

Date: 20140612

Docket: A-234-13

Citation: 2014 FCA 159

**CORAM: GAUTHIER J.A.
MAINVILLE J.A.
BOIVIN J.A.**

BETWEEN:

LES ENTREPRISES DRF INC.

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Montréal, Quebec, on June 11, 2014.

Judgment delivered at Montréal, Quebec, on June 12, 2014.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
MAINVILLE J.A.**

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] This is an appeal from a judgment of Angers J. of the Tax Court of Canada (the Judge) dismissing an appeal brought by Les Entreprises DRF Inc. (the appellant) against assessments made under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) with respect to the period between October 1, 2006 to June 30, 2009.

[2] The appellant's commercial activities consist of providing personnel placement services to meat companies. In that context, the appellant called upon subcontractors to obtain temporary workers.

[3] The Minister of National Revenue (the Minister) denied the appellant's claim for input tax credits (ITC) regarding two personnel placement agencies, Entreprises A.C.G.S. (A.C.G.S.) and Service d'emploi M.B. (M.B.). The Minister imposed penalties for misrepresentation and gross negligence for omissions in the appellant's tax returns during the period in question.

[4] Among other things, the Judge concluded that the appellant failed to provide *prima facie* evidence of the services it claims to have received, let alone that such services were rendered by the subcontractors A.C.G.S. and M.B.

[5] The appellant argues that based on the allegations in the Response by the Respondent to its Notice of Appeal, it did not have the burden of establishing such facts. Hence, according to the appellant, this appeal is mainly about whether or not it was entitled at law to a defence of good faith, rather than the defence of due diligence referred to by the Judge.

[6] I cannot agree. In the particular circumstances and context of this case, the Judge was clearly entitled to make the finding that there was no *prima facie* evidence demonstrating that the services described in the invoices were indeed rendered. It is noteworthy to mention the following: the issue of whether the services in this case were rendered or not – notwithstanding

by whom – could be considered a relevant consideration not only to determine if the appellant was entitled to the ITC, but also to determine if the appellant acted in good faith.

[7] Findings of facts and of mixed fact and law of the Judge are reviewable under the standard of palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[8] In the present case, I am of the view that the Judge thoroughly analyzed the evidence before him. His conclusion rests upon his assessment of the credibility of the witnesses he heard and of the documentary evidence. The Judge's assessment does not contain an overriding and palpable error.

[9] Although the appellant has raised a serious issue of law with respect to the defence of due diligence and good faith, in light of the findings of fact of the Judge, it is not appropriate to deal with this matter in this case.

[10] For the reasons above, it is not necessary to deal with the appellant's subsidiary arguments.

[11] The appeal should therefore be dismissed with costs.

“Richard Boivin”

J.A.

“I agree.
Johanne Gauthier J.A.”

“I agree.
Robert M. Mainville J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-234-13
**(APPEAL FROM A JUDGMENT OF ANGERS J. OF THE TAX COURT OF CANADA,
DATED JUNE 17, 2013, DOCKET NUMBER 2011-737(GST)G)**

STYLE OF CAUSE: LES ENTREPRISES DRF INC. v.
MINISTER OF NATIONAL
REVENUE

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 11, 2014

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: GAUTHIER J.A.
MAINVILLE J.A.

DATED: JUNE 12, 2014

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