Docket: 2010-1861(GST)I

BETWEEN:

ANNIE CHU MING LIAO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 29, 2010 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Ernesto Caceres

JUDGMENT

The appeal with respect to an assessment made under the *Excise Tax Act* is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to a rebate in the amount of $5,870.67 in respect of the acquisition of a property at 3608-30 Grand Trunk Crescent, Toronto, Ontario.

The appellant is entitled to her costs, if any.

Signed at Toronto, Ontario this 12th day of November 2010.

"J. M. Woods"

Woods J.

Citation: 2010 TCC 587
Date: 20101112
Docket: 2010-1861(GST)I

BETWEEN:

ANNIE CHU MING LIAO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Annie Chu Ming Liao, acquired a condominium unit for the purpose of rental on June 29, 2007.

[2] The appellant claimed a partial rebate of the goods and services tax payable on the acquisition pursuant to section 256.2 of the *Excise Tax Act*. The claim was denied by way of an assessment, which has been appealed to this Court.

[3] The only issue is whether the application was made within the two year limitation period set out in s. 256.2(7)(a)(iii) of the *Act*. The subsection reads:

> **256.2(7)** A rebate shall not be paid to a person under this section unless
>
> (a) the person files an application for the rebate within two years after
>
> (i) in the case of a rebate under subsection (5), the end of the month in which the person makes the exempt supply referred to in subparagraph (5)(a)(ii),
>
> (ii) in the case of a rebate under subsection (6), the end of the month in which the tax referred to in that subsection is deemed to have been paid

> by the person, and
>
> (iii) in any other case of a rebate in respect of a residential unit, the end of the month in which tax first becomes payable by the person, or is deemed to have been paid by the person, in respect of the unit or interest in the unit or in respect of the residential complex or addition, or interest therein, in which the unit is situated;
>
> (b) if the rebate is in respect of a taxable supply received by the person from another person, the person has paid all of the tax payable in respect of that supply; and
>
> (c) if the rebate is in respect of a taxable supply in respect of which the person is deemed to have collected tax in a reporting period of the person, the person has reported the tax in the person's return under Division V for the reporting period and has remitted all net tax remittable, if any, as reported in that return.
>
> (Emphasis added.)

[4] According to the appellant's testimony, which was supported by the rebate application, the appellant sent the application to the Canada Revenue Agency (CRA) on May 4, 2009. The application was sent by ordinary mail. After a period of time, the appellant followed up with the CRA and was informed that they did not have her application. She then sent another copy on August 8, 2009, which was received by the CRA on August 18, 2009.

[5] The respondent does not challenge the appellant's credibility and accepts her testimony. As a result, the respondent concedes that the application was filed in time provided that the application sent on May 4 was filed properly.

[6] Counsel for the respondent hypothesizes that the application mailed on May 4 may not have been received by the CRA due to insufficient postage. The appellant testified on cross examination that this was possible.

[7] Although it is possible that the application was not delivered due to insufficient postage, it is just as likely that the document was lost by the CRA.

[8] Counsel for the respondent brought to my attention subsection 334(1) of the *Act*, which is a deeming provision relating to mailing. It provides that anything sent by first class mail is deemed to have been received on the day that it is mailed. The provision reads:

> **334(1)** For the purposes of this Part and subject to subsection (2), anything sent by first class mail or its equivalent shall be deemed to have been received by the person

to whom it was sent on the day it was mailed.

[9] It is accepted that the appellant sent the application by ordinary mail on May 4, 2009. This is what used to be known as first class mail, now known as letter mail: *Canada Post Corporation Act, First Class Mail Regulations*.

[10] Based on the evidence as a whole, I accept that the application was properly sent by first class mail on May 4, 2009. Accordingly, the application was deemed to have been received on that day. Although the relevant section uses the term "filed" rather than "received," the respondent has not suggested that anything turns on that in this appeal.

[11] The appeal is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to a rebate in the amount of $5,870.67 in respect of the acquisition of a property at 3608-30 Grand Trunk Crescent, Toronto, Ontario.

[12] The appellant is also entitled to her costs, if any.

Signed at Toronto, Ontario this 12th day of November 2010.

"J. M. Woods"

Woods J.

CITATION:	2010 TCC 587
COURT FILE NO.:	2010-1861(GST)I
STYLE OF CAUSE:	ANNIE CHU MING LIAO and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 29, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice J. M. Woods
DATE OF JUDGMENT:	November 12, 2010

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Ernesto Caceres

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada