

Docket: 2012-3591(GST)G

BETWEEN:

LES VENTES ET FAÇONNAGE DU PAPIER REISS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 17, 2015, November 2 and 3, 2015, and March 14 and 15, 2016, at Montréal, Quebec. Written submissions filed on April 29, 2016, June 10, 2016, and June 29, 2016.

Before: The Honourable Justice Dominique Lafleur

Appearances:

Counsel for the Appellant: Stéphane Rivard

Counsel for the Respondent: Maurice Régnier

JUDGMENT

The appeal from the assessment made pursuant to Part IX of the *Excise Tax Act*, notice of which is dated December 2, 2011, for the following 28 monthly reporting periods, which are not all consecutive: April 2005, July 2005, August 2005, September 2005, October 2005, November 2005, December 2005, January 2006, February 2006, March 2006, June 2006, July 2006, August 2006, September 2006, October 2006, November 2006, January 2007, April 2007, July 2007, January 2008, July 2008, August 2008, September 2008, October 2008, December 2008, January 2009, February 2009 and April 2009, is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 16th day of December 2016.

“Dominique Lafleur”

Lafleur J.

Citation: 2016 TCC 289
Date: 20161216
Docket: 2012-3591(GST)G

BETWEEN:

LES VENTES ET FAÇONNAGE DU PAPIER REISS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lafleur J.

[1] The Appellant is appealing from an assessment made under the *Excise Tax Act*, R.S.C. (1985), c. E-15 (the “ETA”) by the Agence du revenu du Québec (“ARQ”) acting on behalf of the Minister of National Revenue (the “Minister”) (Exhibit I-22), the notice of which is dated December 2, 2011, for the following 28 monthly periods, which are not all consecutive: April 2005, July 2005, August 2005, September 2005, October 2005, November 2005, December 2005, January 2006, February 2006, March 2006, June 2006, July 2006, August 2006, September 2006, October 2006, November 2006, January 2007, April 2007, July 2007, January 2008, July 2008, August 2008, September 2008, October 2008, December 2008, January 2009, February 2009 and April 2009 (the “28 periods in question”). In the Notice of Assessment, adjustments were made to the calculation of the net tax reported (\$47,926.78) and a penalty under section 285 of the ETA was added (\$13,853.86), as well as interest and penalties for late payment. The adjustments in the net tax calculation take into consideration, among other things, the input tax credits (“ITCs”) claimed by the Appellant and obtained in the amount of \$53,203.27 (of which \$1,568.58 was allowed by reconciliation). The amounts claimed as ITCs are at issue in the present case.

[2] In particular, six of the Appellant’s suppliers are in question (collectively, the “Suppliers”), all of which had a Goods and Services Tax (“GST”) registration number at the time the invoices were issued. They were:

1. PFG Management (Pierre-François Gervais) (“PFG”): total ITCs claimed in the amount of \$19,389.96;
2. J.S. Récupération 2004 (Jean Sirois) (“J.S. Récupération”): total ITCs claimed in the amount of \$1,336.46;
3. Recyclage GHG Inc. (“GHG”): total ITCs claimed in the amount of \$1,835.71;
4. 9172-3726 Québec Inc. or Recyclage Méga Terra (“Méga Terra”): total ITCs claimed in the amount of \$17,267.76;
5. Gestion.personel.2008 Inc. (“Gestion”): total ITCs claimed in the amount of \$2,961.03;
6. Les transitaires Koudlai Inc. (“Koudlai”): total ITCs claimed in the amount of \$10,412.35.

[3] The Minister submits that the Appellant is not entitled to the ITCs claimed because the supporting documents it filed do not meet the documentary requirements set out in the ETA and its regulations. In particular, the Minister submits that the invoices presented are invoices of convenience because the Suppliers are not the true suppliers of the products the Appellant acquired.

[4] As indicated at paragraph 21 of the Reply to the Notice of Appeal, in making the assessment in question, the Minister relied on the following assumptions, among others:

[TRANSLATION]

...

- (b) the Appellant operates a business that buys and sells recycled or non-compliant paper;

...

- (h) the Appellant did not provide Revenu Québec, with sufficient information when required to do so, including information prescribed by regulations, to establish the above-noted CTI amount of \$53,203.27 that it claimed and received in its net tax calculation for the 28 periods in question;

- (i) more specifically, the Appellant provided supporting documents to establish this ITC amount that do not meet the requirements of the ETA and its regulations;
- (j) essentially, the supporting documents (invoices) remitted to Revenu Québec in support of the claimed ITCs regarding supplies of goods or services the Appellant allegedly acquired during the 28 periods in question are false in that the Appellant did not acquire the said goods or services it claims to have acquired or it acquired the said goods or services from a supplier other than those indicated in the supporting documents and the supporting documents in question are invoices “of convenience”;
- (k) the purpose of this scheme was for the Appellant, using these invoices “of convenience”, to claim inappropriate ITCs based on the requirements of the ETA when calculating its net tax for the 28 periods in question;
- (l) in the present case, the Appellant, the “accommodated” person, used the services of third parties that may or may not have operated real businesses, the “accommodating” persons, namely the six suppliers/sub-contractors in question, that issued invoices to the Appellant for the supply of goods or services they did not provide to the Appellant and that the Appellant did not acquire from any of them;
- (m) moreover, with regard to the purchase invoice provided by the Appellant and issued by PFG MANAGEMENT ENR. (Pierre-François Gervais) [#214211], the supplier’s registration number does not appear;
- (n) with regard to the six suppliers/sub-contractors in question, as a general rule, they succeed one another as supplier/sub-contractor for the Appellant and the business relationship with each lasts only a few months, rarely more than 12 months;
- (o) with regard to any one of these six suppliers/sub-contractors in question, when it is not all six, they cannot be found;
- (p) with regard to any one of these six suppliers/sub-contractors in question, when it is not all six, the business address on the documentary evidence in question is inaccurate;
- (q) with regard to any one of these six suppliers/sub-contractors in question, when it is not all six, no business was operated by them or they operated a business in a field other than paper recycling;
- (r) with regard to any one of these six suppliers/sub-contractors in question, when it is not all six, they are in default to Revenu Québec with respect to several of Quebec’s tax statutes;

- (s) with regard to any one of these six suppliers/sub-contractors in question, when it is not all six, they do not have the staff or equipment to make the supplies of services (sub-contracting) or goods that they allegedly undertook to make to the Appellant;
- (t) the cheques written by the Appellant to pay for the supplies allegedly acquired from these six suppliers/sub-contractors were brought to a cheque-cashing business by the said suppliers/sub-contractors to be cashed;
- (u) with regard to any one of these six suppliers/sub-contractors in question, according to the Société de l'assurance automobile du Québec records, they did not own or lease on a long-term basis from third parties motor vehicles during the relevant reporting periods;
- (v) some of the supporting documents provided in support of the ITCs claimed for any one of these six suppliers/sub-contractors in question have an inconsistent numerical sequence;
- (w) the Appellant's internal control for the six suppliers/sub-contractors in question is different from that used for the Appellant's other goods and services suppliers; this control is not as strict (the documentary evidence in question did not include purchase orders issued by the Appellant or the invoice for the associated sale, etc., as opposed to those for the other suppliers);
- (x) with regard to any one of the six suppliers/sub-contractors in question, the payment deadline in the documentary evidence in question (invoices) of the said suppliers/sub-contractors in question is shorter than for the Appellant's other suppliers, namely a few days as opposed to deadlines of a few weeks for the other suppliers;
- (y) the Appellant made a misrepresentation that is attributable to neglect, carelessness or wilful default by claiming, in the calculation of the net tax it reported in its net tax returns for the first 19 monthly reporting periods (namely April 2005 to July 2007 inclusively), an amount of \$39,829.89 as ITCs regarding the invoices of convenience in question;
- (z) the Appellant, knowingly or under circumstances amounting to gross negligence when performing an obligation set out in Part IX of the ETA, made a false statement or omission in its net tax returns by claiming, as ITCs in the calculation of its net tax reported during the 28 periods in question, an amount of \$53,203.27 with regard to the alleged supplies acquired from the six suppliers/sub-contractors in question;
- (aa) the Appellant therefore owes the Minister the amount of the adjustments made to the calculation of its net tax reported for the 28 periods in question in

the amount of \$47,926.78, for which the amount in question is \$53,203.27 (\$47,926.78 - (\$-3,707.91 + \$-1,568.58)), plus net interest and penalties.

A. THE ISSUES.

[5] In this case, the issue is whether the Appellant is entitled to the ITCs claimed regarding the invoices issued by the Suppliers. Similarly, it must be determined whether the penalty assessed by the Minister under section 285 of the ETA is justified and whether the Minister could assess the Appellant with regard to certain suppliers under subsection 298(4) of the ETA.

B. THE RELEVANT LEGISLATION.

[6] The relevant provisions of the ETA are as follows:

169(4) Required documentation —

A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and

...

280.1 Failure to file a return —

Every person who fails to file a return for a reporting period as and when required under this Part is liable to pay a penalty equal to the sum of

(a) an amount equal to 1% of the total of all amounts each of which is an amount that is required to be remitted or paid for the reporting period and was not remitted or paid, as the case may be, on or before the day on or before which

169(4) Documents —

L'inscrit peut demander un crédit de taxe sur les intrants pour une période de déclaration si, avant de produire la déclaration à cette fin :

a) il obtient les renseignements suffisants pour établir le montant du crédit, y compris les renseignements visés par règlement;

[...]

280.1 Non-production d'une déclaration —

Quiconque omet de produire une déclaration pour une période de déclaration selon les modalités et dans le délai prévus par la présente partie est passible d'une pénalité égale à la somme des montants suivants :

a) le montant correspondant à 1 % du total des montants représentant chacun un montant qui est à verser ou à payer pour la période de déclaration, mais qui ne l'a pas été

the return was required to be filed, and

au plus tard à la date limite où la déclaration devait être produite;

(b) the amount obtained when one quarter of the amount determined under paragraph (a) is multiplied by the number of complete months, not exceeding 12, from the day on or before which the return was required to be filed to the day on which the return is filed.

b) le produit du quart du montant déterminé selon l'alinéa a) par le nombre de mois entiers, jusqu'à concurrence de douze, compris dans la période commençant à la date limite où la déclaration devait être produite et se terminant le jour où elle est effectivement produite.

...

[...]

285. False statements or omissions

— Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a “return”) made in respect of a reporting period or transaction is liable to a penalty of the greater of \$250 and 25% of the total of

285. Faux énoncés ou omissions —

Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, une facture ou une réponse — appelés « déclaration » au présent article — établi pour une période de déclaration ou une opération, ou y participe, y consent ou y acquiesce, est passible d'une pénalité de 250 \$ ou, s'il est plus élevé, d'un montant égal à 25 % de la somme des montants suivants :

(a) if the false statement or omission is relevant to the determination of the net tax of the person for a reporting period, the amount determined by the formula

$$A - B$$

where

A is the net tax of the person for the period, and

B is the amount that would be the net tax of the person for the period if the net tax were determined on the basis of the information provided in

a) si le faux énoncé ou l'omission a trait au calcul de la taxe nette de la personne pour une période de déclaration, le montant obtenu par la formule suivante :

$$A - B$$

où :

A représente la taxe nette de la personne pour la période,

B le montant qui correspondrait à la taxe nette de la personne pour la période si elle était déterminée

the return,

(b) if the false statement or omission is relevant to the determination of an amount of tax payable by the person, the amount, if any, by which

(i) that tax payable exceeds

(ii) the amount that would be the tax payable by the person if the tax were determined on the basis of the information provided in the return, and

(c) if the false statement or omission is relevant to the determination of a rebate under this Part, the amount, if any, by which

(i) the amount that would be the rebate payable to the person if the rebate were determined on the basis of the information provided in the return

exceeds

(ii) the amount of the rebate payable to the person.

...

298(4) Idem — An assessment in respect of any matter may be made at any time where the person to be assessed has, in respect of that matter,

(a) made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default;

(b) committed fraud

(i) in making or filing a return under this Part,

(ii) in making or filing an application for a rebate under

d'après les renseignements indiqués dans la déclaration;

b) si le faux énoncé ou l'omission a trait au calcul de la taxe payable par la personne, l'excédent éventuel de cette taxe sur le montant qui correspondrait à cette taxe si elle était déterminée d'après les renseignements indiqués dans la déclaration;

c) si le faux énoncé ou l'omission a trait au calcul d'un remboursement prévu par la présente partie, l'excédent éventuel du remboursement qui serait payable à la personne s'il était déterminé d'après les renseignements indiqués dans la déclaration sur le remboursement payable à la personne.

[...]

298(4) Exception en cas de négligence, fraude ou renonciation

— Une cotisation peut être établie à tout moment si la personne visée a :

a) fait une présentation erronée des faits, par négligence, inattention ou omission volontaire;

b) commis quelque fraude en faisant ou en produisant une déclaration selon la présente partie

Division VI, or	ou une demande de remboursement selon la section VI ou en donnant, ou en ne donnant pas, quelque renseignement selon la présente partie;
(iii) in supplying, or failing to supply, any information under this Part; or	
(c) filed a waiver under subsection (7) that is in effect at that time.	c) produit une renonciation en application du paragraphe (7) qui est en vigueur au moment de l'établissement de la cotisation.

[7] The relevant provisions of the *Input Tax Credit Information (GST/HST) Regulations*, SOR/91-45 (the “Regulations”) read as follows:

2. Interpretation — In these Regulations,

“**Act**” means the *Excise Tax Act*; (*Loi*)

“**intermediary**” of a person, means, in respect of a supply, a registrant who, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply by the person; (*intermédiaire*)

...

“**supporting documentation**” means the form in which information prescribed by section 3 is contained, and includes

- (a) an invoice,
- (b) a receipt,
- (c) a credit-card receipt,
- (d) a debit note,
- (e) a book or ledger of account,
- (f) a written contract or agreement,

2. Définitions — Les définitions qui suivent s’appliquent au présent règlement.

[...]

« **intermédiaire** » Inscrit qui, agissant à titre de mandataire d’une personne ou aux termes d’une convention conclue avec la personne, permet à cette dernière d’effectuer une fourniture ou en facilite la réalisation. (*intermediary*)

« **Loi** » La *Loi sur la taxe d’accise*. (*Act*)

« **pièce justificative** » Document qui contient les renseignements exigés à l’article 3, notamment :

- a) une facture;
- b) un reçu;
- c) un bordereau de carte de crédit;
- d) une note de débit;
- e) un livre ou registre de comptabilité;
- f) une convention ou un contrat

(g) any record contained in a computerized or electronic retrieval or data storage system, and

(h) any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable; (*pièce justificative*)

...

3. Prescribed Information — For the purposes of paragraph 169(4)(a) of the *Act*, the following information is prescribed information:

(a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than \$30,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business,

(ii) where an invoice is issued in respect of the supply or the supplies, the date of the invoice,

(iii) where an invoice is not issued in respect of the supply or the supplies, the date on which there is tax paid or payable in respect thereof, and

(iv) the total amount paid or payable for all of the supplies;

écrits;

g) tout registre faisant partie d'un système de recherche documentaire informatisé ou électronique ou d'une banque de données;

h) tout autre document signé ou délivré en bonne et due forme par un inscrit pour une fourniture qu'il a effectuée et à l'égard de laquelle il y a une taxe payée ou payable. (*supporting documentation*)

[...]

3. Renseignements — Les renseignements visés à l'alinéa 169(4)a) de la *Loi*, sont les suivants :

a) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de moins de 30 \$:

(i) le nom ou le nom commercial du fournisseur ou de l'intermédiaire,

(ii) si une facture a été remise pour la ou les fournitures, la date de cette facture,

(iii) si aucune facture n'a été remise pour la ou les fournitures, la date à laquelle il y a un montant de taxe payée ou payable sur celles-ci,

(iv) le montant total payé ou payable pour la ou les fournitures;

b) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 30 \$ ou plus et de

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$30 or more and less than \$150,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, and the registration number assigned under section 241 of the *Act* to the supplier or the intermediary, as the case may be,

(ii) the information set out in subparagraphs (a)(ii) to (iv),

...

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$150 or more,

(i) the information set out in paragraphs (a) and (b),

(ii) the recipient's name, the name under which the recipient does business or the name of the recipient's duly authorized agent or representative,

(iii) the terms of payment, and

(iv) a description of each supply sufficient to identify it.

moins de 150 \$:

(i) le nom ou le nom commercial du fournisseur ou de l'intermédiaire et le numéro d'inscription attribué, conformément à l'article 241 de la *Loi*, au fournisseur ou à l'intermédiaire, selon le cas,

(ii) les renseignements visés aux sous-alinéas a)(ii) à (iv),

[...]

c) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 150 \$ ou plus :

(i) les renseignements visés aux alinéas a) et b),

(ii) soit le nom de l'acquéreur ou son nom commercial, soit le nom de son mandataire ou de son représentant autorisé,

(iii) les modalités de paiement,

(iv) une description suffisante pour identifier chaque fourniture.

[8] Lastly, the relevant provisions of the *Civil Code of Québec*, RLRQ c. C-1991 ("CCQ") read as follows:

2831. An unsigned writing regularly used in the ordinary course of business of an enterprise to evidence a juridical act makes proof of its content.

...

2835. A person who invokes an unsigned writing shall prove that it originates from the person whom he claims to be its author.

2836. Writings contemplated by this section may be contradicted by any means.

2831. L'écrit non signé, habituellement utilisé dans le cours des activités d'une entreprise pour constater un acte juridique, fait preuve de son contenu.

[...]

2835. Celui qui invoque un écrit non signé doit prouver que cet écrit émane de celui qu'il prétend en être l'auteur.

2836. Les écrits visés par la présente section peuvent être contredits par tous moyens.

C. THE APPELLANT'S SUBMISSIONS.

[9] According to the Appellant, the invoices issued by the Suppliers meet the requirements under the ETA and its regulations.

[10] Moreover, with regard to certain Suppliers, namely Méga Terra, PFG, J.S. Récupération and GHG (the "4 suppliers"), because the Respondent had already admitted that the supplies noted on the invoices were acquired by the Appellant, the Appellant submits that this admission, in itself, confirms the eligibility to the ITCs claimed, notwithstanding the issue of whether the supplies were acquired from the suppliers that issued the invoices.

[11] The Appellant's position is that the evidence refutes the Minister's assumptions at paragraphs 21 (b), (h), (i), (j), (w) and (x) of the Reply to the Notice of Appeal reproduced above.

[12] The Appellant submits that the assumptions at paragraphs 21 (k), (l), (o), (p), (q), (r), (s) and (u) must be established on a balance of probabilities by the Respondent because third parties are involved and, at any rate, these assumptions are not relevant even if they were found to be true. In addition, the Respondent must prove the facts that justify the assessment of a penalty under section 285 of the ETA and making an assessment after the normal assessment period in accordance with subsection 298(4) of the ETA with regard to the 4 suppliers.

[13] The Appellant also cites articles 2831 and 2835 of the CCQ and submits that the Appellant is entitled to the presumption provided for at article 2831.

[14] According to the Appellant, since an internal control mechanism was in force that allowed, in particular, for the Suppliers' tax numbers to be verified and since the Appellant was not required to conduct any other verifications, the Appellant kept the copies of the relevant invoices and cheques and the Respondent was unable to present evidence that the Appellant was involved in a false invoices or invoices of convenience scheme, the ITCs should be allowed.

[15] Moreover, with regard to the 4 suppliers, the Appellant submits that Jacques Jarry was representing them and therefore, since the Appellant trusted him and had a long business relationship with him (more than 25 years), he did not need to conduct additional verifications.

[16] The Appellant adds that the Suppliers' being tax offenders has no impact on the admissibility of the ITCs claimed by the Appellant. The fact that the various Suppliers succeeded each other over time is irrelevant according to the Appellant.

[17] Lastly, the Appellant submits that the Respondent did not prove the facts justifying the penalties assessed on a balance of probabilities because the Respondent did not present any evidence that shows the Appellant knew the invoices were false, if such were the case.

D. THE RESPONDENT'S SUBMISSIONS.

[18] The requirements under the ETA and its Regulations are strict and mandatory.

[19] An invoice must contain all the mandatory information, which must be valid, true and accurate, regardless of the degree of good faith of the person claiming the ITCs.

[20] According to the doctrine propounded by the Court of Appeal of Quebec in *Agence du Revenu du Québec v. Système intérieur GPBR inc.*, 2015 QCCA 1402 (CanLII) (application for leave to appeal to the Supreme Court of Canada dismissed on June 9, 2016) (the "GPBR case"), "... the invoice must be issued by a registrant that has an interest in issuing the invoice, thereby automatically excluding accommodation invoices... These requirements are strict and mandatory. They must be rigorously met by any registrant claiming an ITC, failing which the ITC cannot be granted." (paras. 38 and 40).

[21] According to the Respondent, the Appellant was unable to rebut the presumption that the assessment is valid because the only evidence it submitted

was its statement that it did business with Jacques Jarry, someone named Tony and also someone named Larry. That is not sufficient to discharge the burden of proof.

[22] However, if this Court were to find that the Appellant had adduced such evidence, the Respondent submits that it showed on a balance of probabilities that the Suppliers' invoices were fake invoices and they were not true suppliers of merchandise.

[23] According to the Respondent, it is not sufficient for the merchandise to be received for a registrant to be eligible for ITCs. The Appellant had to show, on a balance of probabilities, that the Suppliers were true suppliers, which it did not do.

[24] As for the 4 suppliers, the Respondent admitted that the supplies were acquired by the Appellant, but added that the supplies so acquired were not from the suppliers whose names appeared on the invoices; the evidence shows that the true supplier was one Jacques Jarry. The frequent changes of corporations Jacques Jarry used to bill the Appellant should have alerted the Appellant.

[25] As for Gestion and Koudlai, the Respondent submits that no supplies were acquired by the Appellant and that the invoices so issued were false, and, assuming there were supplies in these two cases, the true supplier remains unknown. As for Gestion, since false documents were given to the Respondent in support of the invoices issued by this supplier, it is clear there were no supplies in this case. Moreover, the Respondent is of the opinion that this Court must draw a negative inference from the fact that no witness named Tony or Larry came to testify.

[26] According to the Respondent, the evidence shows that the Appellant did not attempt to contact the directors of the Suppliers and did not verify the identity of the officers and directors with the Registraire des entreprises du Québec ("REQ"). Moreover, I must draw a negative inference from the fact that all the cheques issued to the Suppliers in payment of merchandise were cashed at cheque-cashing centres. Additionally, there was a real parade of Suppliers.

[27] With regard to the penalty assessed under section 285 of the ETA, the Respondent submits that the Appellant showed wilful blindness in the circumstances because it ignored the many indicia that indicated that the Suppliers on the invoices were not genuine suppliers.

E. THE FACTS.

[28] The Appellant was the subject of an ARQ audit because some of its suppliers cashed cheques through cheque-cashing centres.

[29] Only one person testified for the Appellant, Chaim (Kevin) Faivushevit; he is the Appellant's current and only director and has been with the corporation for 16 years. Michel (Moshe) Reiss, who resigned from his position as the Appellant's president and director in 2011, did not testify at the hearing.

[30] The Appellant did not call its employee responsible for verifying tax numbers (Scott Mitchell) to testify, or Larry, or Tony.

[31] Fourteen persons were called by the Respondent to testify: the various ARQ auditors that audited the Suppliers, Michel Boulet (ARQ auditor for 8 years and responsible for the Appellant's audit), the directors of certain Suppliers (namely Maxime Grondin from Méga Terra, Pierre-François Gervais from PFG, Jean Sirois from J.S. Récupération and Kularanjithamalar Markandu from Gestion), Jacques Jarry, Carole Leroux (Jacques Jarry's accountant), Daniel Héroux (ARQ auditor who conducted the audit of 9072-6886 Québec Inc. ("Distribution Papier J.M.") and representatives from the corporation Perkan Inc. ("Perkan"), Pierre Bergeron and Carole Latendresse.

1. The Appellant's business according to Mr. Faivushevit's testimony.

[32] According to Mr. Faivushevit, the Appellant's business, whose sales figures were in the \$2.5M to \$4.5M range, carried out the duties of a broker or intermediary between persons selling paper (damaged or non-compliant) and the Appellant's clients who wanted to acquire this paper. In fact, the Appellant purchased paper from its suppliers and then sold the merchandise to its own clients. The identity of the suppliers was not revealed to the Appellant's clients, nor was the identity of the clients revealed to the Appellant's suppliers. Otherwise, the Appellant would no longer have a business. It does not know the source of the paper. A bookkeeper worked for the Appellant and it also used an external accountant.

[33] Mr. Faivushevit testified that before doing business with a supplier, he verified its credibility and reputation in the field, and examined whether the deal would be beneficial. Moreover, he had regular discussions with his suppliers. Some of them occasionally used the Appellant's warehouse.

[34] Generally, those who wanted to sell paper would go to the Appellant's offices with samples of paper or loads of paper, and if there was an agreement, the

deal would be concluded right then and there; the invoice would be issued immediately.

[35] Mr. Faivushevitz would not go to the warehouse to inspect the merchandise. After the transaction was entered into and after obtaining the suppliers' authorization, he would contact the people in charge of the warehouse to give instructions about where to deliver the paper.

[36] Mr. Faivushevitz does not verify the information on the invoices himself; one of his employees, Scott Mitchell, takes care of that. Mr. Mitchell verifies the tax numbers on the government's website. No verification is conducted regarding the identity of the directors or officers of the corporations that issue invoices. Mr. Faivushevitz admitted before this Court that having information about his suppliers' corporations is not important to him (namely the identity of the directors and officers), as long as there is paper to sell.

[37] At the hearing, Exhibit A-1, containing examples of how the Appellant's business operates, was filed. First, the order is received from the client (purchase order); then, after being authorized to deal with the Appellant, the holder of the paper receives instructions from the Appellant about who will receive the paper delivery (namely, the Appellant's client); after receiving confirmation of delivery to the client, the Appellant prepares the invoice; then, the Appellant receives the invoice from its supplier and pays it.

[38] Also filed was Exhibit A-2, which provides examples of the Appellant's operating method with one of its suppliers, namely Trebano Inc. ("Trebano"). This includes (in chronological order) a copy of the following documents: a purchase order issued by Bengal Converting (one of the Appellant's clients) to the Appellant; a purchase order issued by the Appellant to Trebano (because Trebano had the paper); an invoice issued by Trebano to the Appellant; an invoice issued by the Appellant to its client, Bengal Converting, and the customs documents. All these documents allow the Appellant to track the merchandise, from the purchase of the paper from a supplier to the sale of this paper to its client.

[39] When a supplier would go directly to the Appellant's with a load of paper, it was not necessary to have all these documents because the merchandise is already on site. Purchase orders are used by suppliers that do not go directly to the warehouse.

[40] In the case of suppliers that are large corporations, they require many more documents (purchase orders, delivery orders, etc.). However, for small suppliers, fewer documents are needed.

[41] The payment deadline also varies according to the size of the supplier; in principle, the Appellant pays within 30 days. However, the Appellant sometimes pays immediately. Also, the Appellant sometimes pays before delivery of the merchandise. In principle, the Appellant does not pay until it has examined the merchandise. If the Appellant prepays an insurance corporation that had taken possession of the merchandise, there will be no documentation as long as the merchandise is still in the warehouse.

2. The Appellant's audit.

[42] During the audit, the Appellant was very cooperative.

[43] According to Mr. Faivushevitz, he was not made aware of the problems with the Suppliers during the audit. The meeting between Mr. Faivushevitz, Mr. Reiss and Michel Boulet for the purpose of presenting the draft assessment lasted less than an hour. According to Mr. Faivushevitz, the discussions were about general topics. He was very surprised by the assessment.

[44] Michel Boulet reviewed the way the Appellant does business, for example, with so-called regular suppliers. Copies of documents in the Appellant's business records regarding transactions conducted with the Appellant's US suppliers, namely Harmon Associates, SCA Tissue North America LLC and DK Trading Corporation, Inc. and a Canadian supplier, Trebano, were reviewed (Exhibit I-1, Tabs 6 to 9). These documents include the Appellant's purchase orders to its supplier, the invoices from the supplier to the Appellant, purchase orders from the Appellant's clients, invoices from the Appellant to its clients and shipping documents from the Appellant to its clients. In this way, it is possible to track the merchandise throughout the process, from purchase to sale. Moreover, the merchandise is clearly described on the invoices as are the terms and conditions of payment. In principle, payment is made within 30 days; however, with the Suppliers, the payment deadline was always very short, and sometimes the payment is made on the very day the invoice is issued.

[45] Mr. Boulet explained to the Court that in general, the lifespan of issuers of invoices of convenience is relatively short, from 6 months to 1.5 years (Exhibit I-1, Tab 1, p. 66). In this case, after PFG, J.S. Récupération and Méga Terra were the object of tax audits, the invoices of convenience temporarily stopped, only to

reappear a year later with Gestion and Koudlai (Exhibit I-1, Tab 1, p. 66). This strategy then ended after the first phone call from the ARQ auditor to the Appellant.

[46] In cross-examination, Michel Boulet admitted that he did not know how many suppliers the Appellant has, or the volume of the Appellant's sales. He never met Jacques Jarry, except at the hearing before this Court.

[47] The percentage of purchases the Appellant made with the Suppliers compared to all its Canadian suppliers for 2006, 2007 and 2008 is 42.5% (Exhibit I-1, Tab 1, page 43).

3. The Suppliers.

3.1 Méga Terra (9172-3726 Québec Inc.).

(a) The invoices.

[48] Seven invoices are at issue (Exhibit I-1, Tab 26), dated from August 22, 2006 to July 18, 2007, for a total of \$327,943.55; the disallowed ITCs are for a total of \$17,267.76. The cheques issued by the Appellant as payment were all cashed at the same cheque-cashing centre (Exhibit I-1, Tab 25).

(b) The information.

[49] According to the "État de renseignements d'une personne morale" from the REQ (Exhibit I-2), Maxime Grondin is the majority shareholder, president and sole director; no change was made since Méga Terra was registered on August 4, 2006. It states that its activity consists of recycling metal for export.

(c) Mr. Faivushevit.

[50] Mr. Faivushevit assumed that the director and officer of Méga Terra was Jacques Jarry, whom he had known for 15 years; he had been doing business with the Appellant for around 30 years. The only initiative one of his employees took with regard to this supplier was to verify the tax number and he does not recall whether other searches were conducted.

[51] Mr. Faivushevit added that it is possible that he had met Mr. Grondin before and that he was present during the 2006 meeting during which Jacques Jarry offered paper from the CN train derailment (I will discuss this below) but his memory is not perfect considering the number of years that have passed.

(d) Maxime Grondin.

[52] Maxime Grondin explained to the Court that Méga Terra was incorporated upon his return from a 6-year stay in New Zealand because his father had convinced him to create a corporation to recover metal. The creation of the corporation was entrusted to his father's accountant, one Robert Enrico. He signed a single cheque on behalf of this corporation and never sold paper. He never opened an account at a cheque-cashing centre. He does not recognize any invoice issued by Méga Terra to the Appellant in 2006 and 2007; he confirmed that it is not his signature on the back of the copies of the cheques issued by the Appellant to Méga Terra in 2006 and 2007.

[53] Furthermore, Maxime Grondin submits that he does not know either Jacques Jarry or Mr. Faivushevitz.

[54] Maxime Grondin learned that there had been transactions involving Méga Terra when he received a tax bill for \$640,000. He tried to resolve things with the tax authorities but he received a call from Mr. Enrico instructing him not to proceed.

(e) Méga Terra's audit.

[55] Luc Jolicœur, ARQ auditor, conducted the audit of Méga Terra for the period of August 1, 2006, to July 31, 2008, because this corporation was cashing cheques in a cheque-cashing centre and had not filed tax returns (audit report under Exhibit I-11, Tab 47).

[56] Mr. Jolicœur explained that he tried to reach Maxime Grondin, but could not. He did reach someone named Mr. Robidoux at the phone number on the handwritten note on one of the invoices; this phone number is, in fact, the number of the corporation 9073-3122 Québec Inc. (doing business as Granulation Plastique 2000). Jacques Jarry is the sole director and president, secretary of this corporation and it is held by 9072-6886 Québec Inc. (another corporation whose sole director and president, secretary and shareholder is Jacques Jarry) (Exhibits I-5 and I-18). According to the auditor, Mr. Robidoux confirmed that he did not know Méga Terra or Maxime Grondin.

[57] According to the information Mr. Jolicœur obtained, Méga Terra had cashed cheques for \$1,507,739.65. As for the period in audit, a total of \$2,167,277.21 was processed through the corporation because there were other cheques that were not

processed in a cheque-cashing centre. There were 145 transactions recorded at the cheque-cashing centre.

[58] No GST/QST return was filed by Méga Terra during the audit period; no income tax return was filed from 2006 to 2008; moreover, Maxime Grondin did not file an income tax return from 2001 to 2006 and no record of employment in his name was found. No cooperation was offered during the audit. Méga Terra does not own a vehicle; Maxime Grondin owns a small car.

[59] According to Mr. Jolicœur, Méga Terra and Maxime Grondin do not have the material or financial resources needed to generate the income reconstructed with the information obtained from the cheque-cashing centre.

[60] In cross-examination, Mr. Jolicœur confirmed that he did not have access to the business records; however, all the factors (namely the lack of cooperation by Maxime Grondin, use of a cheque-cashing centre and lack of business records, reception orders and delivery orders) led him to conclude that Méga Terra did not carry on any commercial activity and acted as an issuer of false invoices. Méga Terra was assessed for GST collected and unremitted in the amount of \$109,709.62.

[61] An excerpt from the audit file of the corporation 9073-3122 Québec Inc. prepared by Luc Jolicœur was submitted as Exhibit I-17. At the hearing, I accepted this document subject to the objection raised by Mr. Rivard and I asked counsels to present their submissions on the issue. In the absence of such submissions, I agreed to file this document to the record as evidence. At page 11 of this report, Mr. Jolicœur stated that Mr. Jarry never operated or was associated in any way with any other corporations (other than 9072-6886 Québec Inc., 9200-0298 Québec Inc. and 9073-3122 Québec Inc.) and he does not trust anyone anymore.

(f) Michel Boulet, auditor.

[62] Mr. Boulet reviewed the report by the auditor Jolicœur with regard to Méga Terra.

[63] According to Mr. Boulet, the writing on the Méga Terra invoices is similar to that on the invoices issued by GHG and 9072-6886 Québec Inc. (Distribution Papier J.M.), the corporation of which Jacques Jarry is the sole director and president. Moreover, the numerical sequence of the invoices does not correspond to their chronology.

[64] Furthermore, the Appellant paid the invoices issued by Méga Terra very quickly, on the same day the invoice was issued or a few days later (Exhibit I-1, Tab 31).

[65] Considering all these elements, and those stated below under the CN train derailment heading, Mr. Boulet concluded that the supplies listed on the invoices issued by Méga Terra to the Appellant were not made by Méga Terra to the Appellant, that there had not been any genuine commercial transactions between Méga Terra and the Appellant and, therefore, the invoices issued by Méga Terra to the Appellant were invoices of convenience.

(g) CN train derailment.

Mr. Faivushevitz's explanations:

[66] Mr. Faivushevitz explained to the Court that no purchase order was issued for the transaction involving the CN train derailment. Jacques Jarry went to the Appellant's offices to inform it that paper in the cars from a CN train that had derailed was available; this was a very significant contract for the Appellant.

[67] Considering the amounts in question, Mr. Faivushevitz explained that he had to make a payment to secure the merchandise. A cheque (Exhibit A-1, p. 19, and a copy at Exhibit I-1, Tab 25, p. 1134) was issued on November 16, 2006, by the Appellant to Méga Terra as payment for the invoice issued by Méga Terra that same day and that bore this sole notation: "Account on News Print Inventory CN" for a total consideration of \$159,530 (Exhibit A-1, p. 18 and copies at Exhibit I-1, Tab 26, p. 1123 and Exhibit I-13, p. 1123) ("Méga Invoice"); this cheque was cashed at a cheque-cashing centre that day and the name on the back of the cheque was Maxime Grondin.

[68] According to Mr. Faivushevitz, he and Jacques Jarry went to the CN warehouse that day (November 16, 2006) in the east of Montreal to examine the paper.

[69] Another invoice (Exhibit A-1, p. 20, and a copy at Exhibit I-1, Tab 29 and Exhibit I-13, p. 1203) dated January 9, 2007, issued by Récupération Papier J.M., 9072-6886 Québec Inc. to the Appellant ("J.M. Invoice") also refers to merchandise from the CN train derailment. Mr. Faivushevitz does not recall why two invoices from two different suppliers were issued but suggested that it could be due to the fact that the suppliers' credit limits had been reached.

[70] During his testimony, Mr. Faivushevitz did not offer before the Court additional documentation that would explain why the amounts on the Méga Invoice and the J.M. Invoice were paid, although he had agreed to. He did state the following, however:

MR. FAIVUSHEVITZ: So, the first invoice is from Méga Terra and the second invoice is from — it's not clear over here. The paper jammed. So, basically, there's many times that we'll have — especially on a big deal — there's companies that will only have a certain amount of credit limit from within a certain account. So, when they — let's say — use up their credit limit and they want to purchase more paper or they want to, you know, get a higher credit limit, they'll use another corporation to go in with them on a deal, and they'll use another corporation which has credit as well. And they'll buy, under that corporation name, to be able to get more credit from the supplier. So, you'll have the same deal with two different corporation names but it's for the same material.

MR. RIVARD: And you say the same material. Is it two invoices for the same material or it's for the whole lot or for what?

MR. FAIVUSHEVITZ: Well, the first invoice would be for the deal. It's money on account of the deal. Without specifying exactly how much paper it's referring to. And the second invoice would be an actual official invoice where we knew exactly the quantity and we knew the pricing and we knew what it was and it's the way we dispersed the money that we would confirm what it is.

(March 15, 2016 transcript at lines 14 to 28 of p. 14 and lines 1 to 9 of p. 15.)

[71] When the examination resumed in March 2016, Mr. Faivushevitz clarified Jacques Jarry's involvement in the industry by stating that he had many contacts in the industry, and made arrangements with various corporations to obtain commissions. He opined that he acted as a broker; he added that he did not know the exact arrangements but knew that Jacques Jarry represented a variety of corporations.

Michel Boulet's explanations:

[72] Enclosed with the invoice issued by the Appellant to one of its clients for the resale of part of the paper from the CN train derailment (Exhibit I-1, Tab 27, p. 1283) were documents bearing the name Jacques Jarry not Maxime Grondin (copy of a fax the Appellant sent to Jacques Jarry (Exhibit I-1, Tab 27, p. 1293)) and the fax number of 9072-6886 Québec Inc., a corporation of which Jacques Jarry is the majority shareholder, sole director, president and secretary (Exhibit I-18).

[73] Moreover, attached to the Méga Invoice are: (i) a worksheet by the Appellant indicating the quantity of paper and prices (Exhibit I-1, Tab 30) and (ii) the J.M. Invoice.

[74] According to the auditor, Mr. Boulet, the paper from the CN train derailment was invoiced by Méga Terra (on account) and the balance of the transaction was invoiced by Récupération Papier J.M. The Appellant paid this January 9, 2007 invoice by issuing two cheques made out to Récupération Papier J.M.—9072-6886 Québec Inc. (Exhibit A-1, p. 21).

Perkan Inc. (Perkan) and 9072-6886 Québec Inc.:

[75] According to the testimonies at the hearing, it was Perkan who obtained the paper recovery contract for CN, but it was the corporation 9072-6886 Québec Inc. that paid CN directly for all of the merchandise from the train derailment (Exhibit I-8, p. 11.52 and Exhibit I-12, Tab 9, pages 156, 157 and 158 and Tab 11, p. 217). CN allegedly never issued an invoice to 9072-6886 Québec Inc. for this transaction.

[76] Moreover, according to the business records of 9072-6886 Québec Inc., no sale was recorded to Méga Terra (Exhibit I-12, Tab 6).

[77] The evidence also indicates that all of the paper from the train derailment and paid to CN by 9072-6886 Québec Inc. was purchased by the Appellant—the same quantities of paper are noted on the Appellant's worksheet (Exhibit I-1, Tab 30) and on the document from Perkan (Exhibit I-8, p. 11.52) and an amount almost identical to the amount purchased by the Appellant was sold by the Appellant to its clients (Exhibit I-13, p. 1245).

Pierre Bergeron and Carole Latendresse from Perkan:

[78] Mr. Bergeron stated that during the years in question, i.e. 2005, 2006 and 2007, many transactions regarding paper had been conducted. He did not know the Appellant and Perkan had never done business with it; he did know Jacques Jarry, having sold paper to him on a number of occasions, and to many of Jacques Jarry's corporations. According to Mr. Bergeron, Jacques Jarry paid without delay. Mr. Bergeron confirmed that it is the exception for money to be given in advance to finalize a transaction.

[79] Carole Latendresse, administrative assistant at Perkan during the years in question (2005-2006-2007), remembers being on site at a significant CN train derailment. Although this was not exactly part of her duties, she went to the site of the train derailment and purchased paper. She knew Jacques Jarry because he is one of the persons Perkan called when there was paper to be sold when there were train derailments.

Jacques Jarry and 9072-6886 Québec Inc. (Distribution Papier J.M.):

[80] At the start of his testimony, Jacques Jarry noted that he has Alzheimer's disease; he did not produce any medical certificate to confirm the state of his health.

[81] He did not know the corporation 9072-6886 Québec Inc. (Distribution Papier J.M.); he did not know whether he was a director of this corporation. He also confirmed that he did not know Méga Terra and was not associated with it.

[82] According to Jacques Jarry, during the years 2005, 2006 and 2007, he was in the plastic business. He never traded in paper, except 15 or 20 years ago (therefore, in 1995-2000), a period during which he allegedly sold paper from Kruger to Mr. Reiss.

[83] He did not recall issuing the J.M. Invoice and could not imagine that he sold merchandise for such a significant amount as \$181,000.

[84] Jacques Jarry admitted he knew Perkan because he collected merchandise from train derailments. However, he did not recall purchasing \$299,000 of merchandise from CN.

[85] The cross-examination revealed Jacques Jarry's personal bankruptcy in 2005-2006, but his memory is unclear—he stated he was subject to an audit by the tax authorities and had to pay large amounts.

[86] He also admitted that he had known Mr. Reiss for more than 25 years. He knew him in the paper field because he had sold him paper from Domtar; he added that Mr. Reiss always paid him without delay.

[87] During his cross-examination, Mr. Jarry seemed to find his memory, explaining the circumstances surrounding the CN train derailment. He explained

that CN allegedly issued invoices in Perkan's name although he (or his corporation) paid the amounts owing. This allegedly led to serious problems with income tax and other taxes, leading to his bankruptcy and depression.

Daniel Héroux:

[88] Daniel Héroux is a team leader and has been employed by the ARQ for 30 years in the field of taxes. He stated that the ITCs claimed by 9072-6886 Québec Inc. for certain transactions conducted with CN in the circumstances where 9072-6886 Québec Inc. directly paid CN when no invoice had been issued by CN were disallowed (Exhibit I-12, Tab 1). The only documentation in support of the ITC claim was a document issued by Perkan with no date and that did not seem to be an invoice, which was insufficient.

3.2 J.S. Récupération (Jean Sirois).

(a) The invoices.

[89] Two invoices are at issue (Exhibit I-1, Tab 17), dated June 14, 2006, and July 10, 2006, for a total of \$20,607.57; the disallowed ITCs are for a total of \$1,336.46. No supporting documents were found, no purchase order or other document.

[90] The writing on the invoices is similar to that issued by PFG. No document, such as purchase orders or others, was attached to the invoices. The two cheques issued by the Appellant on June 15, 2006, and July 10, 2006, in payment of these two invoices were cashed at a cheque-cashing centre (Exhibit I-1, Tab 16).

(b) The information.

[91] According to the "État de renseignements d'une personne physique exploitant une entreprise" from the REQ (Exhibit I-7), Jean Sirois did business as J.S. Récupération 2004. This name was voluntarily struck off the REQ on August 19, 2009. The name Jacques Jarry does not appear on this document.

(c) Mr. Faivushevit.

[92] In his testimony, Mr. Faivushevit confirmed that he remembered this supplier and the liaison person was Mr. Jarry. Moreover, according to the

questionnaire submitted under Exhibit I-1, Tab 18, Mr. Reiss reported during the audit that Jacques Jarry was the person who liaised with this supplier and he did not know where the place of business was located.

(d) Jacques Jarry.

[93] Jacques Jarry acknowledged that he knew Jean Sirois. He had recommended him to many people for the purchase and sale of paper. He did not recognize the name J.S. Récupération 2004.

(e) Jean Sirois.

[94] Jean Sirois stated that he worked in paper, plastic and wood recycling in 2005 and 2006; he only carried out this activity for one year: things were difficult for his corporation. He did not remember his sales figures. He purchased paper at scrap yards and then sold the merchandise. He went bankrupt at that time.

[95] He confirmed that he opened an account to cash cheques at Insta Chèques in late fall 2005 or early that winter. In 2006, business was slow; moreover, Mr. Sirois confirmed he was not active in the spring of 2006 because he was in prison from July 2006 to February 2007 for a drug case.

[96] Mr. Sirois categorically stated that it is not his writing on the invoices in question.

[97] According to Mr. Sirois, the signature on the back of the cheques looked like his signature. He did not recall the transactions for which the cheques had been issued and did not recall what merchandise was sold.

[98] In cross-examination, he admitted he did not know Mr. Reiss or the Appellant, but he had known Jacques Jarry for many years.

[99] Mr. Sirois confirmed that he did business with clients recommended by Mr. Jarry but did not deal directly with Jacques Jarry.

(f) Jean Sirois's audit.

[100] Marie-Josée Lavoie, investigator with the ARQ, conducted the audit of Jean Sirois, doing business as J.S. Récupération 2004 for the period of February 8, 2005, to March 31, 2007 (Exhibit I-11, Tab 44). J.S. Récupération was retained for audit purposes following the audit of Trebano, because the cheques were cashed at cheque-cashing centres.

[101] The address on the invoices issued by J.S. Récupération 2004 is from a computer repair corporation (5948 Hochelaga). The other address Mr. Sirois provided was from a hotel on Saint-André Street.

[102] According to Mr. Sirois's tax history for 2003 to 2006, his income was modest and came, in whole or in large part, from social assistance.

[103] The information provided by the cheque-cashing centre indicates that a total of \$1,184,262.17 was cashed by J.S. Récupération for the period starting in January 2005 and ending on March 30, 2007.

[104] The tax numbers (GST and QST) were cancelled by the ARQ as of June 4, 2007. The GST/QST returns filed by Jean Sirois and J.S. Récupération for the period beginning February 8, 2005, and ending December 31, 2006, showed a nil amount (copies enclosed with the auditor's report). This supplier had no employees and no bank account. According to Ms. Lavoie, Mr. Sirois did not carry on any commercial activity and did not have the financial or material means to operate a business. J.S. Récupération acted as a supplier of invoices of convenience; it was assessed for GST collected and unremitted for \$70,844.35.

(g) Michel Boulet, auditor.

[105] Considering all the elements Ms. Lavoie had raised, and after analyzing the invoices in question, Mr. Boulet concluded that the supplies listed on the invoices issued by J.S. Récupération to the Appellant were not made by J.S. Récupération to the Appellant, that there had not been any genuine commercial transactions between J.S. Récupération and the Appellant and, therefore, the invoices issued by J.S. Récupération to the Appellant were invoices of convenience.

3.3 PFG (Pierre-François Gervais).

(a) The invoices.

[106] At issue are 15 invoices, dated between April 12, 2005, and March 21, 2006, for a total of \$318,618.85 (including taxes) (Exhibit I-1, Tab 5); the disallowed ITCs are for a total of \$19,389.96.

[107] As of November 2005, the invoices were issued by PFG Management Canada instead of PFG Management; however, the same tax numbers are noted on the invoices. Additionally, in September 2005, an invoice was issued in the name of PFG Management International, with the same tax numbers.

[108] Various addresses can be found on the invoices—in Lachenaie, Mascouche and Laval. The format of the various invoices is inconsistent. The invoices have a writing similar as those issued by J.S. Récupération. On certain documents produced in support of the invoices is the name Jacques Jarry (Exhibit I-1, Tab 5). On one of the invoices, PFG's registration number does not appear (invoice No. 214211—ITCs of \$1,810.89).

[109] The 15 cheques issued by the Appellant as payment for these invoices were all issued to PFG Management, notwithstanding the various names on the invoices, and all were cashed at a cheque-cashing centre (Exhibit I-1, Tab 4).

(b) The information.

[110] According to the copy of the “État de renseignements d’une personne physique exploitant une entreprise” from the REQ (Exhibit I-9), Pierre-François Gervais had been doing business since October 2001 as Gestion PFG, since March 4, 2003, as Gestion P.F.G. and since April 11, 2005, as PFG Management. As of March 7, 2007, these names were struck off the REQ. According to this document, the first field of activity was [TRANSLATION] “import export raw materials commodities” and the second was real estate management.

(c) Mr. Faivushevit.

[111] Mr. Faivushevit stated that he knew Mr. Gervais because he had done business with him after 2008; in previous years, he did business with Mr. Jarry when the Appellant purchased merchandise from PFG; he added that Mr. Gervais attended meetings with Mr. Jarry as an interpreter because Mr. Jarry did not speak English well and he did not speak French.

(d) Jacques Jarry.

[112] Jacques Jarry admitted that he knew Pierre-François Gervais; he worked for him at a corporation that sold plastic; they did business together for a while, but it did not last. When he did business with Pierre-François Gervais, he sold paper. He added that he did not know PFG Management, although his name appears on certain documents involving PFG, as found under Exhibit I-1, Tab 5.

(e) Pierre-François Gervais.

[113] Pierre-François Gervais explained that the various names under which he did business were struck off the REQ in 2007 and he went bankrupt.

[114] His activity consisted of recycling obsolete material and finding new uses for them; corporations did business with him to avoid landfill charges. The material recovered this way was mainly plastic, at more than 50%, and paper. He operated this business from 2001 to 2007; he had a trunk stolen that contained all the documents that would show his sales figures for those years and could therefore not confirm his sales figures. Everything happened on the road; he did not have a warehouse, only an office at home.

[115] Mr. Gervais confirmed that he opened an account at Insta Chèques in April 2005 and that he cashed cheques there. He did not, however, recall the amounts of the cheques so cashed. No GST/QST return was filed in 2006.

[116] He does not recognize the invoices in question; he maintained that it is not his writing on some of them, while on others, it is indeed his writing. He does not know why the name Jacques Jarry appears on some of the documents submitted in support of the invoices.

[117] Mr. Gervais added that he had sold a lot of paper to Mr. Reiss in 2005 and 2006 and that he always paid his suppliers without delay. However, Mr. Gervais was unable to name a single supplier with whom he allegedly did business. He also added that he may not have had commercial activities in 2005 and 2006, and that is why he did not file GST/QST returns for that period.

[118] Mr. Gervais submits that it was not his signature on the back of the cheques. He added that he was the only person authorized to sign for cheque-cashing purposes. He added that it is very possible that he had cashed the cheques although

it is not his signature. He never reported the amounts earned in 2005 and 2006 (the years on the invoices and the cheques) to the tax authorities.

[119] Mr. Gervais did not have any employees; he knew Mr. Jarry and Mr. Lewis, Mr. Jarry's right-hand man according to him. He added that Mr. Jarry was never his employee and he was never Mr. Jarry's employee. They worked together in plastics.

[120] Some of the documents from the audit file of 9073-3122 Québec Inc. were submitted under Exhibit I-10. The name Pierre Gervais was listed as authorized person; he stated, however, that he was not an employee—he was in a business relationship with this corporation. As indicated in the copy of the “État des informations sur une personne morale” from the REQ submitted as Exhibit I-5, 9073-3122 Québec Inc. was a corporation whose president, secretary and director was Jacques Jarry and whose majority shareholder was 9072-6886 Québec Inc. and that used the name Granulation Plastique 2000.

(f) PFG's audit.

[121] Martin Houde, ARQ auditor, conducted the audit of Pierre-François Gervais for the period of January 1, 2002 to December 31, 2006, because Mr. Gervais had not filed a GST/QST return for two years and that cheques in his business's name had been cashed at cheque-cashing centres (Exhibit I-11, Tab 46).

[122] Martin Houde attempted to reach Mr. Gervais in July 2006, but was unsuccessful. He managed to speak to him a few weeks later and explained to him what he needed and Mr. Gervais agreed to send him all the documents required. However, after waiting for many months, Mr. Houde sent a letter dated January 17, 2007, to Mr. Gervais and Gestion P.F.G. by registered mail advising them of the audit being conducted and to make all the corporation's business records available to the auditor (Exhibit I-11, Tab 46, p. 4.5). Mr. Gervais asked for additional time by letter dated January 23, 2007 (Exhibit I-11, Tab 46, p. 4.4). Two weeks later, (February 6, 2007), Mr. Gervais advised the auditor that he had no documents because everything had been stolen in August 2006 (Exhibit I-11, Tab 46, p. 4.188), a short time after the audit had begun. After that, Mr. Houde requested information regarding the accounts after the document theft. Mr. Gervais produced invoices for his business involving plastic.

[123] According to the information obtained from the cheque-cashing centre (enclosed with the report at Exhibit I-11, Tab 46), Mr. Gervais cashed cheques totalling \$1,967,511 during the period of April 2005 to September 2006.

[124] Mr. Gervais did not provide any information as to the identity of his suppliers or about his purchases; he only had sales, according to Mr. Houde. He confirmed that the sales figures for his business were between \$30,000 and \$100,000.

[125] Moreover, Mr. Gervais mentioned to the auditor, Mr. Houde, that he did almost no paper recycling because his corporation is more active in recycling polymers. He added that he had not filed a GST/QST return in 2004 and 2005 because he was ill and hardly worked.

[126] Additionally, Mr. Houde established before this Court that purchase orders submitted by clients (for example, Forest Fibers) to Récupération Papier J.M. (and not Distribution Papier J.M.) were invoiced by PFG (Exhibit I-11, Tab 46, pp. 4.59, 4.60 and 4.54); on the invoice issued by PFG (copy at p. 4.61), Mr. Gervais added that it was his writing on the letterhead of the invoice and the first part indicating the material sold; however, with regard to the rest of the notations on the invoice, it is not his writing.

[127] Similarly, the invoices issued by PFG were sent by Mr. Lewis from the fax number of 9072-6886 Québec Inc. (Exhibit I-11, Tab 46, p. 4.28). Mr. Gervais was unable to explain to the Court why this document was included with the invoice issued by PFG.

[128] The auditor, Mr. Houde, therefore concluded that there had been no purchases by this corporation, that there had only been sales that seemed to have been carried out by Mr. Jarry and that were invoiced by PFG.

[129] According to Martin Houde, PFG issued invoices of convenience in the paper industry but was a legitimate business in the plastic industry; therefore, Mr. Gervais was assessed for GST collected an unremitted for \$119,735.64.

(g) Michel Boulet, auditor.

[130] Michel Boulet reviewed the audit report prepared by Martin Houde. One of the things he noticed was that there was no purchase order or sales invoice indicated on the PFG invoices, which is different from the other suppliers

(Exhibit I-1, Tabs 6 and 7). Moreover, on some of PFG's documents, it is Jacques Jarry's name that appears; it is never Pierre-François Gervais's name.

[131] There are no payment terms and conditions on the invoices issued by PFG (except on the one of which a copy can be found at Exhibit I-1, Tab 5, p. 954).

[132] As for the invoice of which a copy can be found at Exhibit I-1, Tab 5, page 939, it does not have any details about the merchandise purchased; moreover, the address and tax numbers are not indicated.

[133] Mr. Rivard, counsel for the Appellant at the hearing, objected to the presentation of the invoice of which a copy can be found at Exhibit I-1, Tab 5, page 954 because the auditor's handwritten notes appear on it and he agreed to offer a copy to the Court with no notes. Since Mr. Rivard never produced such an invoice, his objection is dismissed.

[134] Mr. Boulet was unable to find any evidence that Jacques Jarry was a representative of PFG.

[135] Considering all these elements, Mr. Boulet concluded that the supplies listed on the invoices issued by PFG to the Appellant were not made by PFG to the Appellant, that there had not been any genuine commercial transactions between PFG and the Appellant and therefore, the invoices issued by PFG to the Appellant were invoices of convenience.

3.4 GHG (Gaston H. Gilbert).

(a) The invoice.

[136] Only one invoice dated September 12, 2006, is at issue. This invoice is for a total of \$34,863.23 including taxes (Exhibit I-1, Tab 22); the disallowed ITCs are for a total of \$1,835.71.

[137] The invoice did not include any purchase order, reception order or shipping order. It is impossible to track the path of the paper.

[138] The cheque issued by the Appellant to GHG as payment for this invoice was cashed at a cheque-cashing centre (Exhibit I-1, Tab 21).

(b) The information.

[139] According to the "État des informations sur une personne morale" from the REQ (Exhibit I-16), the sole director of GHG is Gaston H. Gilbert.

[140] Mr. Gilbert died before the hearing.

(c) Mr. Faivushevitz.

[141] According to Mr. Faivushevitz, the person who liaised with the supplier was Mr. Jarry. During the Appellant's audit, Mr. Reiss stated that he dealt with Jacques Jarry with regard to this supplier.

(d) Jacques Jarry.

[142] Jacques Jarry does not recognize the name Recyclage GHG Inc.

(e) GHG's audit.

[143] Marie-Josée Lavoie also audited this supplier for the audit period starting on the date this corporation was incorporated, August 29, 2006, until October 31, 2006 (Exhibit I-11, Tab 45). GHG was chosen to be audited following Trebano's audit.

[144] Ms. Lavoie contacted Mr. Gilbert in March 2007; according to Ms. Lavoie, Mr. Gilbert confirmed that, having been under medical treatment, he had not made any sales and did not want the GHG's tax registration numbers to be cancelled because he wanted to resume his activities. However, the numbers were cancelled by the ARQ on June 4, 2007.

[145] The GST/QST returns GHG filed for the periods beginning on August 29, 2006, and ending October 31, 2006, showed a nil amount.

[146] The information from the cheque-cashing centre indicates that a total of \$403,145.67 was cashed by GHG or Gaston Gilbert for the period beginning in July 2006 and ending in March 2006. Of that amount, the total for GHG was \$161,742.41 (period of September 2006 to October 2006).

[147] The address on the invoices corresponds to a printing and mailboxes business.

[148] The address of the corporation's president, Mr. Gilbert, is a large residential building. Mr. Gilbert's income for 2003 to 2006 was very modest and came from social assistance and the Régie des rentes du Québec.

[149] Ms. Lavoie could not locate any of GHG's suppliers.

[150] She is of the view that Mr. Gilbert and GHG did not carry on any commercial activity and did not have the financial and material means to operate a business. She concluded that GHG issued invoices of convenience. As a result, GHG was assessed for GST collected and unremitted for \$21,227.50.

(f) Michel Boulet, auditor.

[151] Mr. Boulet reviewed Ms. Lavoie's report and analyzed the tax history of Gaston Gilbert; the latter received no income from GHG in 2003, 2004, 2005 and 2006. Moreover, no vehicle was registered in his name with the SAAQ.

[152] Additionally, according to GHG's profile, no income tax return was filed for 2006, no registration with the source deductions records ("RAS"), no vehicle registered with the SAAQ and the GST/QST returns for the periods ending on October 31, 2006, January 31, 2007, and April 20, 2007, were filed with nil amounts.

[153] According to Mr. Boulet, the writing on the invoice issued by GHG is similar to that on the invoices issued by Méga Terra (Exhibit I-1, Tabs 23 and 26) and those issued by Mr. Jarry's corporation, 9072-6886 Québec Inc. (Exhibit I-1, Tab 43).

[154] Considering all these elements, Mr. Boulet concluded that the supplies listed on the invoice GHG issued to the Appellant were not made by GHG to the Appellant, that there had not been any genuine commercial transactions between GHG and the Appellant and therefore, that the invoice issued by GHG to the Appellant was an invoice of convenience.

3.5 Gestion.

(a) The invoices.

[155] Two invoices are in issue, invoice No. 201, dated July 28, 2008, for a total of \$28,035.22, and invoice No. 305, dated September 18, 2008, for a total of \$38,809.98 (Exhibit I-1, Tab 34). The disallowed ITCs are for a total of \$2,961.03. No documentation in support of the invoices was found, either in the form of a purchase order or other. The writing on the invoices is similar to that on those issued by PFG.

[156] The invoices indicate that “Napkin Rolls” was sold; however, according to information from the REQ, the corporation operated as a personnel agency.

[157] The two cheques issued by the Appellant as payment for the two invoices were cashed at a cheque-cashing centre (Exhibit I-1, Tab 33). The first cheque was dated July 28, 2008, and the second, October 27, 2008. It should be noted that the supplier’s name is incorrectly spelled on both the cheques and the invoices: Gestion Personnel 2008 Inc.—however, Mr. Boulet confirmed that the GST number on the invoices was the correct one for Gestion.personel.2008 Inc.

(b) The information.

[158] According to the “État de renseignements d’une personne morale” from the REQ (Exhibit I-3), the sole director of Gestion is Ms. Kularanjithamalar Markandu, who testified at the hearing. The corporation was registered on March 8, 2008, and was incorporated on March 7, 2008. That information has not been updated.

(c) Mr. Faivushevitz.

[159] Mr. Faivushevitz knows this supplier, having done business with them for a long time, but he does not know Ms. Markandu. On cross-examination, Mr. Faivushevitz indicated that it was possible that a corporation involved in personnel placement could sell paper; he could not quite recall how everything had worked out with this supplier. He did, however, recall doing business with someone by the name of Tony. Mr. Jarry had nothing to do with that supplier.

(d) Ms. Markandu.

[160] Ms. Markandu does not know Jacques Jarry; she indicated that she had been a victim of identity theft. She did not recognize any of the invoices issued by the corporation. Moreover, she did not recognize the cheques issued by the Appellant in payment of those invoices and confirmed that it was not her signature on the back of those cheques.

[161] Ms. Markandu agrees that it is not her signature that appears at page 2 on the documents of incorporation; but that those are in fact copies of her Quebec health insurance card and her social insurance card that appear in the attached exhibit (Exhibit I-6). She adds that it is not her signature that appears on the articles of

incorporation of Gestion or on the notice establishing the address of the head office and its list of directors.

(e) Michel Boulet, auditor.

[162] Mr. Boulet reviewed detailed information in the audit report of Diane De Luca, auditor at the ARQ, who had conducted an audit of Gestion for the period from March 11, 2008, until January 31, 2009. She did not testify at the hearing. According to excerpts from her report, she had been unable to audit Gestion's business records, and found that Gestion had used a scheme to avoid, among other things, paying taxes and was thus assessed for GST collected and unremitted in the amount of \$239,731.50.

[163] It appears from the information regarding Ms. Markandu that her income for 2008 and 2009 was from social assistance. She does not own any vehicle registered to her name with the SAAQ.

[164] According to Gestion's tax history, the corporation filed its GST/QST return for the period ending on April 30, 2008, and subsequently, that is to say from July 31, 2008, did not file a return; as to its income, no income tax return was filed and it is registered in the RAS—a return was filed in 2008 but not in 2009.

[165] In addition, when he examined the documents attached to the 1st invoice (No. 201), Michel Boulet noticed that the outbound slip (copy pp. 1444-1445 at Tab 36 of Exhibit I-1) is a copy of an outbound slip that had been attached to an invoice issued by another one of the Appellant's suppliers, namely, DK Trading Corporation, Inc. (pp. 1448 to 1451 in Tab 36 of Exhibit I-1).

[166] With regard to the 2nd invoice (No. 305), attached to it were bills of lading indicating a sale to a client of the Appellant as well as invoice No. U-20027 issued by the Appellant to its client, Fantastic Industries Inc. (pp. 1457 to 1459 at Tab 35 of Exhibit I-1). During his audit, Mr. Boulet asked the Appellant to provide him with a copy of the invoice issued by the Appellant to its client regarding the purchase of paper in relation to that second invoice. A copy of another invoice bearing the number U-20027 was provided to him, bearing the same date and issued to the same client (Fantastic Industries Inc.) but for a different quantity of paper and at a different price, as well as a document entitled "Order" and another entitled "Outbound" (pp. 1460 to 1462 at Tab 35 of Exhibit I-1). According to the Appellant's business records, it's the second version of invoice No. U-20027 that was accounted for and not the first (p. 1466 at Tab 35 of Exhibit I-1).

[167] Mr. Boulet therefore found that the actual purchase had occurred with DK Trading Corporation, Inc., not with Gestion, given that the same exhibits are attached to invoices issued by both entities.

[168] Considering all these elements, Mr. Boulet concluded that the supplies listed on the invoices issued by Gestion to the Appellant had not been made by Gestion to the Appellant, that there had not been any genuine commercial transactions between Gestion and the Appellant and, therefore, that the invoices issued by Gestion to the Appellant were ones of convenience.

3.6 Koudlai.

(a) The invoices.

[169] Nine invoices dated between July 27, 2008, and April 22, 2009, are in issue, for a total of \$235,058.80, including taxes (Tab 39, Exhibit I-1). The disallowed ITCs are for a total of \$10,412.35.

[170] The first two invoices (No. 831 and No. 847 from July and August 2008) were for transportation services (pp. 1506 and 1509 at Tab 39 of Exhibit I-1). With regard to one of the two invoices relating to transportation (p. 1506, Tab 39 of Exhibit I-1), there was a purchase order (p. 1507, Tab 39 of Exhibit I-1) issued by the Appellant to the attention of someone named Larry that indicated that the seller was Koudlai.

[171] All of the other invoices (dated from the month of August 2008 to April 2009) issued by Koudlai refer to the sale of paper (pp. 1512, 1513, 1514, 1515, 1516, 1517 and 1520). The invoices contain no information as to the specific weight, volume or size of the paper and there are no supporting documents for the purchase. A number of the invoices indicate that the merchandise has been “appropriated for non-payment”.

[172] Attached to one invoice (Exhibit I-1, Tab 39, page 1517) was a document validating Koudlai’s QST number as well as a purchase order issued by the Appellant to Réseau Financier DBI Inc. (“DBI”) and not to Koudlai.

[173] Cheques issued by the Appellant to Koudlai or to DBI were cashed at cheque-cashing centres (Tab 38, Exhibit I-1). Some of the cheques were endorsed by “A. Koudlai” and deposited under the name Centurion Armored Car Services Inc., while other cheques were endorsed by “Soumas”.

[174] In addition, apart from the two cheques issued by the Appellant in payment of the first two invoices (for transportation), all of the other cheques had been paid to DBI (Tab 38, Exhibit I-1, pp. 1540 to 1545).

(b) The information.

[175] According to the “État de renseignements d’une personne morale” from the REQ (Exhibit I-4), the sole director of Koudlai is Andrej Koudlai. The corporation’s stated line of business is freight forwarding—overseas and trans-Canada transportation.

(c) Mr. Faivushevitz.

[176] According to Mr. Faivushevitz, the person who took care of liaison with this supplier was one Larry. He did not know Larry’s last name. He does not know Mr. Koudlai. In his testimony, Mr. Faivushevitz confirmed that Jacques Jarry had not participated in Koudlai’s activities and that he had not made any enquiries as to the provenance of the merchandise.

(d) The audit of Koudlai.

[177] Sylvain Audette, GST and QST auditor at the ARQ, was tasked with auditing Koudlai (Exhibit I-1, Tab 37). He conducted the audit because the ARQ had learned that cheques had been cashed at cheque-cashing centres and that Koudlai had not filed its GST/QST returns since it was registered. The name of Koudlai appeared following the Appellant’s audit.

[178] Mr. Audette tried to contact the director (Mr. Koudlai), without success; he sent formal demand to obtain copies of bank statements as well as information from the cheque-cashing centre (p. 1.4 of the report filed under Tab 37 of Exhibit I-1). Thus, he obtained copies of the cheques and invoices. Among the invoices, there were transportation invoices, in addition to invoices from telecommunications corporations and others.

[179] According to Mr. Audette, the address that appeared on the invoices is not a place of business or a commercial address. The assessment issued following the audit was issued on the basis of cash inflow; an amount of \$2.4M had been cashed, including taxes.

[180] According to Mr. Audette, Koudlai is not capable of providing transportation. It would appear that two persons are employed by the corporation, though one employee's social insurance number is invalid (p. 5.1.3, Tab 37, Exhibit I-1). He concluded that, in the absence of any commercial activity, the entity had issued false invoices. Thus, Koudlai was assessed for GST collected and unremitted in the amount of \$108,101.20.

(e) Michel Boulet, auditor.

[181] According to the review conducted by Mr. Boulet, no permit had been issued by the Commission des transports du Québec to Koudlai; according to information found in the files of the SAAQ, Koudlai's president, Andrej Koudlai, owns two vehicles. Neither vehicle is registered under the name of Koudlai. Since April 2008, Mr. Koudlai provided an address in British Columbia. Mr. Koudlai has a modest income (\$8,000) in comparison to the rather significant sums cashed at cheque-cashing centres. He has not filed income tax returns in Quebec since 2008.

[182] Furthermore, Koudlai is not registered with the Commission des transports du Québec and GST/QST returns for the periods ending March 31, 2008, March 31, 2009, and March 31, 2010, have not been filed. Income tax returns were filed for 2007 and 2008, but not for 2009 and 2010.

[183] Koudlai has two employees, namely, one Mr. Goddart and Labros Soumas; Koudlai filed an employer summary for 2008 and 2009 but never remitted source deductions on salaries. Labros Soumas is also a director of DBI.

[184] On cross-examination, Michel Boulet acknowledged that Labros Soumas was employed by Koudlai and that, during the audit, Mr. Reiss provided the telephone number of Labros Soumas as the contact person for Koudlai.

[185] In addition, during a meeting with the Appellant's external accountant, the latter confirmed with Michel Boulet that Koudlai's accounts receivable had been assigned as collateral to DBI, thereby explaining the payment made to DBI rather than to Koudlai. However, Michel Boulet did not inquire further into this during his audit.

[186] Considering all these elements, Mr. Boulet concluded that the supplies listed on the invoices issued by Koudlai to the Appellant had not been made by Koudlai to the Appellant, that there had not been any genuine commercial transactions

between Koudlai and the Appellant, and, therefore, that the invoices issued by Koudlai to the Appellant were invoices of convenience.

F. DISCUSSION.

1. The mandatory nature of the provisions of the ETA and the Regulations.

[187] Under the ETA, an ITC may only be granted if the information required by the Regulations is obtained. The Regulations provide, in particular, that the name of the supplier or intermediary must be indicated in the supporting documentation (for example, an invoice).

[188] The Regulations define intermediary as: “a registrant who, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply by the person.”

[189] The Federal Court of Appeal has ruled on a number of occasions that the name of the true supplier or of his or her intermediary (within the meaning of the ETA) must appear on the invoices. Thus, in the matter of *Kosma-Kare Canada Inc. v. Her Majesty the Queen*, 2014 FCA 225, [2015] GSTC 116 [*Kosma-Kare*], Justice Gauthier, writing on behalf of the Court, noted:

[7] Consequently, contrary to its allegations, Kosma-Kare had not complied with the strict provisions of the Act requiring, among other things, that it declare the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, and the registration number assigned under subsection 241(1) of the Act, to that supplier or intermediary, as the case may be, (Input Tax Credit Information (GST/HST) Regulations SOR/91-45, subparagraph 3(b)(i) (the Regulations).

[Emphasis added.]

Furthermore, *Her Majesty the Queen v. Salaison Lévesque Inc.*, 2014 FCA 296, [2014] FCJ No. 1272 (QL) [*Salaison Lévesque*], Justice Gauthier observed:

[17] . . . The Regulations are clear, and the only actual issue before the judge in the present matter was to determine whether Salaison had produced invoices describing the name of the service supplier of [*sic*] the intermediary as required by the Regulations. That is a question of fact.

[190] The case law of this Court and of the Federal Court of Appeal uniformly holds that the provisions of the ETA and its Regulations are mandatory with respect to claims for ITCs.

[191] As the Federal Court of Appeal, in *Systematix Technology Consultants Inc. v. Her Majesty the Queen*, 2007 FCA 226, [2007] GSTC 74, held:

[4] We are of the view that the legislation is mandatory in that it requires persons who have paid GST to suppliers to have valid GST registration numbers from those suppliers when claiming input tax credits.

[5] We agree with the comments of Bowie J. in the case of *Key Property Management Corp. v. R.*, [2004] G.S.T.C. 32 (T.C.C.) where he stated:

The whole purpose of paragraph 169(4)(a) and the Regulations is to protect the consolidated revenue fund against both fraudulent and innocent incursions. They cannot succeed in that purpose unless they are considered to be mandatory requirements and strictly enforced. The result of viewing them as merely directory would not simply be inconvenient, it would be a serious breach of the integrity of the statutory scheme [emphasis added].

[6] We also agree with the comments of Campbell J. in *Davis v. R.*, [2004] G.S.T.C. 134 (TCC):

Because of the very specific way in which these provisions are worded, I do not believe that they can be sidestepped. They are clearly mandatory and the Appellant has simply not met the technical requirements that the Act and the Regulations place upon him as a member of a self-assessing system [emphasis added].

[192] The case law is well-settled: a registrant's good faith in claiming an ITC is of no relevance.

[193] In *Comtronic Computer Inc. v. Her Majesty the Queen*, 2010 TCC 55, [2010] GSTC 13 [*Comtronic*], Justice Boyle noted that:

[29] In this case I am bound to follow the Federal Court of Appeal's decision in *Systematix*. I should note, however, that (as noted by Archambault J. of this Court in deciding the *Systematix* case at first instance) this strict approach can result in unfairness to a purchaser who pays the GST in good faith. It leaves Canadian businesses bearing the risk of fraud, identity theft, and wrongdoing and effectively requires them to put into place risk management practices in dealing with new and continuing suppliers to identify supplier information that may

require further investigation. A result such as this may prove harsh and unfair but it is open to Parliament to legislate such a regime and I am bound to apply that legislation as it has already been interpreted by the Federal Court of Appeal.

[Emphasis added]

[194] Examining similar provisions of the *Act Respecting the Quebec Sales Tax*, the Court of Appeal of Quebec, in the GPBR case, also found them to be mandatory:

[38] Under sections 201R1 to 201R5 of the *Regulation*, only invoices presented by a supplier, its mandatory, i.e. a person having the power to represent it in the performance of a juridical act with a third person, or a person who, under an agreement, caused or facilitated the rendering of the service by the supplier, can give rise to an ITC. In all cases, the invoice must be issued by a registrant that has an interest in issuing the invoice, thereby automatically excluding accommodation invoices [invoices of convenience], or worse, false invoices.

...

[40] On the contrary, these regulatory provisions are specifically aimed at preventing accommodation invoicing [invoices of convenience], whether or not fraudulent. The courts have noted this countless times. Regulatory requirements such as those in sections 201R1 to 201R5 of the *Regulation* are intended to protect the public treasury against all incursions, regardless of whether or not they can be designated as fraudulent. These requirements are strict and mandatory. They must be rigorously met by any registrant claiming an ITC, failing which the ITC cannot be granted.

[Emphasis added.]

[195] Thus, the supplier whose name appears on the invoice must be the supplier that made the supply or the mandatory or authorized representative of that supplier. In all cases, the person who issued the invoice must have an interest in issuing the invoice; otherwise, no ITC may be granted.

[196] In addition, as Justice Boyle noted in *Comtronic* (above, para. 29), risk management measures must be taken by persons claiming ITCs, given that they are left “bearing the risk of fraud, identity theft and wrongdoing”.

[197] The Court of Appeal of Quebec, in the GPBR case, stated *in obiter* that a registrant has a duty of verification and that such precautions are essential for the registrant’s own protection (para. 46 to 49).

[198] Therefore, I am of the view that the mandatory nature of the provisions of the ETA and the Regulations, from which flows a duty of verification on the part of the person claiming an ITC, is determinative in this case, no matter the Appellant's good faith.

2. The burden of proof.

[199] As for the 1st part of the period in question (namely, from April 2005 to July 2007), the Respondent must prove that the Appellant made a misrepresentation that was attributable to neglect, carelessness or wilful default, in order to justify the Minister's exercise of his or her authority to assess after the normal assessment period has expired (subsection 298(4) of the ETA). I will discuss this point further below.

[200] As for the 2nd part of the period in question (namely, from January 2008 to April 2009), I am of the view that the Appellant's argument is incomplete when it asserts that it has met its burden of proof by presenting, among other things, a *prima facie* case that it acquired the supplies. It must also make a *prima facie* case that it acquired those supplies from the suppliers whose names appear on the invoices.

[201] Moreover, the *prima facie* case made by the Appellant must include elements showing that it was not a party to the invoice of convenience scheme alleged by the Respondent and that it had actually purchased supplies from the Suppliers. In addition, the Appellant must show that the invoices (and other supporting documentation) comply with the provisions of the ETA and the Regulations (*Les Entreprises DRF Inc. v. M.R.N.*, 2013 TCC 95, [2013] GSTC 144 [DRF], para. 36 and 37).

[202] In *Kosma-Kare Canada Inc. v. The Queen*, 2014 TCC 13, [2015] GSTC 2, Justice Lamarre (as she then was) confirmed that the burden of proof rests with the appellant (Justice Paris also referred to this passage with approval in the matter of *Pépinière A. Massé Inc. v. The Queen*, 2014 TCC 271, [2015] GSTC 11):

[48] For the second part of the periods at issue, namely, from March 2007 to June 30, 2010, the appellant must prove that the assessment is erroneous. To do so, it must put forward a *prima facie* case showing the inaccuracy of the assumptions relied on by the Minister when making the assessment. Such a case is supported by evidence which creates such a degree of probability in its favour that it must be accepted if believed by the Court, unless it is rebutted or the contrary is proved (*Stewart v. Canada*, [2000] T.C.J. No. 53 (QL)). If the appellant makes

such a *prima facie* case, the Minister must then refute that *prima facie* case and prove the assumptions he relied upon (*Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336). However, the initial burden of proof put on the taxpayer cannot be lightly, capriciously or casually shifted, since the taxpayer has information within his reach and under his control (*Voitures Orly Inc. v. Canada*, 2005 FCA 425, [2005] G.S.T.C. 200).

[203] Furthermore, the Appellant is mistaken when it claims that the legitimacy of the Suppliers has been shown, given that the Appellant was not aware, in particular, that the Suppliers [TRANSLATION] “did not have an interest in the supply (if, of course, this were to be the case)”. The case law is quite clear that the purchaser’s good faith has no bearing on an ITC.

3. Observations with regard to all Suppliers.

[204] The evidence shows that the Appellant acquired the merchandise listed on the invoices issued by the 4 suppliers (except for the Méga invoice). Furthermore, this point was not disputed by the Respondent. With respect to Gestion and Koudlai, I find, on a balance of probabilities, that no merchandise was acquired by the Appellant from those suppliers.

[205] In addition, the Respondent has established, on a balance of probabilities, that the Suppliers were not true suppliers: the Respondent has established that the true supplier of paper was Jacques Jarry as far as the 4 suppliers were concerned and that, with respect to Gestion and Koudlai, no supply had been made to the Appellant.

[206] Moreover, the Appellant has not persuaded me that the Suppliers were intermediaries (within the meaning of the ETA) of a person who has actually made a supply. It is clear from the evidence that the Suppliers were not acting by themselves, either as suppliers of paper or as intermediaries for suppliers in that field.

[207] The presumption provided for by section 2831 of the CCQ cannot assist the Appellant given that it has not adduced evidence showing that the invoices came from the Suppliers. Indeed, the Suppliers (Méga Terra, PFG, J.S. Récupération and Gestion) do not recognize the invoices at issue; the Respondent’s evidence is clear in this regard. As for Koudlai and GHG, no evidence in this regard was adduced by the Appellant; given the evidence adduced by the Respondent, I must also reach the same conclusion with respect to these two suppliers.

[208] According to the Appellant, the rigorous processes followed by cheque-cashing centres to verify the identity of persons cashing cheques is another factor to take into consideration that would point to the invoices having come from the Suppliers. At the hearing, no evidence was provided with regard to such processes and I am therefore unable to bear judgement as to the quality of such verification measures. On the contrary, I note that the directors of some of the Suppliers stated before this Court that the signatures appearing on the backs of the cheques were not theirs; furthermore, I note that the cheques issued in the name of Récupération Papier J.M./9072-6886 Québec Inc. (Exhibit I-13, p. 1204) and cashed at a cheque-cashing centre were not issued in the correct name. Given the evidence adduced at the hearing, 9072-6886 Québec Inc. does business under the name of Distribution Papier J.M., not Récupération Papier J.M. (Exhibit I-18). The cheques were nonetheless cashed by the cheque-cashing centre—which does not point to any rigorous process for clearing cheques. In my view, this argument cannot be accepted.

[209] It is clearly apparent from the evidence adduced at the hearing that the Suppliers had no capacity to operate a business in the sale and resale of paper. There is no doubt that the Suppliers were not engaged in any commercial activity during the years at issue. The testimony given by various auditors is clear in that regard. The various officers and directors of the Suppliers who testified at the hearing admitted that they had not operated a business (Méga Terra and Gestion) or sold any paper to the Appellant (Méga Terra, Gestion, PFG and J.S. Récupération). Moreover, the testimonies of the officers and directors of the Suppliers suggest that they did not know Jacques Jarry, or if they did, they had never done business with him.

[210] In addition, during his testimony, Jacques Jarry declared that he did not know the various Suppliers; however, I will not give any weight to that testimony in the light of the rather vague and incoherent statements that he made; he could not even recognize the name of his own corporation (9072-6886 Québec Inc. and Distribution Papier J.M.).

[211] All of the cheques issued by the Appellant in payment of the invoices in question were cashed at cheque-cashing centres. This Court, in *Les Pro-Poseurs Inc. v. The Queen*, 2011 TCC 113, [2011] GSTC 104, (para. 40), determined that the mere cashing of cheques at a cheque-cashing centre should raise suspicion as to the honesty of the supplier. Mr. Faivushevit's testimony suggesting that he received copies of the cheques from his bank is rather vague. He said that it was possible to obtain copies of cheques from the bank without indicating whether he

had requested these. In this regard, would the Appellant's bookkeeper have been able to give evidence at the hearing on the matter? Given his absence, I therefore draw a negative inference in the sense that the testimony of that bookkeeper would not have helped the Appellant's position. Given the doctrine of *2411-3250 Québec Inc. v. The Queen*, 2013 TCC 272, [2013] GSTC 154, I am entitled to take into account the fact that the cheques were cashed at cheque-cashing centres to assess the probative value of the Appellant's testimony and credibility (para. 65).

[212] It is clearly apparent from the evidence that the only verifications made by the Appellant consisted of checking the tax registration numbers, namely, whether the numbers were still valid. No other verification measures were undertaken by the Appellant. Mr. Faivushevitz acknowledged that there was no verification with the REQ. Furthermore, he testified that it mattered little which name appeared on the invoices, the only thing that mattered to him was that he had paper to resell. According to the doctrine of this Court, such verification is not sufficient to justify the claiming of ITCs (*Modes Crystal inc. v. The Queen*, 2013 TCC 33, [2013] GSTC 20), which was confirmed, in particular, in the GPBR case.

[213] The Appellant is asking this Court to hold that it was not required to check to ensure that the Suppliers were not tax offenders, that they had the ability to provide the supplies and that they were not acting as a nominee or prête-nom for a third party. That duty is said to fall upon tax authorities that oversee the GST registries.

[214] The Appellant cites *SNF L.P. v. The Queen*, 2016 TCC 12, [2016] GSTC 13 [SNF], in support of its interpretation of the ETA and the Regulations. In *SNF*, an account was opened with SNF for each supplier and upon opening an account, as many details as possible were obtained from those persons, for example, the stamped copy of the tax registration form issued by the ARQ, including registration numbers, addresses, etc. The process employed by SNF was very different from that used by the Appellant herein. In this case, the only verification made by the Appellant was in regard to tax numbers. That case is therefore not relevant here.

[215] According to the doctrine of the Federal Court of Appeal (*Kosma-Kare and Salaison Lévesque*), the name of the true supplier or its intermediary (within the meaning of the ETA) must appear on the invoices and good faith is not a relevant criterion in that regard.

[216] The Appellant also cites *Stamatopoulos c. Agence du revenu du Québec*, 2015 QCCQ 13237 (CanLII) (appeal pending before the Court of Appeal of Quebec). In that case, Mr. Stamatopoulos met with sub-contractors, obtained a copy of the articles of incorporation, of the form filed with the REQ and tax registration.

[217] In this case, the facts are very different. Again, the Appellant merely verified the tax numbers and no steps were undertaken by the Appellant to verify the identity of the Suppliers. No verification was done with the REQ.

[218] I acknowledge that the Appellant was not expected to conduct a verification of its suppliers to ensure that they were in compliance with tax laws, given that the Appellant lacks the means of doing so. However, the Appellant must do a minimum of verification, which would include, in particular, searching the government's website to confirm the registration for the GST, inquiring with the REQ as well as verifying the identity of the person with whom it was doing business. The world of business is fast-paced and often frantic. It is nonetheless very easy to quickly verify the identity of the directors and officers of corporations or of individuals engaged in commercial activities. In that regard, a simple enquiry made to the REQ would have enabled the Appellant to learn that Jacques Jarry was neither a director nor an officer of these Suppliers and had no relation with any of them. I have made the same determination with regard to Tony and Larry vis-à-vis Gestion and Koudlai.

[219] I am of the view that the duty of verification and the strict eligibility conditions for ITCs mean that a registrant must verify the identity of the suppliers with whom business is done.

[220] I note the absence of an important witness who might have been able to support some of the Appellant's arguments, such as Scott Mitchell, who was the employee tasked with verifying tax numbers. I therefore make a negative inference from that absence and conclude that any testimony he could have provided would not have helped the Appellant.

[221] In addition, the documentation listing the transactions with the Suppliers does not provide any information as to the tracking of the merchandise from the purchase to the sale by the Appellant. However, with the other suppliers of the Appellant, it was possible to track the movement of the merchandise throughout the process, because there were purchase orders, delivery slips, shipping records, etc. The payment was also made very quickly.

[222] Lastly, auditor Boulet has established the succession of Suppliers in chronological order (Exhibit I-1, Tab 1, pp. 65-66).

4. Specific observations with regard to the 4 suppliers (Méga Terra, PFG, J.S. Récupération and GHG).

[223] The Appellant submits that since the Respondent acknowledged that supplies had been provided in relation to the invoices issued by the 4 suppliers, this was sufficient to entitle it to ITCs. This argument cannot be accepted. The case law clearly holds that it does not suffice (*9088-2945 Québec Inc. v. The Queen*, 2013 TCC 58, [2013] GSTC 28, para. 14 and *DRF*, above, para. 57).

[224] Mr. Faivushevitz contends that Jacques Jarry represented the 4 suppliers, but was unable to adduce any evidence to that effect. Rather, the evidence shows that Jacques Jarry was neither a director nor an officer of the 4 suppliers and that he had no relation with any of them. There was no documentary evidence showing that Jacques Jarry had an interest with the 4 suppliers or that he had any relation with them. No documentation connects Jacques Jarry to the 4 suppliers. Mr. Faivushevitz should have questioned Jacques Jarry in that regard. It seems highly unlikely that a person who appears for such a brief period would be able to claim to successively represent different suppliers. Mr. Faivushevitz made no verification in this regard. Mr. Faivushevitz simply took it for granted that Jacques Jarry was a representative of the 4 suppliers. Mr. Faivushevitz did not bother checking information that was publicly available on the REQ's website. Had he done so, he would have noticed that Jacques Jarry's name was nowhere to be found in the REQ with respect to these Suppliers.

[225] It is also apparent from Mr. Faivushevitz's testimony that he never questioned Jacques Jarry in that regard.

[226] In addition, according to auditor Jolicœur's testimony, it appears that Jacques Jarry had interests in three corporations (9072-6886 Québec Inc., 9073-3122 Québec Inc. and 9200-0298 Québec Inc.) and that he was not associated with any other corporation (Exhibit I-17).

[227] Mr. Faivushevitz contradicted himself when he spoke of Jacques Jarry—on the first day of the hearing, Mr. Faivushevitz said that Jacques Jarry was an authorized representative of Méga Terra (he would further claim that Jacques Jarry was the representative of J.S. Récupération, GHG and PFG). When the hearing resumed a few months later, Mr. Faivushevitz stated that he was unaware of what

kinds of arrangements Jacques Jarry may have had with the 4 suppliers. That part of Mr. Faivushevitz's testimony is not credible. He cannot state that Jacques Jarry was a representative, only to later assert that he was unaware of Mr. Jarry's arrangements with the 4 suppliers. He ought to have questioned Jacques Jarry and required confirmation on the part of the 4 suppliers as to any possible arrangements that had been made. The reason provided by Mr. Faivushevitz according to which the identity of the suppliers of those suppliers must remain secret cannot apply here—if Jacques Jarry was the representative of the 4 suppliers, then the 4 suppliers were the Appellant's suppliers—to know the identity of the suppliers to those 4 suppliers was not an issue here.

[228] In its written submissions, the Appellant maintains that Jacques Jarry was the representative of the 4 suppliers but also contends that Jacques Jarry was a broker as to those 4 suppliers. This does not align with Mr. Faivushevitz's testimony given that he indicated that Jacques Jarry never appeared alone when he met with the Appellant; for example, Mr. Faivushevitz stated that Jacques Jarry may have been accompanied by Maxime Grondin in 2006 during a meeting about the transaction in relation to the purchase of paper from the CN train derailment that was concluded, or that Jacques Jarry was accompanied by Pierre-François Gervais to conclude agreements with PFG. If Jacques Jarry was a broker, then given the fact that the identity of suppliers must remain confidential, why then would Jacques Jarry go and meet the Appellant with Mr. Grondin or Mr. Gervais and why would Jacques Jarry hold himself out as the representative of the 4 suppliers? The explanation provided by Mr. Faivushevitz is vague and unconvincing.

[229] In addition, Mr. Faivushevitz's testimony suggesting that Mr. Gervais attended the meetings with Mr. Jarry to act as an interpreter is implausible. Someone who was described as having many contacts in the paper industry, who had apparently been doing business with the Appellant for over 30 years, who was involved in the business world, would be unable to negotiate the sale price of paper in English by himself? I cannot reasonably believe that.

[230] Moreover, Mr. Faivushevitz was unable to adduce before the Court Jacques Jarry's business cards indicating that he was the representative of the 4 suppliers. In that regard, however, I give no weight to Jacques Jarry when he asserts to have never sold paper to the Appellant (except for a period prior to the years in question).

[231] Were the 4 suppliers whose names appeared on the invoices intermediaries of a supplier (Jacques Jarry in this case or one of his corporations) within the meaning of the ETA? There is no evidence showing that Jacques Jarry had told the Appellant that the 4 suppliers were acting as intermediaries for him. The Appellant adduced no evidence regarding Jacques Jarry's relationship with the 4 suppliers. Mr. Faivushevitz simply presumed that Jacques Jarry was the representative of the 4 suppliers, without having been presented with any evidence.

[232] I note the similar handwriting on the various invoices issued by the 4 suppliers. Given that no evidence has been submitted as to Jacques Jarry's role with regard to the 4 suppliers, it is legitimate to entertain doubts as to the validity of the invoices issued by the 4 suppliers.

[233] I am of the view that the evidence shows that the Appellant simply followed Jacques Jarry's payment instructions without asking any questions with regard to the 4 suppliers. First, it is clear that the only verifications made by the Appellant consisted in making sure the 4 suppliers were registered with the GST registry. No other verifications were undertaken. Once again, I draw a negative inference from the fact that the Appellant's employee tasked with verifying tax numbers did not appear at the hearing to testify; from this I infer that his testimony would not have been favourable to the Appellant's position.

[234] The Appellant cautions this Court in relation to the probative value to be given to the testimony of third parties, namely, the directors of the various Suppliers, who are not disinterested third parties, as such testimony may possibly affect their own tax situation, given that they have all been subject to an audit and assessment. This argument put forth by the Appellant leaves me perplexed, as I am asked to give probative value to the testimony of Messrs. Jarry and Gervais, who were also audited and assessed.

[235] Regarding Jacques Jarry's testimony, given his propensity to not be able to recall any name or event, other than the transaction related to the CN train derailment, his testimony is of little probative value. Rather, I will opine that, as per Mr. Faivushevitz's statements, Jacques Jarry had had many contacts in the paper industry; furthermore, this testimony is consistent with that of the representatives of Perkan, who indicated that Jacques Jarry had purchased paper products during the years in issue.

[236] I find the testimony given by Messrs. Grondin and Sirois to be rather credible. I found no contradictions therein.

[237] The Appellant is asking this Court to give predominant weight to the testimony of Mr. Gervais, who indicated that he sold paper to the Appellant. I do not agree. First, Mr. Gervais contradicted himself in this regard. He stated that he sold paper to the Appellant in 2005 and 2006 and then stated that there may not have been any commercial activity for him in 2005 and 2006. Furthermore, Mr. Faivushevitz stated that he did business with Mr. Gervais only after 2008, not before. Also, Mr. Gervais was unable to name any of his suppliers. Mr. Gervais's credibility is also undermined by that story of his business records being stolen in August 2006. Why did he wait so long before notifying the auditor Martin Houde, who required copies of those documents? Martin Houde had communicated with Mr. Gervais in the summer of 2006 and it was not until 2007 that Mr. Gervais informed him of the supposed theft, which apparently happened shortly after the audit started, that is, in August 2006. Furthermore, Mr. Gervais provided no explanation for Forest Fibers's purchase orders issued to 9072-6886 Québec Inc. (Distribution Papier J.M.), which were enclosed with some of the invoices issued by PFG. Also, some invoices issued by PFG were sent by Mr. Lewis from the fax number of 9072-6886 Québec Inc. (p. 4.28 of Tab 46, Exhibit I-11). This lack of explanation by Mr. Gervais shows, in my opinion, that PFG did not make supplies to the Appellant.

[238] Regarding J.S. Récupération: Mr. Sirois acknowledged that the contact person was Jacques Jarry and Mr. Sirois confirmed that he did not know the Appellant or Mr. Reiss. He stated that he knows Mr. Jarry but that he has never done business with him directly. He does not remember his sales figures. In this regard, it seems very odd to me that Mr. Sirois does not remember his sales figures, especially if he operated his recycling business for one year only. In my view, it is because Mr. Sirois did not operate the business in 2005 and 2006 that he does not remember his sales figures. Consequently, J.S. Récupération cannot have made supplies to the Appellant.

[239] Regarding Méga Terra: Maxime Grondin stated that he does not know the Appellant, Mr. Faivushevitz or Jacques Jarry. Given that he was uncooperative with the ARQ auditor, this Court is not particularly sympathetic to him; that being said, I found his testimony to be credible nonetheless. Mr. Faivushevitz's explanation with respect to the Méga Invoice is vague. He stated that the J.M. Invoice is the official invoice—known quantity and price; then what about the Méga Invoice? That transaction was a very large one for the Appellant, but the overly vague and imprecise comments instead lead me to believe that I am not getting the whole story. According to the evidence, 9072-6886 Québec Inc. (Distribution Papier J.M.) did not sell anything to Méga Terra; all of the paper

acquired by 9072-6886 Québec Inc. was sold by the Appellant (worksheet, Exhibit I-1, Tab 30 and Exhibit I-8, p. 11.52) and Jacques Jarry's name and the fax number of 9072-6886 Québec Inc. appear in several places in the documentation for that transaction. In my opinion, the Méga Invoice is simply false.

[240] Given these circumstances, I am of the opinion that, on a balance of probabilities, it was Jacques Jarry or one of his corporations that made the supplies in question. None of the 4 suppliers made the supplies to the Appellant or acted as an intermediary for the true supplier.

5. Specific observations on Gestion and Koudlai.

[241] First, Ms. Markandu's testimony seemed to me to be credible. It is clear that Ms. Markandu, who speaks neither English nor French, did not make any supplies in the paper industry through Gestion.

[242] Mr. Faivushevitz admitted that he does not know Ms. Markandu or Mr. Koudlai (the directors).

[243] Mr. Faivushevitz explained that Jacques Jarry was not the person who liaised with those two Suppliers, and that it was one Tony for Gestion and one Larry for Koudlai. I draw a negative inference from the lack of testimony from those two mysterious persons and conclude that the testimony that they would have rendered would not have been favourable to the Appellant.

[244] In *Les Pro-Poseurs Inc. v. The Queen*, 2012 FCA 200, 2013 DTC 5002, [2012] GSTC 109, the Federal Court of Appeal states that such negative inference could be drawn:

[16] The TCC judge was also correct to draw a negative inference from the fact that many of the individuals who supposedly could have backed up the appellants' claims were not called as witnesses. Here, I am thinking of the staff of the hardware store where the Company recruited its workforce, as well as the appellants' accountant.

[17] As regards the senior management of the alleged suppliers, it is true that auditors were unable to contact them. However, this does not establish that the appellants were unable to do so, and they could offer no evidence that they had made any efforts in this regard. I would add that while it is true that these individuals could not be found, this fact is in itself revealing.

[Emphasis added.]

[245] Also, regarding Gestion, according to the evidence submitted by the auditor Boulet, it is clear that the paper supplier was, in fact, DK Trading Corporation, Inc. Documents pertaining to other purchases made by the Appellant were enclosed with the invoices in question. No evidence was submitted by the Appellant to rebut the evidence adduced by the auditor Boulet.

[246] Various invoices issued by Koudlai state that the merchandise was “appropriated for non-payment”. Mr. Faivushevitz did not tell the Court whether he verified the source of the paper. Given the wording on the invoices, it seems to me that Mr. Faivushevitz should have asked questions about the source of the paper.

[247] Furthermore, the Appellant did not submit any evidence to rebut the Respondent’s evidence regarding Gestion and Koudlai.

[248] Given these circumstances, I am of the opinion that Gestion and Koudlai did not make any supplies to the Appellant and that the Appellant did not purchase any of the merchandise described in the invoices. Consequently, I am of the view that the invoices are false. However, if there were supplies, it is clear that, on a balance of probabilities, the supplies could not have come from Gestion or Koudlai. Furthermore, the Appellant offered no evidence as to whether those Suppliers were intermediaries of the true supplier.

6. The penalties set out in section 285 of the ETA and the assessment period under subsection 298(4) of the ETA.

6.1 The penalties set out in section 285 of the ETA.

[249] Section 285 of the ETA provides that “[e]very person who knowingly, or under circumstances amounting to gross negligence, makes . . . a false statement or omission” is liable to a penalty.

[250] The burden of establishing the facts justifying the assessment of the penalty is on the Minister (subsection 285.1(16) of the ETA).

[251] According to the very wording of section 285 of the ETA, two elements are required for a penalty to apply: (1) a mental element (“knowingly, or under circumstances amounting to gross negligence”) and (2) a material element (“makes . . . a false statement or omission”).

[252] Regarding the material element, the case law holds that an incorrect statement in an income tax return amounts to a misrepresentation (*Nesbitt v. The Queen*, 96 DTC 6045, [1996] FCJ No. 19 (F.C.T.D.) (QL), para. 22; *D’Andrea v. The Queen*, 2011 TCC 298, 2011 DTC 1234, para. 35). The same principles apply with respect to consumption taxes. Having found that the Appellant was not eligible for ITCs regarding the Suppliers, I also find that the Appellant made a misrepresentation and, consequently, a false statement in filing its GST returns.

[253] Regarding the mental element, two possible scenarios have to be examined for penalties to apply: the Appellant knowingly made a false statement or the Appellant made a false statement under circumstances amounting to gross negligence.

[254] In *De Gennaro v. the Queen*, 2016 TCC 108, 2016 DTC 1090, Justice Owen examined a provision similar to section 285 of the ETA, that is, subsection 163(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (“ITA”), and noted that wilful blindness is sufficient to establish “circumstances amounting to gross negligence”:

[41] A textual reading of the term “knowingly” requires that the Appellant subjectively knew that the impugned statement was false when it was made. The context of the word “knowingly”, which is in contrast to “circumstances amounting to gross negligence”, supports this meaning.

[42] Some of the cases addressing subsection 163(2) of the ITA might be read as suggesting that knowledge can be imputed through a finding of wilful blindness. However, I do not believe that these cases are suggesting that wilful blindness is a substitute for the subjective knowledge required by the word “knowingly”. Rather, they simply confirm that wilful blindness is sufficient to establish “circumstances amounting to gross negligence”. This is made clear in the reasons of the Federal Court of Appeal in *Attorney General of Canada v. Villeneuve*, 2004 FCA 20 at paragraph 6, *Panini v. The Queen*, 2006 FCA 224 at paragraphs 41 to 43 and *Strachan v. The Queen*, 2015 FCA 60 at paragraph 4.

[Emphasis added.]

[255] Justice Strayer defines the notion of “gross negligence” in *Venne v. The Queen*, 84 DTC 6247, [1984] F.C.J. No. 314 (F.C.T.D.) (QL):

“Gross negligence” must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not.

[256] In *Strachan v. The Queen*, 2015 FCA 60, 2015 DTC 5044, the Federal Court of Appeal ruled that gross negligence could also result from the wilful blindness of the taxpayer:

[4] First, as conceded in oral argument by counsel for the appellant, the Judge made no error in articulating the applicable legal test. Gross negligence may be established where a taxpayer is willfully blind to the relevant facts in circumstances where the taxpayer becomes aware of the need for some inquiry but declines to make the inquiry because the taxpayer does not want to know the truth (*Canada (Attorney General) v. Villeneuve*, 2004 FCA 20, 327 N.R. 186, at paragraph 6; *Panini v. Canada*, 2006 FCA 224, [2006] F.C.J. No. 955, at paragraphs 41-43).

[257] In *Kosma-Kare Canada Inc. v. The Queen*, 2015 TCC 182, [2016] GSTC 53, Associate Chief Justice Lamarre stated as follows:

[28] As stated above, when there is an issue of gross negligence, the taxpayer's conduct should be considered, especially if it must be determined whether the taxpayer was wilfully blind. The particular circumstances of each case should be taken into account to assess the taxpayer's conduct. I reiterate: wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he or she prefers not to know the truth. That is precisely what happened in this case. The appellant took no reasonable measures to ensure that it provided the information required by the ETA and the Regulations, despite the circumstances. The appellant preferred to remain ignorant and [TRANSLATION] "look the other way". No specific duty to investigate was imposed on the appellant. However, I consider that, in this case, it became necessary for it to find out the identity of its suppliers when it knew that the circumstances dictated that it inquire into the situation in order to fulfill its obligation to provide accurate information when claiming ITCs under the ETA and the Regulations.

[Emphasis added.]

[258] According to the Respondent, the Appellant was wilfully blind regarding several indicia that the names of the Suppliers appearing on the invoices were false. In the Respondent's opinion, the Appellant could not ignore that the true supplier was Jacques Jarry for the 4 suppliers. The sole interlocutor for the 4 suppliers was Jacques Jarry. The Appellant did not take any measures to ensure that Jacques Jarry was the representative of the 4 suppliers; it simply took it for granted. No procedure was established by the Appellant to verify the identity of the 4 suppliers, as the Appellant admitted that it verified only their tax registration numbers, and did not make any verification with the REQ. The Respondent added

that the frequent changes to the corporations Jacques Jarry used to bill the Appellant should have alerted the Appellant. Regarding Gestion, the Respondent is of the view that the false documents submitted in support of the invoices show collusion. According to the Respondent, by agreeing to pay invoices issued by suppliers unknown to it, the Appellant showed wilful blindness amounting to gross negligence, justifying the penalty set out in section 285 of the ETA.

[259] The sole argument raised by the Appellant is that it did not know that the invoices were false and, consequently, the penalties should not be maintained. It is merely attempting to respond to the first scenario of the mental element referred to above.

[260] I am rather of the opinion that the Appellant knew that it was making a false statement under the ETA regarding Gestion. The false documents submitted in support of the invoices issued by Gestion are sufficient to show this. In addition, I draw the same conclusion for the Méga Invoice. As indicated earlier, the explanations provided by Mr. Faivushevitz regarding that invoice were not clear, and even vague, and I find that the Méga Invoice is false. From this I infer that the Appellant knew that it was making a false statement in this regard by claiming ITCs.

[261] Regarding the other Suppliers (that is, Méga Terra, apart from the Méga Invoice, PFG, J.S. Récupération, GHG and Koudlai), I am rather of the view that the Appellant showed wilful blindness amounting to gross negligence. In the light of this finding, I will not address the question whether the Appellant knew that it was making a false statement in respect of those Suppliers.

[262] I am of the opinion that the Appellant was wilfully blind in its relations with the Suppliers. That wilful blindness resulted in gross negligence committed by the Appellant in carrying out its obligations under the ETA and the Regulations, justifying penalties. The Appellant's conduct exceeded the threshold of mere negligence.

[263] Among other things, it is apparent from the evidence that the Appellant was not concerned with the names of the various Suppliers that appeared on the invoices. The Appellant verified only whether the Supplier in question had a tax registration number. The frequent changes in Suppliers should have led the Appellant to ask questions about the legitimacy of the Suppliers. I will not consider Mr. Faivushevitz's statements to the effect that Maxime Grondin from Méga Terra

was present at meetings or that Mr. Gervais acted as an interpreter. I reiterate it: those explanations are implausible.

[264] In addition, even if the Appellant had been doing business with Jacques Jarry for 30 years, the duty of verification resulting from the mandatory nature of the provisions of the ETA and the Regulations called for more thorough inquiries than those made by the Appellant. It is clear that the Appellant was not concerned that Jacques Jarry held himself out as the representative of the 4 suppliers successively.

[265] Other indicia, such as the use of three different addresses on the PFG invoices and the issuance of the Méga Invoice and the J.M. Invoice for the transaction resulting from the CN train derailment, should have raised suspicion in the Appellant's mind. Similarly, the words "appropriated for non-payment", which appears on the invoices issued by Koudlai, should have led Mr. Faivushevitz to carry out further verifications on that supplier's identity.

[266] Furthermore, Mr. Faivushevitz's confusing explanations regarding the Méga Invoice show an indifference as to whether the ETA and the Regulations were being complied with or not.

[267] Given these circumstances, the penalties under section 285 of the ETA will be maintained.

6.2 The assessment period under subsection 298(4) of the ETA.

[268] Lastly, I must determine whether the assessment is valid in respect of the 4 suppliers in the light of subsection 298(4) of the ETA. The assessment will be valid if I find that the Appellant made a misrepresentation that is attributable to its neglect, carelessness or wilful default, by claiming ITCs regarding the invoices issued by the 4 suppliers. In the previous section, I have found that the Appellant made a misrepresentation by filing its GST returns in respect of the Suppliers, including the 4 suppliers. Furthermore, I found that the Appellant showed wilful blindness amounting to gross negligence in doing so; hence, neglect for the purposes of subsection 298(4) of the ETA is established. Also, I found that the Méga Invoice was false. In the light of the foregoing, all of the requirements set out in subsection 298(4) of the ETA are met and, therefore, the assessment is valid.

G. CONCLUSION.

[269] For these reasons, the appeal is dismissed with costs in favour of the Respondent.

Signed at Ottawa, Canada, this 16th day of December 2016.

“Dominique Lafleur”

Lafleur J.

CITATION: 2016 TCC 289

COURT FILE NO.: 2012-3591(GST)G

STYLE OF CAUSE: LES VENTES ET FAÇONNAGE DU
PAPIER REISS INC. AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATES OF HEARING: September 17, November 2 and 3, 2015,
March 14 and 15, 2016 (Written
submissions filed April 29, June 10 and
June 29, 2016)

REASONS FOR JUDGMENT BY: The Honourable Justice Dominique Lafleur

DATE OF JUDGMENT: December 16, 2016

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