

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121101

Docket: A-342-10

Citation: 2012 FCA 277

**CORAM: BLAIS C.J.
SHARLOW J.A.
MAINVILLE J.A.**

BETWEEN:

ABLE ENTERPRISES LTD.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on November 1, 2012.

Judgment delivered from the Bench at Vancouver, British Columbia, on November 1, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 1, 2012)

SHARLOW J.A.

[1] Able Enterprises Ltd. is appealing the judgment of the Tax Court of Canada in an appeal under the informal procedure of that Court, dismissing an appeal of an assessment of goods and services tax (GST) under the *Excise Tax Act*, R.S.C. 1985, c. E-15, for the period March 1, 2002 to February 29, 2004 (2010 TCC 352). The assessments imposed a liability on Able Enterprises Ltd. to remit GST pursuant to section 173 of the *Excise Tax Act* on the amount of benefits conferred on its sole shareholder, Mr. Babich, in 2003 and 2004.

[2] Mr. Babich had appealed to the Tax Court the reassessments that included the taxable benefits in his income. Almost all of the issues raised by Able Enterprises Ltd. in its GST appeal are the same as those that were raised in Mr. Babich's income tax appeal. Mr. Babich's income tax appeal was unsuccessful in the Tax Court, as was the GST appeal of Able Enterprises Ltd.

[3] In this Court, Mr. Babich's appeal of the Tax Court judgment in his income tax appeal was heard immediately before this appeal. In the income tax appeal, all of the issues common to both appeals were determined in the Crown's favour. Those same determinations must stand for this GST appeal.

[4] The only issue that is unique to the GST appeal is the treatment by the Minister of a particular amount of \$12,624.41 that, according Mr. Babich, should have been credited to the GST account of Able Enterprises Ltd., rather than its employee source deduction account. The judge declined to consider this issue because she concluded that it was a collection matter that was outside her statutory jurisdiction. Mr. Babich challenges that conclusion. However, we are not persuaded that the judge erred in law or in fact when she declined on jurisdictional grounds to deal with that issue.

[5] For these reasons, the appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-342-10

STYLE OF CAUSE: Able Enterprises Ltd. v.
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 1, 2012

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OF THE COURT BY:** BLAIS C.J.
SHARLOW J.A.
MAINVILLE J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Earl Babich FOR THE APPLICANT

Selena Sit FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada