Docket: 2007-4615(GST)I

BETWEEN:

CLAUDE RICARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 4, 2008, at Shawinigan, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Benoît Denis

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act* for the period from January 1, 2006, to March 31, 2006, notice of which is dated November 23, 2006, and bears the number AEFT002068, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 26th day of June 2008.

"Alain Tardif"

Tardif J.

Translation certified true
on this 2nd day of September 2008.
Susan Deichert, Reviser

Citation: 2008 TCC 366
Date: 20080626
Docket: 2007-4615(GST)I

BETWEEN:

CLAUDE RICARD,

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 23, 2006, under Part IX of the *Excise Tax Act* (ETA), pertaining to the period from January 1, 2006, to March 31, 2006, and bearing the number AEFT002068.

[2] The Respondent has worded the issue as follows:

> [TRANSLATION]
>
> The issue is whether the Appellant is entitled to include a $3,296.37 input tax credit in computing his net tax for the period in issue.

[3] In making the assessment, the Respondent relied on the assumptions of fact set out in paragraph 17 of the Reply to the Notice of Appeal, which read as follows:

> [TRANSLATION]
>
> (a) The facts admitted to above.

(b) The Appellant is a registrant for the purposes of Part IX of the ETA.

(c) The Appellant operates a business that sells used vehicles.

(d) On April 15, 2004, the Respondent, acting through the Minister, assessed the Appellant under Part IX of the ETA for the period from July 1, 1999, to December 31, 2002, and sent the Appellant a notice of assessment bearing the number **AEFV0281** and the same date.

(e) As stated in the notice of assessment sent to the Appellant, the amounts assessed on April 15, 2004, are as follows:

Adjustments in the calculation of the reported net tax	**$6,566.52**
Penalties	**$1,051.92**
Net interest	**$514.99**
Total	**$8,133.43**

(f) Specifically, the adjustments, totalling $6,566.52, in the calculation of the net tax reported by the Appellant (see the preceding paragraph) can be broken down as follows:

GST collected or collectible but not included in the calculation of the reported net tax	**$4,082.23**
Excess ITCs claimed and obtained by mistake or without entitlement	**$2,484.29**
Total	**$6,566.52**

(g) On or about April 28, 2004, that is, within the prescribed time, the Appellant submitted a notice of objection to the Minister with respect to the assessment referred to above at subparagraph (d), without making any admissions concerning the statement of facts and reasons. On May 10, 2004, the Minister acknowledged receipt of the notice of objection.

(h) On December 20, 2004, a Revenu Québec objections officer sent the Appellant a letter setting out the adjustments that would be made to the assessment referred to above at subparagraph (d): the adjustments in the calculation of the reported net tax would be $4,087.95 instead of $6,566.52.

(i) On February 16, 2005, in response to the notice of objection, and in accordance with the preceding subparagraph, the Minister reassessed the Appellant for the period in question and notified him of his decision in a notice of reassessment bearing the number **02307303** and the same date. (The notice in question cancels and replaces the notice of assessment referred to above at subparagraph (d).)

(j) As stated in the notice of reassessment sent to the Appellant, the amounts assessed on February 16, 2005, are as follows:

Adjustments in the calculation of the reported net tax	**$4,087.95**
Penalties	**$719.15**
Net interest	**$363.10**
Total	**$5,170.20**

(k) Specifically, the adjustments, totalling $4,087.95, in the calculation of the net tax reported by the Appellant (see the preceding paragraph) can be broken down as follows:

GST collected or collectible but not included in the calculation of the reported net tax	**$1,792.64**
Excess ITCs claimed and obtained by mistake or without entitlement	**$2,295.31**
Total	**$4,087.95**

(l) The Appellant did not file an appeal in this Court from the reassessment referred to above at subparagraph (i).

(m) In the winter of 2005, the Minister, in conjunction with the reassessment under Part IX of the ETA referred to above at subparagraph (i), also reassessed the Appellant under the *Taxation Act*, R.S.Q., c. I-3, Quebec's provincial income tax statute, for the 1999, 2000, 2001 and 2002 taxation years, and sent him notices of reassessment in this regard.

(n) In light of these reassessments made by the Minister in the winter of 2005 and referred to above at subparagraphs (i) and (m), and further to an exchange of information, the Canada Customs and Revenue Agency (as it was called at the time) reassessed the Appellant in December 2005 or January 2006 for the 2000, 2001 and 2002 taxation years under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

(o) A portion of the ITC amount in issue, claimed in the calculation of the net tax for the period in issue, corresponds to the adjustments made by the Canada Customs and Revenue Agency (CCRA) to the additional automobile expenses deductible in computing the Appellant's business income, namely, $813.68 (7% of ($2,972 [2000 taxation year] + $4,930 [2001 taxation year] + $3,722 [2002 taxation year]). Those ITCs were already assessed or de-assessed by the Minister upon making the reassessment referred to in subparagraph (i).

(p) A large part, if not all, of the ITC amount of $813.68 was claimed more than four (4) years after the date on which the Appellant had paid the corresponding GST.

(q) The other part of the ITC amount in issue, claimed in the calculation of the net tax for the period in issue, corresponds to the adjustments made by the CCRA to the additional gross business income to be added in computing the Appellant's business income, namely, $2,482.69 (i.e. 7% of ($4,834 [2000 taxation year] + $17,833 [2001 taxation year] + $12,800 [2002 taxation year]), an amount that actually corresponds to the GST that was payable and should have been included in the calculation of the Appellant's net tax, which had already been assessed or de-assessed by the Minister upon making the reassessment referred to in subparagraph (i)).

(r) In any event, a large part, if not all, of the amount of $2,482.69 designated as an ITC by the Appellant was claimed more than four (4) years after the date on which the Appellant claims to have paid the corresponding GST.

(s) The Appellant therefore owes the Minister the amount of the adjustments to his reported net tax for the period in issue.

[4] Since I had a good idea of the direction that the Appellant planned to take, and since the Appellant clearly did not understand the nature and scope of the evidence that he would need to submit, I explained the scope of his obligations with respect to the burden of proof in his appeal.

[5] I stated, repeated and emphasized that he would need to establish the merits of his claims by providing detailed documentary evidence of the facts that demonstrate his entitlement to the input tax credits (ITCs).

[6] Despite the Court's numerous, precise and detailed explanations, the Appellant essentially argued that his appeal should be allowed on the basis of Exhibits A-1, A-2 and A-3, which he adduced. In his submission, the contents of these documents demonstrate that he is completely correct.

[7] Essentially, the documents in question set out the details of a settlement with the Canada Customs and Revenue Agency (CCRA), which agreed to make changes to his income and expenses as part of a reassessment that was revised to his advantage.

[8] Based on this settlement, the Appellant is seeking to be reimbursed for the ITCs corresponding to the difference between the initial assessment and assessment that was corrected to his advantage as part of the settlement of his file.

[9] As for the Respondent, she called four witnesses: Daniel Gaulin, Manon Lafrenière, France Blouin and Jocelyne Létourneau. Mr. Gaulin and Ms. Lafrenière were the first witnesses to testify.

[10] Both of them were instructed to do a complete audit; Mr. Gaulin was responsible for income tax, and Ms. Lafrenière was responsible for GST and QST.

[11] The audit and its outcome caused the Appellant to react so negatively that his relations with Ms. Lafrenière broke down to the point that the exchanges between them had to be filtered by Ms. Lafrenière's superior.

[12] The Appellant promptly filed a notice of objection to the assessment. Ms. Blouin made some major changes. Among other things, she cancelled practically all the income that had been added. Major changes were also made to the automobiles' value. Although he remained dissatisfied with the result, the Appellant, for reasons that remain vague, did not file an appeal in the Court of Québec.

[13] Following an audit by the provincial authorities, and based on information that they disclosed, the CCRA intervened, and a new draft assessment was submitted to the Appellant. The assessment was essentially based on the *Income Tax Act* and did not include GST, since Quebec had already exercised its jurisdiction under the formal agreement to that effect between the two levels of government.

[14] In the course of the correspondence and negotiations following the income tax reassessment, other changes, which were also to the Appellant's benefit, were made to the initial assessment.

[15] Given the potential impact of the changes on the net GST amounts, the Appellant, through the instant appeal, is indirectly claiming the input tax credits based on the settlement with the CCRA. In other words, the Appellant claims to be entitled to the ITCs on the difference between the amounts that formed the basis of the initial assessment, and the amount that was used for the definitive assessment that followed the settlement.

[16] As for the Respondent, she submits that the ITCs claimed by the Appellant were refunded or are statute-barred since they pertain to purchases made or expenses incurred more than four years ago.

[17] In light of these facts, the Appellant needed to do a complete inventory of the relevant purchases and sales in order to obtain ITCs. Such an inventory would have made it possible to ascertain the parties' rights and obligations, both in terms of relevance and of the date or dates based on which it could be determined whether the claim was statute-barred.

[18] With consumption taxes (GST and QST), as with income tax, it must be possible to ascertain the taxpayer's rights and obligations from the documents, vouchers and records. This is not an issue of reasonableness; rather, it is essentially a bookkeeping issue.

[19] It is sometimes necessary to resort to an approach based on reasonableness under certain circumstances, or in an unusual context, such as where a kind of circumstantial evidence is needed because a person who is being audited has no documents or has incomplete accounting records. In the case at bar, the Appellant wishes to obtain ITCs based on a settlement in which no ITC-related documents or vouchers were under consideration.

[20] It is the duty of every registrant to keep all supporting documents, because the amounts involved do not belong to the person who collects them. Indeed, consumption tax registrants are agents and trustees and therefore have serious responsibilities. Registrants must manage their affairs coherently and transparently and are accountable for that management.

[21] In the case at bar, the Appellant seemed very conversant with his file and this obviously enabled him to secure several adjustments to the initial assessment.

[22] However, the evidence also disclosed that the officials' desire to settle the file also played a part in the settlement. First of all, these elements are not sufficient to conclude that the appeal has merit, and secondly, they are nothing more than a circumstantial indication.

[23] The merits of an appeal cannot be decided based on perceptions, intuitions or circumstantial evidence, especially where the entire case, not just a few elements of it, is at stake.

[24] Moreover, an appeal is not the appropriate recourse for grievances concerning the persons responsible for one or more audits that led to assessments.

[25] It is true that it might be very frustrating to have to pay what is not owed, or to be unable to collect one's due; however, in both income and consumption tax cases, taxpayers must be able to establish their rights based on documentary evidence. They cannot succeed based on oral assertions of their allegations and on certain indirect clues.

[26] Very often, a party's inability to demonstrate the merits of the party’s claims stems from negligence or a certain amount of carelessness on the part of that party, who is required to keep all relevant supporting documents and provide them upon request. In other words, taxpayers are often the authors of their own misfortune because they do not have the essential details and documents in their possession.

[27] Even though this Court gave the Appellant a detailed explanation of what he would have to do in order to succeed, he submitted evidence that cannot even be characterized as circumstantial.

[28] He basically aired his grievances and frustrations, which might be justified in view of the numerous changes made to his assessment.

[29] Essentially, the Appellant was content to submit a few documents and claim that he was entitled to ITCs and interest based on a settlement with the CCRA.

[30] However, the fact that the Appellant obtained the settlement was partly attributable to the explanations that he provided, but was also attributable to what was clearly a desire, on the part of the officials, to settle the matter.

[31] While the Appellant's reaction may be understandable, it is neither possible nor reasonable to conclude that he adduced sufficient evidence to succeed in his appeal.

[32] The number and extent of the adjustments and corrections to his assessments suggest that the auditor was being somewhat zealous. But evidence of zeal is not sufficient to set aside all the auditor's work or findings.

[33] I would also point out that situations of this kind often result from inadequate bookkeeping and a lack of supporting documents. Granted, perception, intuition and imagination are often blunt work instruments, but they are unfortunately necessary to fill in gaps for which the taxpayer is usually responsible.

[34] The Appellant chose to submit evidence based solely on the settlement with the CCRA, which, as I have stated, stemmed from a desire to settle the matter.

[35] The amounts of GST, which is a tax, and ITCs, which are inputs, are computed based on numerous taxable supplies made or received on specific dates.

[36] In order to establish the taxpayer's rights and obligations in this matter, it is absolutely essential that the Court have all the information and supporting documents related to the supplies that gave rise to the dispute.

[37] The evidence adduced by the Appellant completely shut out this fundamental consideration. Consequently, it is obvious that his appeal cannot be allowed.

Signed at Ottawa, Canada, this 26th day of June 2008.

"Alain Tardif"

Tardif J.

Translation certified true
on this 2nd day of September 2008.
Susan Deichert, Reviser

CITATION:	2008 TCC 366
COURT FILE NO.:	2007-4615(GST)I
STYLE OF CAUSE:	CLAUDE RICARD and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Shawinigan, Quebec
DATE OF HEARING:	June 4, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Alain Tardif
DATE OF JUDGMENT:	June 26, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Benoît Denis

COUNSEL OF RECORD:

For the Appellant:

Name:
Firm:

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada