

Court File No. 2005-2022 (GST)G

TAX COURT OF CANADA

IN RE: *Income Tax Act*

BETWEEN:

B.E.S.T. LINEN SUPPLY AND SERVICES LTD.

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

[OFFICIAL ENGLISH TRANSLATION]

**Decision and Reasons given by Paris J.
Courts Administration Service,
200 Kent Street,
Ottawa, Ontario
Wednesday, April 4, 2007 at 4:00 p.m.**

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1
2 --- The decision and reasons of Paris J. were
3 handed down on April 4, 2007 at 4:00 p.m.

4 PARIS J.: These are the reasons
5 in the matter of *B.E.S.T. Linen Supply and Services*
6 *Ltd. v. The Queen* 2005-2022(GST)G.

7 This is an appeal from a
8 reassessment under Part IX of the *Excise Tax Act* by
9 which the Minister of National Revenue (the
10 Minister) made adjustments to the amount payable by
11 the Appellant under the Act for the period from
12 April 1, 2000, to October 31, 2003.

13 These adjustments included
14 \$9,738.72 in GST that, according to the Minister's
15 calculations, the Appellant had failed to collect
16 and report in relation to sales of used linen
17 between July 13, 2001, and October 14, 2002. This
18 is the amount at issue in this matter.

19 Although the Appellant also
20 referred to a refused ITC amount in his amended
21 Notice of Appeal, counsel for the Appellant
22 confirmed that this amount was no longer at issue.
23 In any case, no evidence was filed pertaining to
24 refused ITC.

25 The Appellant claimed that the

1 used linen supplies in question were zero-rated
 2 supplies according to subsection 165(3) of the Act
 3 because the purchasers of the property exported it
 4 from Canada.

5 Schedule 6 of the Act deals with
 6 zero-rated supplies and section 1 of Part V of
 7 Schedule 6 sets out that the following are zero-
 8 rated:

- 9
- 10 1. A supply of tangible
 11 personal property (other than
 12 an excisable good) made by a
 13 person to a recipient (other
 14 than a consumer) who intends
 15 to export the property where
 16 . . .
 17 (e) the person maintains
 18 evidence satisfactory to the
 19 Minister of the exportation
 20 of the property by the
 21 recipient.

22

23 In this case, the evidence given
 24 by the Appellant during the audit of used linen
 25 exportation was not found satisfactory by the

1 Minister. The presumptions of fact used by the
2 Minister in his assessment are found in
3 paragraph 19 of the amended reply to the amended
4 Notice of Appeal.

5 In his assessment of the
6 Appellant, the Minister relied on, but not
7 exclusively, the following findings and
8 presumptions of fact, as set out in paragraph 19 of
9 the Reply to Notice of Appeal:

10 [TRANSLATION]

- 11 (a) the Appellant is a registrant
12 for the purposes of Part IX
13 of the ETA;
- 14 (b) the Appellant's fiscal year
15 begins on April 1 and ends on
16 March 30 of the following
17 year;
- 18 (c) the Appellant did not keep
19 accounting records in the
20 adequate form and with the
21 relevant information
22 necessary to determine its
23 obligations under Part IX of
24 the ETA during the period in
25 question;

- 1 (d) the Appellant operates, in
2 Canada - in Quebec to be more
3 specific - a service that
4 cleans and rents bed sheets,
5 pillowcases, bath towels,
6 tablecloths, uniforms etc.
7 (hereinafter referred to as
8 the bedding) for hotels,
9 restaurants, etc.;
- 10 (e) when the bedding is too worn
11 or damaged and, therefore, no
12 longer meets the
13 clients' (hotels and
14 restaurants) quality
15 standards, the Appellant
16 supplies by sale said worn or
17 damaged bedding to third
18 parties, such as clothing and
19 linen recycling companies;
- 20 (f) during the period in
21 question, the Appellant
22 supplied by sale, in Canada,
23 worn or damaged bedding for

1 total consideration of
2 \$315,464.68, broken down as
3 follows: \$194,868.32 during
4 its fiscal year ending March
5 31, 2002, and \$120,606.36
6 for its fiscal year ending
7 March 31, 2003;

8 (g) not all of said supplies made
9 by the Appellant mentioned in
10 the preceding sub-paragraph
11 are invoiced, and when they
12 are, the identity of the
13 purchasers is not indicated
14 in a way that makes it
15 possible to adequately
16 identify them;

17 (h) the Appellant also supplied
18 by sale 510 used barrels
19 during its fiscal year ending
20 March 31, 2003, for
21 consideration of \$5,100.00 -
22 200 barrels on August 5, for
23 consideration of \$2,000 to

1 an unknown purchaser,
2 according to the invoice
3 prepared by the Appellant,
4 but who is alleged to be
5 WETIPP (NIG.) LTD according
6 to paragraph 5 of the amended
7 Notice of Appeal, and 300
8 barrels on October 14, 2002,
9 for consideration of
10 \$3,100.00 to KRAZNIAC IMPORT;

11 (i) the purchasers of said worn
12 or damaged bedding or said
13 used barrels took delivery in
14 Canada, i.e. the Appellant
15 did not itself ship the goods
16 supplied to the purchasers
17 outside of Canada, nor did it
18 hire a public carrier, to
19 send the goods supplied to
20 the purchasers outside of
21 Canada, inasmuch as said
22 goods were apparently
23 exported from Canada after

1 the Appellant had made the
2 supply to said purchasers;

3 (j) the Appellant did not collect
4 the GST on its supplies by
5 sale of the worn or damaged
6 bedding or the 510 used
7 barrels acquired by the
8 purchasers, and the
9 purchasers did not pay GST to
10 the Appellant;

11 (k) the Appellant did not provide
12 any evidence of exportation
13 by the purchasers that was
14 satisfactory to the Minister,
15 whether in reasonable time or
16 not after having taken
17 delivery from the Appellant
18 of all or part of the worn or
19 damaged bedding or the 510
20 barrels supplied by the
21 Appellant by sale;

22 (l) the amount of GST not

1 collected by the Appellant
2 for supplies by sale of worn
3 or damaged bedding or the
4 used barrels is \$22,440.22,
5 i.e. 7% of \$320,574.68
6 (\$315,474.68 + \$5,100.00),
7 amount which the Appellant
8 did not include in the
9 calculation of the net tax
10 that it reported to the
11 Minister for the period at
12 issue; and

13 (m) the Appellant therefore owes
14 the Minister the amount of
15 \$26,164.15 in adjustments
16 (including the previously
17 mentioned amount of
18 \$22,440.22, this amount of
19 \$22,440.22 including the
20 amount of \$12,701.50 [7% of
21 \$181,450.00 (\$24,750 +
22 \$46,600 + \$110,100)] which is
23 contested) made to its net

1 tax reported for the period
2 in question, plus the net
3 interest and the penalty.

4 The evidence reveals that the
5 Appellant operates a business in Quebec and Ontario
6 as described in paragraph 19(1) of the Reply to
7 Notice of Appeal and that, in its operations, it
8 sold quantities of used linen that no longer met
9 its clients' requirements.

10
11 Mr. Raffoul, the Appellant's
12 principal, testified that there was no market for
13 the used linen in Canada, but that the Appellant
14 had started selling it to foreign companies in
15 2000. A certain Mr. Ahmed had been introduced to
16 him as a purchaser or agent for foreign companies,
17 to wit, Wetipp, a Nigerian company, and Krazniak, a
18 Bosnian company.

19 Over a period of about three
20 years, the Appellant sold a quantity of linen to
21 Mr. Ahmed, who was acting on behalf of Wetipp and
22 Krazniak. The Appellant issued Mr. Ahmed a hand-
23 written receipt, prepared by Mr. Raffoul, for each
24 sale. Copies of these receipts were filed with the
25 Court as Exhibits A-8.1, A-8.12, and A-9.1 through

1 9.10.

2 On these receipts, Mr. Raffoul
3 wrote the name "Ahmed" and "Cash Sale" or "Cash
4 Sale" or "Ahmed Nigéria" or "Cash sale offshore
5 company" or "Vezna Krazniak Bosnia cash sale for
6 recycling in Bosnia" or other variations on the
7 same theme.

8 There was no receipt showing the
9 address of the purchaser or any other information
10 to identify this purchaser.

11 Mr. Raffoul testified that
12 Mr. Ahmed paid in cash. He said that the goods were
13 for export and that in that case there was no GST
14 exigible on the sales.

15 Mr. Raffoul said he telephoned
16 Revenu Québec and was given confirmation that he
17 was not obliged to collect the GST on these sales.

18 Mr. Ahmed picked up the goods from
19 the Appellant with a container that he filled
20 himself or had filled with the help of employees
21 that he brought with him.

22 The evidence also reveals that
23 all of the sales to Mr. Ahmed were reported by the
24 Appellant in its financial statements and for
25 income tax purposes.

1 During the GST/QST audit, the
2 auditor asked the Appellant for evidence that the
3 used linen sold to Mr. Ahmed between July 13, 2001,
4 and October 31, 2002, had been exported. The
5 auditor was looking for written proof beyond the
6 copies of invoices supplied to Mr. Ahmed.

7 The Appellant made efforts to
8 obtain additional evidence of the exports and
9 submitted two letters from Wetipp and Krazniak to
10 the auditor. However, the auditor did not accept
11 these letters as adequate evidence of exportation.

12 The first letter, from Wetipp,
13 only referred to purchases made by Wetipp from the
14 Appellant prior to the sales under review.

15 The second letter, from Krazniak,
16 referred to purchases made from the Appellant
17 between 2000 and 2001 in the amount of \$110,100
18 (according to the letter) "For the purpose to be
19 resold outside Canada." The dates of the sales and
20 the amounts did not correspond with the handwritten
21 invoices presented to the auditor.

22 The Appellant did not submit any
23 other evidence of exportation of goods to the
24 auditor prior to the issuance of the Notice of
25 Reassessment.

1 After the notice of reassessment
2 was issued, the Appellant received three bills of
3 lading from Wetipp and Krazniak showing the used
4 linen exports. The three bills of lading are dated
5 November 19, 2001, August 30, 2002, and October 18,
6 2002.

7 The Appellant also received a
8 letter from Wetipp date June 1, 2006, which
9 provided certain invoices pertaining to the used
10 linen sales that took place on August 12, 2000,
11 October 13, 2000, February 10, 2001 and March 24,
12 2001.

13 Wetipp also said in its letter,
14 Following our telephone
15 conversation, these are the
16 copies of your invoices and
17 this is to confirm to you
18 that the merchandise bought
19 from B.E.S.T. Linen Supply
20 and Services was received by
21 us in the same shape and
22 form, used, stained as when
23 they were delivered and were
24 not modified.

25 These documents were given to

1 counsel for the Respondent during the litigation.

2 The Appellant claimed that all of
3 the evidence provided to the Minister is evidence
4 of the exportation of the goods sold to Wetipp and
5 Krazniak and that these sales were therefore zero-
6 rated supplies. The Appellant claimed that the
7 Minister, by refusing to accept this evidence,
8 failed to consider the relevant facts in exercising
9 his discretion under section 1 in Part V of
10 Schedule 6 of the Act. Counsel for the Appellant
11 submitted that the auditor accepted that the goods
12 had been exported from Canada but was looking for
13 documentary evidence of this fact.

14 He referred to this Court's
15 decision in *Rockwood Motor Products v. The Queen*
16 [2005] G.S.T.C. 84, in which Chief Justice Bowman
17 allowed the appeal in similar circumstances.

18 Counsel for the Appellant also
19 claimed that the requests for evidence made by the
20 auditor were satisfied and, in light of the
21 totality of the evidence, the Court should arrive
22 at the conclusion that the goods in question were
23 exported.

24 Finally, and alternatively, the
25 Appellant was seeking cancellation of the penalties

1 imposed under section 281 of the Act given the
2 efforts made by the Appellant to comply with
3 section 1 in Part V of Schedule 6.

4 The general rule is set out in
5 subsection 142(1) of the Act:

6 For the purposes of this
7 Part, subject to sections
8 143, 144 and 179, a supply
9 shall be deemed to be made
10 in Canada if

11 (a) in the case of a supply
12 by way of sale of tangible
13 personal property, the
14 property is, or is to be,
15 delivered or made available
16 in Canada to the recipient
17 of the supply.

18 The GST is payable by the
19 purchaser of a supply made in Canada and
20 collectible by the supplier pursuant to subsections
21 165(1), 168(1) and 221(1) of the Act. In the case
22 of a zero-rated supply, the rate is set at 0% by
23 subsection 165(3) of the Act. As previously
24 indicated, zero-rated supplies are listed in
25 Schedule 6 of the Act and the relevant provision
26 for exports is Part V of the Schedule.

1 The Minister's decision that the
2 evidence of exportation is not satisfactory is a
3 discretionary decision. In *Uranus Auto Sales v. The*
4 *Queen* [2002]G.S.T.C. 39, this Court held that the
5 Minister is the only person who can decide whether
6 or not the evidence of exportation provided by a
7 taxpayer is satisfactory. The Court cannot
8 intervene unless the evidence demonstrated that, in
9 reaching his decision, the Minister took into
10 account extraneous factors, failed to take into
11 account relevant facts, violated a legal principle
12 or acted in bad faith.

13 The evidence does not prove, as
14 claimed by the Appellant, that the Minister ignored
15 both of the letters from Wetipp and Krazniak, and
16 the bills of lading. It is clear that the Minister
17 considered them and analysed them, eventually
18 rejecting them for the reasons clearly detailed by
19 counsel for the Respondent in his arguments. I
20 accept his arguments concerning the inconsistencies
21 between these documents and the sales at issue.

22 As concerns the invoices
23 themselves, the lack of details, such as the
24 purchaser's address, and often even the name of the
25 purchaser, justified the Minister's refusal to

1 accept them as evidence of exportation.

2 There was also no evidence that
3 the Minister based his decision on irrelevant
4 factors or that he acted in bad faith, or that he
5 violated a principle of law.

6 Given this conclusion, the Court
7 has no right to intervene in this case.

8 I also reject the hypothesis that the auditor
9 accepted that the goods had been exported. The
10 evidence does not support this argument and the
11 *Rockwood* decision is not applicable.

12 Finally, the Appellant cannot be
13 successful with a due diligence defence against the
14 application of the penalty under section 281 of the
15 Act. Even if Mr. Raffoul did contact Revenu Québec
16 to find out whether or not the Appellant had to
17 collect the GST and the QST on these sales, that in
18 itself is not sufficient to establish a due
19 diligence defence.

20 In *Stafford, Stafford and Jakeman*
21 *v. Canada* [1995], G.S.T.C. 7, Bowman J. stated:

22 Due diligence involves more
23 than merely accepting,
24 without more, some oral
25 advice that an assessor with

1 the Department of National
2 Revenue may have given them.

3 In *Wong v. The Queen* [1996]
4 G.S.T.C. 73, the Court said,

5 Due diligence is nothing more
6 than the degree care that a
7 reasonable person would take
8 to ensure compliance with the
9 Act. It does not require
10 perfection or infallibility.
11 It does, however, require
12 more than a casual inquiry of
13 an official in the Tax
14 Department.

15 In conclusion, the Appellant has
16 not successfully demonstrated that the Court could
17 intervene in the Minister's decision that the
18 evidence of exportation provided by the Appellant
19 was not satisfactory. Yet the Respondent consented
20 to the assessment being referred back to the
21 Minister for reconsideration and reassessment, on
22 the basis that the sale of 280 barrels in October
23 2002, for \$2,800 was a zero-rated supply. This
24 results in a GST reduction of \$196. The appeal is
25 allowed only for the purpose of taking this

1 concession into account.

Given the Appellant's very limited success in this matter, costs are awarded to the Respondent.

[oral decision and reasons concluded at 4:15 p.m.]

Translation certified true
On this 9th day of January 2008
Monica F. Chamberlain, Reviser