

Docket: 2014-4227(GST)I

BETWEEN:

JEAN-YVES MONGRAIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on November 5, 2015, at Shawinigan, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Alex Boisvert

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated June 6, 2014, for the period from January 1, 2009, to December 31, 2012, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 9th day of December 2015.

"Réal Favreau"

Favreau J.

Translation certified true
on this 20th day of January 2015
Elizabeth Tan, Translator

Citation: 2015 TCC 303
Date: 20151208
Docket: 2014-4227(GST)I

BETWEEN:

JEAN-YVES MONGRAIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal, governed by the informal procedure, from an assessment made by the Agence du Revenu du Québec (the ARQ) as agent for the Minister of National Revenue (the Minister), under the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the ETA), notice of which is dated June 6, 2014, for the period from January 1, 2009, to December 31, 2012 (the period in question).

[2] As indicated in the notice of assessment sent to the appellant, the amounts assessed on June 6, 2014, are as follows:

Adjustment made to net tax calculation	\$5,670.30
Interest	\$820.29
Penalty for failure to report	\$222.97
Total assessment	\$3,713.56

[3] In particular, the specific adjustment to the net tax calculation is the following:

	GST	ITC	Net Tax
2009-12-31	\$1,945.95	(\$648.99)	\$1,296.96
2010-12-31	\$1,848.65	(\$495.95)	\$1,352.70
2011-12-31	\$2,159.65	(\$658.48)	\$1,501.17
2012-12-31	\$2,393.40	(\$873.93)	\$1,519.47

[4] In assessing the appellant, the Minister relied, *inter alia*, on the following findings and assumptions of fact:

- (a) The facts admitted below;
- (b) For the period in question the appellant is a registrant for the purposes of the ETA;
- (c) The appellant has a groundskeeping business and also does snow removal in the winter [his business];
- (d) For the period in question, the appellant reported the following gross income in his statement of income regarding his business:

Year	2009	2010	2011	2012
Gross income	\$38,919	\$36,973	\$43,193	\$47,468

- (e) All the supplies the appellant made in the operation of his business were taxable supplies for which GST was payable by the recipients to the appellant, who was to collect and remit it to the Minister;
- (f) The total of the amount representing the consideration for taxable supplies made by the appellant is greater than \$30,000 for each of the periods ending on 2009-12-31, 2010-12-31, 2011-12-31 and 2012-12-31;
- (g) For the period in question, the appellant was required to be a registrant for the purposes of the ETA and to collect GST on taxable supplies he made and remit it to the Minister;
- (h) The Minister established the amounts of tax the appellant was to collect and remit to the Minister based on the gross income the appellant reported in his income statement for the period in question and considering the rate of the GST in force during the period in question, which was 5%;

- (i) The input tax credits to which the appellant was entitled were established based on the valid supporting documents the appellant provided to the Minister when required to do so and also based on their eligibility;
- (j) The Minister refused to allow the input tax credits for the appellant's driver's licence, parts for his motorcycle and insurance;
- (k) On April 15, 2014, the Minister retroactively registered the appellant in the tax records for the period in question.

[5] The issue in this case is to determine whether the appellant rebutted the presumption of validity of the assessment in question under which the Minister assessed the appellant, making adjustments to the calculation of the net tax with interest and penalties.

[6] The appellant testified at the hearing and admitted the Minister's findings and assumptions of fact except paragraph (b) as written, because the Minister registered him for taxes retroactively for the period in question and paragraph (j) because he did not claim the input tax credits as described.

[7] During his testimony, the appellant stated that he was unaware that the services he provided were taxable supplies for the purposes of the ETA and that he had to collect the goods and services tax (GST) from his clients and remit it to the Receiver General of Canada after each reporting period. As a result, he was not registered for tax purposes even though the value of the services provided during each of the 2009, 2010, 2011 and 2012 taxation years exceeded \$30,000 per year. Moreover, he did not collect the GST from his clients for the services he provided nor did he remit it to the Receiver General of Canada.

[8] The appellant indicated that in 22 years as a self-employed worker, nobody had informed him that taxes should be applied on the value of the services provided—not his clients or his accountant, who was mandated to prepare his tax returns.

[9] Aline Garceau, the appellant's common-law wife, also testified at the hearing. She was not involved in her spouse's business but acted as the appellant's authorized representative in a tax audit conducted by the Canada Revenue Agency (the CRA) at the end of 2012. No reassessment was issued after his audit for the 2009, 2010 and 2011 taxation years, but Ms. Garceau does not understand why the

CRA auditor did not inform her of the application of the ETA with regard to the services the appellant provided.

[10] The CRA auditor testified at the hearing to essentially confirm that the appellant's gross income exceeded \$30,000 per year during the period in question and during the previous year, in 2008. There was no reassessment for 2008 because it was considered the year during which the appellant exceeded the \$30,000 mark for gross income. The auditor explained that the uncollected GST was added to the appellant's gross income.

[11] For the purposes of calculating the input tax credits, only personal expenses were disallowed. Following the assessment under the ETA, the appellant's taxes were recalculated and a loan loss provision for the uncollected GST was granted. As a result, the appellant received a tax refund of \$6,000.

Analysis

[12] Pursuant to the ETA, every person who makes a taxable supply in the course of a commercial activity is required to be a registrant for the purposes of Part IX of the ETA, unless excluded under the exceptions set out at subsection 240(1), which includes an exception for small suppliers.

[13] The expression "taxable supply" is defined at subsection 123(1) as a supply that is made in the course of a commercial activity. For the purposes of the ETA, operating a business constitutes a commercial activity carried out by a person. The term "registrant" is defined at subsection 123(1) as follows:

"registrant" means a person who is registered, or who is required to be registered under Subdivision d of Division V...

[14] The provisions of Part IX of the ETA that apply to a registrant also apply to any person who is required to be registered even if that person is not registered. The obligations to collect GST on taxable supplies and remit it to the Receiver General of Canada under sections 221 and 225 also apply to any person who is required to be registered.

[15] There is no doubt in this case that the appellant provided services in the course of a commercial activity during the period in question and he should have been registered unless he fell under the exceptions provided in subsection 240(1), which states the following:

Every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be a registrant for the purposes of the Part, except where

- (a) the person is a small supplier;
- (b) the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or
- (c) the person is a non-resident person who does not carry on any business in Canada.

[16] According to the documents submitted to evidence, the appellant was a small supplier until the third quarter of 2008. In theory, he should have collected and remitted the GST on the taxable supplies made during the fourth quarter of 2008 but the Minister did not assess him for this period. Under the circumstances, the Minister was justified in beginning the appellant's registration retroactively to January 1, 2009.

[17] As a result, the appellant owes the Minister the amount of the adjustments made to the calculation of his net tax for the period in question, in addition to the interest and penalties for failing to file GST returns.

[18] I find it difficult to believe the appellant was able to operate his business for 22 years without being exposed in one way or another to the application of the GST on his services. During the period in question, the appellant's business had around thirty clients including many businesses. The appellant's spouse worked in a jewellery store and paid the store's invoices. She was therefore familiar with the application of the GST on goods and services acquired by the jewellery store. Lastly, the appellant used the services of an accountant to prepare his tax returns. I find it absurd that this accountant did not inform the appellant that GST was applicable to services he provided considering the income from his business exceeded \$30,000 per year, for many years.

[19] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 8th day of December 2015.

"Réal Favreau"

Favreau J.

Translation certified true
on this 20th day of January 2016.
Elizabeth Tan, Translator

CITATION: 2015 TCC 303
COURT FILE NO.: 2014-4227(GST)I
STYLE OF CAUSE: Jean-Yves Mongrain and Her Majesty the Queen
PLACE OF HEARING: Shawinigan, Quebec
DATE OF HEARING: November 5, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau
DATE OF JUDGMENT: December 8, 2015

APPEARANCES:

For the appellant: The appellant himself
Counsel for the respondent: Alex Boisvert

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada