrote in his notice of appeal that he became aware of the outstanding assessment when he was contacted by a CRA collections officer in 2019.¹⁴ On February 14, 2019, CRA collections sent a letter to him confirming that they had reached a payment arrangement.¹⁵

[17] On February 19, 2019, the Minister received a notice of objection (dated February 13, 2019) from the appellant.¹⁶ The objection discusses the collection actions and states that the assessment would be zero if the Minister had communicated with him in a timely manner. He also states that he would like for the Minister to work with him to determine the actual amount of tax owing. There is no mention of the previous February 28, 2012 objection.¹⁷ The Minister treated this February 13, 2019 document as a first request for relief from interest and penalties.¹⁸

[18] On February 20, 2019, the Minister received a second notice of objection from the appellant.¹⁹ The objection sought to amend the February 13, 2019 objection by incorporating references to the relief provisions in the *Income Tax Act* and *Excise Tax Act*. There is no mention of the previous February 28, 2012 objection.²⁰ The Minister treated this February 20, 2019 document as an amended request for relief from interest and penalties.²¹

[19] On May 28, 2019, the appellant sent a letter to CRA's Taxpayer Relief Program saying that (among other things) he wished to clarify his relief request to request that "all assessments, interest, and penalties from 2010 to the present be reversed and that all monies confiscated by the CRA collections department be reimbursed."²² There is no mention of the previous February 28, 2012 objection.²³

[20] As described under the heading "Preliminary matters" of these reasons, the Minister granted a waiver of interest and penalties on September 26, 2019²⁴ and issued a notice of reassessment accordingly on October 4, 2019.²⁵ On February 19, 2020, the Minister completed a second-level review of the administrative relief decision.²⁶

[21] The notice of appeal to this Court was then filed on February 26, 2020.

Analysis and discussion

[22] During oral arguments, I invited respondent's counsel's submissions with respect to my initial impression that the February 28, 2012 objection²⁷ had an air of authenticity in terms of the document itself. I must admit that on reviewing the totality of the evidence, I cannot find that on a balance of probabilities, the document was mailed as and when the appellant asserted.

[23] If the appellant had mailed his notice of objection in February 2012 and then forgotten about it until the Minister commenced collection action in about 2018 or 2019, it seems likely that he would have immediately raised the fact that he had an outstanding objection for which he had never received a response. His written communications to the Minister in 2019²⁸ also did not refer to the February 28, 2012 objection and instead seemed to be his first effort to challenge the assessment.

[24] The mailing date of the February 3, 2012 assessment notice is presumed to be the date on the notice itself²⁹ and the appellant's oral testimony supports that the notice was received at or around that time. A person who wishes to object to an assessment should file their notice of objection within 90 days after the assessment was sent.³⁰ In this instance, 90 days from February 3, 2012 falls on May 3, 2012.

[25] A person may ask the Minister for a time extension to object but the request must be made within one year after the original 90-day deadline expires.³¹ In this instance, the additional one year expired on May 3, 2013. It is understandable why the objections and correspondence submitted by the appellant in 2019 were considered by the Minister under administrative relief, because there were no remaining avenues by then.

[26] Unfortunately, neither the Court nor the Minister has the power to extend the time to object where a person does not make their request within the one year permitted by the Act.³² Based on the timeline of events, the appellant took his various steps after the time limits had passed and as a result, there is no power or discretion left for the Minister or the Court to exercise under the law. The requirements are strict and have been applied consistently by this Court and the Federal Court of Appeal.

[27] The appellant might wish to consider applying to the Federal Court for judicial review of the Minister's February 9, 2020 second-level relief decision (for which a time extension would be required) as well as apply to the Minister for administrative relief with respect to the additional delays caused by this litigation.

Conclusion

[28] The appeal is quashed, without costs.

Signed at Ottawa, Canada, this 29th day of November 2024.

“Susan Wong”

Wong J.

CITATION: 2024 TCC 152

COURT FILE NO.: 2020-665(GST)I

STYLE OF CAUSE: Christopher P. Des Roches v. His Majesty
The King

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: April 6, 2023

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: November 29, 2024

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Terence Katerynych

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

For the Respondent: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada

¹ Practice Note no. 25 dated January 30, 2023; Notices to the Public and the Profession dated December 3, 2020, September 1, 2021, December 23, 2021, and June 29, 2022

² O.Reg. 431/20

³ RSO 1990, chapter C.17

⁴ Affidavit of Simon MacLeod, filed on March 29, 2023

⁵ Reply at paragraphs 3, 5, and 6

⁶ Reply at paragraphs 3, 8, 9, and 10

⁷ Notice of appeal, third page

⁸ Reply at paragraph 3

⁹ *Excise Tax Act*, section 281.1

¹⁰ *Excise Tax Act*, subsections 303(7) and 304(5)

¹¹ Affidavit of Simon MacLeod, filed on March 29, 2023 – Exhibit A; Exhibit A-2

¹² Exhibit A-1

¹³ Notice of appeal, fourth page

¹⁴ Notice of appeal, sixth page

¹⁵ Affidavit of Simon MacLeod, filed on March 29, 2023 – Exhibit B

¹⁶ Affidavit of Simon MacLeod, filed on March 29, 2023 – Exhibit B

¹⁷ Exhibit A-1

¹⁸ Affidavit of Simon MacLeod, filed on March 29, 2023 – paragraph 3(d)

¹⁹ Affidavit of Simon MacLeod, filed on March 29, 2023 – Exhibit C

²⁰ Exhibit A-1

²¹ Affidavit of Simon MacLeod, filed on March 29, 2023 – paragraph 3(e)

²² Exhibit A-3

²³ Exhibit A-1

²⁴ Reply at paragraph 3(a)

²⁵ Affidavit of Simon MacLeod, filed on March 29, 2023 – paragraph 3(f); Reply at paragraph 3(b)

²⁶ Affidavit of Simon MacLeod, filed on March 29, 2023 – paragraph 3(g); Reply at paragraph 3(c)

²⁷ Exhibit A-1

²⁸ Affidavit of Simon MacLeod, filed on March 29, 2023 – Exhibits B and C; Exhibit A-3

²⁹ *Excise Tax Act*, subsection 335(10)

³⁰ *Excise Tax Act*, subsection 301(1.1)

³¹ *Excise Tax Act*, subsections 303(1) and (7)

³² *Excise Tax Act*, subsections 303(7) and 304(5)