Docket: 2014-4590(GST)APP

BETWEEN:

ADE OLUMIDE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on April 13, 2015 at Ottawa, Ontario

Before: The Honourable Justice Judith Woods

Appearances:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Joanna Hill

ORDER

Upon motion by the Respondent for an Order to quash an application by the Applicant for a vacation of court costs and for extensions of time to institute proceedings, the motion is granted and the application by the Applicant is quashed. The parties shall bear their own costs.

Signed at Toronto, Ontario this 19th day of May 2015.

"J.M. Woods"

Woods J.

Citation: 2015 TCC 125
Date: 20150519
Docket: 2014-4590(GST)APP

BETWEEN:

ADE OLUMIDE,

Applicant,

and

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Respondent.

REASONS FOR ORDER

Woods J.

I. Introduction

[1] Ade Olumide has filed an application to the Court for the following relief:

> 3. THE NOTICE OF APPLICATION IS FOR:
>
> 4. Vacation of about $10,000 in Court Costs tax assessments stemming from CRA refusals to remedy wrongful information by CRA employee
>
> 5. Extension of time to Appeal to Tax Court and extension of time to seek an order referring the matter 2010 GST Rebate Application for about $16,000 back to the Minister for reconsideration and reassessment. That the reconsideration would include an application of the following CRA Manual tools (but not excluding any other tool available to the Minister) to achieve a return of the GST Rebate
>
> 6. Refund Credit
>
> 7. Fairness Provisions for Excise Tax Act

8. Remissions Order

9. No Fault Settlement

10. Offset between GST Rebate and GST

11. 7C Amendment Letter

12. Due Date Extension For Reporting Period

13. Deadline Waiver To File Nob (Notice of Objection)

14. GHRAPS Due Date

15. Re-Auditing A Previously Audited Period

16. Voiding Or Reassessing The 2010 GST Reassessment

17. Discretion To Allow Statute Barred Refund

18. Discretion To Refund Or Reduce Tax Payable

19. Taxpayer Bill Of Right Promise To Remedy Wrongful Information By CRA Employee

20. Costs of Motion fixed at $10,000 (amount owed to CRA being collected through taxes)

21. Punitive Costs at the discretion of the Court.

[2] Two days before the above application was scheduled to be heard, the respondent brought a motion for an Order to quash the application, or in the alternative for an Order to quash subpoenas to appear that were sent by Mr. Olumide to the Commissioner of the Canada Revenue Agency (CRA) and a CRA auditor. These are my reasons with respect to the respondent's motion.

II. Court costs

[3] The first relief that Mr. Olumide seeks is the vacation of court costs that were ordered against him by other courts in proceedings that are related to the tax matter that is at issue. Mr. Olumide submits that the total of the costs are approximately $10,000.

[4] It is clear that this part of the application cannot succeed because this Court does not have jurisdiction to deal with this matter.

[5] Mr. Olumide is asking this Court to vacate Orders for costs that were issued by other Courts. He submits that the Tax Court has jurisdiction because the Orders were implemented by way of assessments under the *Excise Tax Act*.

[6] I disagree with this submission. First, Mr. Olumide has not established that assessments under the *Excise Tax Act* were issued in respect of the costs awarded by other Courts. Second, the Minister has not been given the authority to make this type of assessment under the *Excise Tax Act.* Finally, the Tax Court of Canada has not been given jurisdiction over such matters.

[7] The respondent filed an affidavit by a CRA appeals officer which stated that no assessment had been issued in relation to court costs, and that an amount owing as court costs with respect to related proceedings in the Federal Court, the Federal Court of Appeal, the Ontario Superior Court of Justice, and the Supreme Court of Canada was added to Mr. Olumide's GST account pursuant to subsection 313(4) of the *Excise Tax Act* (Motion Record, Tab C).

[8] Subsection 313(4) provides:

> **313(4). Court Costs** – If an amount is payable to Her Majesty in right of Canada because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Part applies, subsections 314(1) and (3) and sections 316 to 322 apply to the amount as if the amount were a debt owing by the person to Her Majesty on account of tax payable by the person under this Part.

[9] The essence of s. 313(4) is to provide that court costs payable to the respondent in relation to GST matters can be collected in the same manner as tax owing under the *Act*. But court costs are not tax, they are not deemed to be tax, and the Minister has no authority under the *Excise Tax Act* to issue a tax assessment relating to such costs. Likewise, the Tax Court of Canada has no jurisdiction with respect to such matters.

[10] At the hearing, Mr. Olumide provided to the Court two documents in support of his position (Ex. A-1). Neither of these documents provides support that court costs were assessed by the Minister.

[11] It is clear that the application by Mr. Olumide as it relates to court costs has no chance of success.

III. Applications to extend time

A. *Background*

[12] Mr. Olumide also seeks extensions of time to appeal to this Court and to seek an Order referring the matter of "2010 GST Rebate Application for about $16,000" back to the Minister for reconsideration and reassessment.

[13] Two extensions of time have been requested. As far as I can tell, each of these requests relates to a GST return of net tax that was filed in 2010 for the 2009 calendar year. My understanding is that the reference to a 2010 GST Rebate Application is a reference to the relief that Mr. Olumide sought by filing the net tax return. The return was the subject of an assessment issued under the *Excise Tax Act* by notice dated April 14, 2010 (Motion Record, Tab C).

[14] The Crown submits that the application to extend time has no chance of success because Mr. Olumide has not satisfied a pre-condition that is necessary to appeal to this Court, namely, the filing of a valid notice of objection.

[15] The pre-condition is set out in section 306 of the *Excise Tax Act*, which reads:

> **306. Appeal** – A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either
>
> > (a) the Minister has confirmed the assessment or has reassessed, or
> > (b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,
>
> but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.
>
> [Emphasis added]

[16] In order to satisfy this pre-condition, a valid notice of objection must be filed. The deadline for filing a notice of objection is 90 days from the time that the notice of assessment is sent, and the deadline is strict unless an extension of time is granted. The relevant provision is s. 301(1.1) of the *Act* which reads:

> **301.(1.1) Objection to assessment** – Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

[17] It is not in dispute that the assessment was sent on or around the date on the notice, which is April 14, 2010. Accordingly, the deadline for filing a notice of objection was a further 90 days, which was on or around July 13, 2010.

[18] The Crown submits that Mr. Olumide did not file a notice of objection until July 10, 2013, which is almost three years after the deadline (Motion Record, Tab C).

[19] It is worth noting that Mr. Olumide also filed a notice of objection on October 18, 2011. This objection related to a different assessment, but in any event the objection was filed more than 90 days past the date of the notice of assessment issued on April 14, 2010. The notice of objection was also filed three months past the deadline to apply for an extension of time.

[20] Mr. Olumide submits that an objection was filed on time because he made it clear to the CRA auditor that he did not agree with the assessment. At the hearing, Mr. Olumide stated that he could not remember whether these were only verbal communications. In written submissions received after the hearing, Mr. Olumide submitted that the communications were both verbal and in writing.

[21] I accept that Mr. Olumide expressed his disagreement with the assessment orally to the auditor. However, there is not sufficient evidence to establish that there was any form of objection in writing prior to the filing deadline.

[22] Mr. Olumide submits that his method of communicating disagreement with the assessment is an acceptable notice of objection because a notice of objection does not have to be made in a specific manner.

[23] I disagree with this submission. Subsection 301(1.1) of the *Act* provides for a formal method of filing a notice of objection. In particular, it must be filed in prescribed form and manner. This provision reads:

> **301.(1.1) Objection to assessment** – Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

[24] It is clear from the language used in s. 301(1.1) that the filing of a notice of objection is intended to be a formal procedure. Parliament did not intend that an informal expression of disagreement communicated to a CRA auditor would satisfy this requirement.

[25] In this regard, I would note that the term "prescribed" is defined in subsection 123(1) of the *Excise Tax Act* to mean, in the case of a form or the manner of filing a form, "authorized by the Minister." The form and manner authorized by the Minister in this case is found on Form GST 159 published by the CRA. The form states that the notice of objection should be filed by mailing it to either the Eastern or Western Intake Centre, as specified on the current Form 159, or by sending it to the Chief of Appeals at the nearest tax services office or tax centre, as under the previous version of Form 159.

[26] Further, the requirement that the notice of objection be "sent" implies that it must be in writing. This is also implied by the term "file" in s. 301(1.1). The Oxford English Dictionary (2nd edition) defines the term "file" as "to place (documents) on a file" and, significantly, "to place (a document) in a due manner among the records of a court or public office."

[27] Finally, if there were any doubt that the filing requirements set out in s. 301(1.1) are formal requirements, the Federal Court of Appeal has confirmed that they are: *Pereira v. The Queen*, 2008 FCA 264.

[28] I conclude that Mr. Olumide is precluded from instituting an appeal to this Court in relation to the assessment made by notice dated April 14, 2010.

[29] As mentioned earlier, two extensions have been sought. The second extension request does not refer to an assessment. Mr. Olumide seeks an extension of time to "seek an order referring the matter 2010 GST Rebate Application for about $16,000 back to the Minister for reconsideration and reassessment."

[30] This request also has no chance of success. The only procedure that is available in this Court for relief in reference to a GST return or a Rebate Application is to institute an appeal from an assessment. The Court does not have blanket jurisdiction to issue orders such as the one requested.

[31] Mr. Olumide forcefully submits that the application should be allowed to proceed because the CRA deliberately misled him in their response to his objections. He submits that this Court has the discretion to allow the application and should do so in these egregious circumstances.

[32] I do not agree with this submission. The Tax Court of Canada has no authority to ignore the legislative requirement that an appeal may not be instituted unless a valid notice of objection has been filed. It does not matter if there has been misconduct on the part of the CRA (*Ereiser v. The Queen*, 2013 FCA 20).

[33] Mr. Olumide invokes fundamental rights of Canadians in the Charter of Rights and Freedoms and the Bill of Rights. He submits that the treatment of him by the CRA amounts to cruel and unusual treatment and punishment.

[34] I disagree with these submissions. Even assuming that the actions by the CRA amount to a Charter breach, the Tax Court of Canada does not have the authority to grant relief on this basis. Parliament has provided other avenues for relief, such as an application for a remission order, which I understand was done in this case.

[35] Finally, I would comment that Mr. Olumide attempted to file several documents concerning this matter after the hearing. One of these appears to be a motion record that seeks an Order declaring that section 301(1.1) is constitutionally invalid. If subsection 301(1.1) is found to be invalid, then arguably there are no formal requirements regarding the filing of a notice of objection.

[36] I did not consider this argument, or any new arguments raised by Mr. Olumide after the hearing. Parties do not have the right to raise new issues at

their discretion after the hearing. Such a right would lead to an unacceptable waste of scarce judicial resources.

[37] In this case, Mr. Olumide was given the opportunity to respond to the respondent's motion at the hearing, and at his request he was given the opportunity to make a further submission after the hearing concerning the documents that had been filed at the hearing. In my view, it is not appropriate in this case to permit Mr. Olumide to raise new issues after the hearing.

IV. Conclusion

[38] It is clear that Mr. Olumide's application has no chance of success. In the particular circumstances of this case, I conclude that it is appropriate to grant the Crown's motion to quash the application on that ground.

[39] An Order to quash the application by way of a preliminary motion rather than having a full hearing of the application is an efficient use of Court resources for this particular matter. I note in particular that Mr. Olumide issued a subpoena to the Commissioner of the CRA which required him to appear at the application. I agree with the respondent that the Commissioner's evidence would not have a bearing on the outcome of this application. In addition, Mr. Olumide attempted to file numerous documents with the Registry after the hearing of the motion. It would be an abuse of Court resources to prolong this matter.

[40] In the result, the respondent's motion is granted, and the application by Mr. Olumide for extensions of time and to vacate court costs is quashed. It is not necessary that I deal with the respondent's alternative submission regarding the subpoenas.

[41] The Crown has not sought costs and none will be ordered.

Signed at Toronto, Ontario this 19th day of May 2015.

"J.M. Woods"

Woods J.

CITATION:	2015 TCC 125
COURT FILE NO.:	2014-4590(GST)APP
STYLE OF CAUSE:	ADE OLUMIDE and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	April 13, 2015
REASONS FOR ORDER BY:	The Honourable Justice Judith Woods
DATE OF ORDER:	May 19, 2015

APPEARANCES:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Joanna Hill

COUNSEL OF RECORD:

For the Applicant:

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Firm:	n/a

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