

[OFFICIAL ENGLISH TRANSLATION]

APPLICATION UNDER SECTION 305 OF THE
EXCISE TAX ACT (APPEAL)

2002-508(GST)APP

BETWEEN:

LES INDUSTRIES BONNEVILLE LTÉE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on June 10, 2002, at Québec, Quebec, by
the Honourable Judge Louise Lamarre Proulx

Appearances

Counsel for the Applicant:

Gaétan Drolet

Counsel for the Respondent:

Danny Galarneau

ORDER

Upon application for an Order extending the time within which an appeal from the assessment numbered 03408710 and dated August 17, 2001, made under the *Excise Tax Act* may be instituted;

And upon hearing what was alleged by the parties;

The application is granted in accordance with the attached Reasons for Order, and the notice of appeal received with the application constitutes a valid notice of appeal if the appropriate filing fees are paid to the Court Registry no later than September 23, 2002.

Signed at Ottawa, Canada, this 22nd day of August 2002.

"Louise Lamarre Proulx"

J.T.C.C.

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Date: 20020822
Docket: 2002-508(GST)APP

BETWEEN:

LES INDUSTRIES BONNEVILLE LTÉE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Lamarre Proulx, J.T.C.C.

[1] This is an application for an extension of time to institute an appeal from an assessment numbered 03408710 and issued on August 17, 2001. The application is made under section 305 of the *Excise Tax Act* (the "Act").

[2] According to the facts set out in the application, on March 27, 1996, the respondent issued an assessment against the applicant. On June 21, 1996, the applicant objected to that assessment and many meetings were held between the parties. On April 25, 2001, learning that the Minister of National Revenue (the "Minister") was about to render his decision on the objection, counsel for the applicant asked the Minister for an opportunity to make representations. A meeting was held on August 17, 2001. However, without counsel for the applicant being informed, an assessment of GST was issued that same day. It was not until January 21, 2002, at another meeting, that the applicant learned that the case had been closed with respect to the GST and that only the QST issue was outstanding.

[3] According to the respondent, on April 25, 2001, counsel for the applicant communicated with the objections officer and asked whether the case was closed.

On June 5, 2001, the complaints office of Quebec's Ministère du Revenu informed the respondent's various intervenors that the instant case no longer needed to be put on hold and that the process of closing the case could resume. On August 17, 2001, the respondent issued the applicant a notice of reassessment numbered 03408710.

[4] The applicant's first witness was François Daoust, a chartered accountant, who operates from his own office. He began to act in the applicant's current case in 1995. In his view, this was a complex case that required many meetings with various individuals.

[5] The first exhibits filed as Exhibits A-1 and A-2 are letters from Gaétan Drolet, lawyer, to Pierre Loranger, Director, Ministère du Revenu du Québec. They are dated November 30, 1995, and February 23, 1996. Exhibit A-3 is a letter from Mr. Drolet dated April 11, 1996, which was sent to Gaétan Hallé, Complaints Coordinator, Ministère du Revenu du Québec. Exhibit A-4 is a letter dated July 2, 1996, sent "to whom it may concern", by counsel for the applicant. Exhibit A-5 is a letter dated August 29, 1996, from the office of the Minister of National Revenue to André Bonneville, president of the applicant. That letter suggested that there would likely be a positive outcome to the applicant's problems.

[6] In April 2001, the applicant learned that the Government of Quebec wanted to close the file and make an assessment. Exhibit A-6 is a letter or a handwritten note from Mr. Drolet dated April 25. The year does not appear, but it may be considered that it was 2001. That letter is addressed to Gaétan Hallé, Complaints Office, Revenu Québec, and requests a meeting for the purpose of making representations. That meeting was held on August 17, 2001.

[7] Exhibit A-7 is a letter dated August 20, 2001, from Mr. Drolet to Gaétan Hallé, thanking him for the meeting of August 17. In the letter, he discusses draft assessments of both GST and QST.

[8] The witness, François Daoust, filed as Exhibit A-8 a letter from Caroline Daviau, lawyer, dated June 15, 2001, that had been sent to him. The letter informed the accountant that the assessment would be varied with respect to the point referred to in the letter. Mr. Daoust explained that, when he received the notice of reassessment dated August 17, 2001, he had thought that assessment resolved part of the problem. He did not think the assessment was supposed to solve all the problems. That had not been clearly explained to him.

[9] Mr. Daoust stated that, in January 2002, he had met Ms. Daviau to discuss certain points relating to the applicant. Ms. Daviau purportedly told him at the time: [TRANSLATION] "Nothing more can be corrected at the federal level; the case is closed." He did not understand because he did not believe the assessment had been issued in that regard.

[10] André Bonneville testified. He has been the president of the applicant for 40 years. He had secured the services of professionals to advise him and resolve the applicant's GST and QST problems.

[11] Mr. Bonneville stated that he had understood the exact nature of the assessment of August 17, 2001, at a meeting with Ms. Daviau in January 2002. He and his advisers asked Ms. Daviau to harmonize the GST with the QST, and she informed them that it was too late since the GST assessment had been issued on August 17, 2001.

[12] Mr. Bonneville filed his letter dated January 28, 2002, to Gaétan Hallé as Exhibit A-10. That letter explained the applicant's understanding. It had filed the document on the assumption that it merely confirmed part of what had been discussed. That was why no objection had been filed since it was believed that the other parts of the assessment were still under discussion.

[13] Following the meeting with Ms. Daviau, Mr. Bonneville immediately wrote to Mr. Hallé, that is, the letter of January 28, 2002 (Exhibit A-10). This application is dated February 1, 2002, and it was received at the Court on February 4, 2002.

[14] Ms. Daviau and Mr. Hallé testified at the request of counsel for the respondent. Their version of the facts was not substantially different from that of the applicant's witnesses. However, with respect, it should be noted that the explanations given by Ms. Daviau concerning the numbers and text appearing in the assessment of August 17, 2001, filed as Exhibit A-9, were not clear. It is therefore plausible that Mr. Daoust might also have misinterpreted it.

Conclusion

[15] In my view, the most important element in this case is the letter of August 20, 2001, filed as Exhibit A-7. It was a result of the meeting of August 17, 2001, and it specifically states that the discussions had dealt with both the GST and the QST. A summary of the substance of the meeting is provided, and nowhere is it mentioned that only the QST was at issue. There does not appear to have been a

response precisely describing the situation with respect to the GST. It seems strange that no reference seems to have been made to the GST assessment that was issued on the day of the meeting between the applicant, its lawyers, and the agents of Revenu Québec either at the time of that meeting or after receipt of Mr. Drolet's letter dated August 20, 2001.

[16] An assessment normally covers all points. Since a number of advisers were involved in this case and since the Minister's agents did not clear up the confusion following the meeting of August 17, 2001, it is plausible that the applicant did not completely grasp the nature of the assessment issued that same day by other agents of the Minister.

[17] The evidence showed that, as soon as the applicant and its advisers realized that the assessment had been issued covering all the points under discussion relating to the GST, they requested an extension of time to institute an appeal. That intention to appeal existed throughout this case.

[18] The application is accordingly granted.

Signed at Ottawa, Canada, this 22nd day of August 2002.

"Louise Lamarre Proulx"

J.T.C.C.