

Docket: 2007-2708(GST)I

BETWEEN:

LUC VOINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on November 1, 2007, at Montréal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Brigitte Landry

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act* for the period from August 1, 2004, to December 31, 2005, notice of which is dated November 15, 2006, and bears the number DE-3944, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 5th day of December 2007.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 9th day of January 2008.

Brian McCordick, Translator

Citation: 2007TCC710  
Date: 20071205  
Docket: 2007-2708(GST)I

BETWEEN:

LUC VOINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Tardif J.

[1] This is an appeal from an assessment made on November 15, 2006, under Part IX of the *Excise Tax Act* ("the ETA"), for the period from August 1, 2004, to December 31, 2005, and bearing the number DE-3944.

[2] The facts on which the Minister of National Revenue ("the Minister") relied in making the assessment are set out in paragraph 18 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) The facts admitted to above.
- (b) The Appellant was, during the period in issue, a non-registrant for the purposes of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (hereinafter "ETA").
- (c) As alleged in the Notice of Appeal, the Appellant carried on a renovation and maintenance business during the period in issue.

- (d) As alleged in the Notice of Appeal, the Appellant's gross income was \$17,110 in 2003 and \$44,861 in 2004.
- (e) The Respondent took the position that the Appellant's gross income for 2003 was \$17,110, or \$4,277.50 per quarter.
- (f) The Respondent took the position that the Appellant's gross income for 2004 was \$44,861, or \$11,215.25 per quarter.
- (g) The Respondent took the position that, as of August 1, 2004, the Appellant was no longer a small supplier because the total supplies for the four quarters preceding the quarter commencing July 1, 2004, exceeded \$30,000.
- (h) Thus, effective August 1, 2004, all supplies made by the Appellant in the course of the commercial activities of his business during the period in issue constituted taxable supplies for which a 7% tax on the value of the consideration for the supply was payable by the Appellant's recipients, and the Appellant had to collect this tax and remit it to the Respondent's representatives.
- (i) The Respondent determined that the Appellant could be a "specified registrant" because he met the prescribed conditions.
- (j) The Respondent applied the Quick Method of accounting to determine the Appellant's net tax for the period in issue.

[3] The issue is formulated by the Respondent as follows:

Thus, the issue is whether the Appellant ceased to be a small supplier on August 1, 2004, and failed to collect and remit the GST on the supplies made during the period in issue.

[4] The Appellant, a very likeable individual, explained that he had to go through an extremely difficult period. He had numerous health problems to contend with. Highly educated, he chose to earn a living through his talents as a carpenter rather than counting on his university education.

[5] After a turbulent period with several causes, the Appellant wisely decided to clear up the management of his affairs. Thus, he took the initiative to report his business income for the 2003 and 2004 taxation years. This was followed by an assessment based on the numbers that the Appellant reported.

[6] The Appellant explained that a part of the income that he reported for 2004 should undoubtedly have been reported in the previous year, 2003, when the reported income was \$17,110; the reported income for 2004 was \$44,861, for a two-year total of \$61,971, which represents an annual average slightly higher than \$30,000, the threshold at which a taxpayer is required to register. In such a situation, the Appellant clearly would have escaped the assessment. He would like his appeal to result in a kind of retroactive amendment of his tax return in order to avoid the assessment.

[7] The assessment in the case at bar was based on the assumptions that would be most advantageous to the Appellant in terms of principal, interest and penalties, and this was due, no doubt, to the somewhat special characteristics of the file and the Appellant's likeable nature. In other words, the assessment was based on the assumptions most favourable to the Appellant.

[8] However, the assessment was made in accordance with the provisions of the ETA, including sections 123, 148, 165, 221, 225, 228, 240, 296 and 299.

[9] The arguments based on ignorance, incapacity related to medical problems, or other causes that elicit great sympathy for the Appellant, are not relevant and should not be taken into consideration in determining the merits of the assessment.

[10] Unfortunately, these are elements that cannot be taken into account, notably for reasons of fairness to all other Canadian taxpayers.

[11] When a person decides to earn his living by operating a business, or, as in the case at bar, through self-employment, that person must comply with all the laws and regulations that apply to his activity.

[12] When a person is incapable of complying, whether for medical reasons or out of ignorance, he must simply mandate someone else to do this for him.

[13] In the case at bar, the Appellant, being self-employed, should have known that if his sales exceeded a certain threshold, he had to register and thereby become an agent for the collection of the taxes imposed by the legislator.

[14] Even though the Appellant claims to have had reasons for neglecting to fulfil his tax obligations and those reasons elicit sympathy, and even though all this was brought to light through his own initiative, this has no effect on the merits of the assessment.

[15] Indeed, the assessment is perfectly in keeping with the provisions of the ETA. Moreover, it was based on figures that the Appellant himself provided.

[16] For these reasons, I must dismiss the appeal and confirm the assessment on its merits, since the Appellant ceased to be a small supplier as of August 1, 2004, and failed to collect and remit the GST on the supplies that were made.

Signed at Ottawa, Canada, this 5th day of December 2007.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 9th day of January 2008.

Brian McCordick, Translator

CITATION: 2007TCC710  
COURT FILE NO.: 2007-2708(GST)I  
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PLACE OF HEARING: Montréal, Quebec  
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REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif  
DATE OF JUDGMENT: December 5, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Brigitte Landry

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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