

Dockets: 2010-2509(GST)I  
2010-2510(GST)I

BETWEEN:

ZENON KEDZIERSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on February 7 and 10, 2012 at Ottawa, Ontario

Before: The Honourable Justice J.M. Woods

Appearances:

Agent for the Appellant: Robert Kedzierski  
Counsel for the Respondent: Christopher Kitchen

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**JUDGMENT**

The appeal with respect to assessments made under the *Excise Tax Act* for periods from January 17 to December 31, 2005 is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

- (a) for the period from January 17 to March 31, 2005, additional input tax credits in the amount of \$1,137 should be allowed,
- (b) for the period from April 1 to June 30, 2005, additional input tax credits in the amount of \$453.59 should be allowed,

(c) for the period from July 1 to September 30, 2005, goods and services tax collectible should be reduced by \$355, and

(d) for the period from October 1 to December 31, 2005, goods and services tax collectible should be reduced by \$500.

Each party shall bear their own costs.

Signed at Ottawa, Ontario this 15th day of March 2012.

“J. M. Woods”

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Woods J.

Citation: 2012 TCC 85  
Date: 20120315  
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BETWEEN:

ZENON KEDZIERSKI,

Appellant,

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Respondent.

### **REASONS FOR JUDGMENT**

Woods J.

[1] Zenon Kedzierski owns a motorcycle parts business which is operated as a sole proprietorship. For the most part, the business purchases motorcycles as salvage and sells the parts.

[2] This appeal concerns four assessments of net tax made under the *Excise Tax Act* for 2005, which is the first year that the business operated. The assessments relate to each quarter in 2005 and, for simplicity, the periods will be referred to as Q1, Q2, Q3 and Q4.

[3] According to the Reply filed by the respondent, the aggregate net tax payable for 2005 is \$5,696.84. As a result of two concessions made by the respondent at the hearing, the net tax payable as now submitted by the respondent is \$4,743.25. The amounts conceded are \$453.59 for Q2 and \$500 for Q4.

[4] At the hearing, the appellant introduced into evidence goods and services tax (GST) returns in which refunds are claimed for each period for an aggregate refund of approximately \$14,770.

[5] Based on the respondent's position as set out above and the appellant's GST returns submitted into evidence, the total amount in dispute is \$19,513.25.

[6] The appellant was represented at the hearing by his son, Robert Kedzierski, who also testified on behalf of the appellant. Although the appellant did not attend the hearing, the respondent did not object to this on the basis that Robert Kedzierski has detailed knowledge of the transactions that are at issue.

[7] By way of background, it is clear from the evidence that the appellant did not keep proper accounting records from which net tax could be properly determined. The assessments were therefore based on a review of source documents.

[8] In determining GST collectible, the auditor generally assumed that deposits to the bank account used by the business represent sales, except where a satisfactory explanation was provided. In determining input tax credits (ITCs), the auditor scrutinized the documentation provided and rejected claims if the documentation did not satisfy the provisions of the *Act* and regulations.

[9] This method of determining net tax was appropriate in the circumstances.

[10] At the hearing, the appellant submitted two binders of additional source documents. Many of these had not been reviewed by the respondent prior to the hearing.

[11] Based on a review of the evidence as a whole, I have concluded that it is appropriate to make only two additional adjustments to the amounts assessed.

[12] For Q1, an adjustment should be made to increase ITCs by \$1,137. The auditor rejected an invoice that supported this expense. The invoice represents purchases of motorcycles from Import Auto Sales, which is an automobile dealership owned by Robert Kedzierski (R-1, Tab J). Mr. Kedzierski testified that Import Auto Sales acted as an accommodation party to purchase the vehicles for resale to the appellant. It was explained that this was done because the appellant did not have the proper licenses to purchase the vehicles.

[13] The auditor was not satisfied with the supporting documentation, at least in part because the seller's GST registration number was not on the invoice.

[14] The appellant introduced additional documentation at the hearing to support this expense. It is a customs form showing that Import Auto Sales imported motorcycles around this time and paid GST at the border in the amount of \$1,118.71 (A-1, Tab 3, 4th page).

[15] Although the amounts do not match, the additional documentation does support that some ITCs should be allowed in respect of this transaction. I will allow additional ITCs for Q1 in the amount of \$1,137.

[16] The second adjustment that should be made is to reduce GST collectible for Q3 in the amount of \$354.87. This adjustment is based on documentation provided by the appellant at the hearing as to U.S. sales which are exempt from GST (Ex. A-2, Tab 2). The supporting documentation is by no means ideal, but it is sufficient in my view to justify an adjustment to reflect exempt U.S. sales as represented by the appellant in the amount of \$9,788.71. This is an increase of \$5,423.71 from what was accepted by the auditor. GST collectible should be reduced by \$355 to take this into account.

[17] These are the only adjustments that are warranted in my view. In reaching this conclusion, I would make the following observations.

[18] First and foremost, if the result in this appeal is harsh to the appellant, he has only himself to blame because he failed to keep adequate books and records as required by the legislation.

[19] Second, the auditor was correct in my view to reject some of the source documentation that the appellant provided. The following two examples from Q1 illustrate the problem.

[20] In respect of ITCs for Q1, the appellant provided supporting documents for purchases of motorcycles from MP Cars and Import Auto Sales. The supporting documents consisted of handwritten invoices and toll bridge receipts which the auditor rejected as not being reliable. I would agree with the auditor. I would note in particular that the GST number for MP Cars on the invoices is incorrect, and some of the invoices for Import Auto Sales list "parts" without a more detailed description of the type of parts that are purchased. The invoices are not sufficiently reliable in my view. As for the toll bridge receipts, they do not provide details of the purchases.

[21] Robert Kedzierski testified that MP Cars and Import Auto Sales purchased the vehicles as an accommodation as described above and that he paid the GST at the

border on behalf of these corporations. The total amount of ITCs claimed with respect to these transactions is \$6,726.30 (Ex. R-1, Tab 4).

[22] The appellant should have been able to provide more reliable supporting documentation by linking the invoices to customs documents. As mentioned above, the amount of \$1,137.50 has been allowed since customs documentation was provided at the hearing. The handwritten invoices that were given to the auditor were not sufficiently reliable.

[23] In respect of GST collectible for Q1, the appellant provided to the auditor three handwritten invoices which purportedly represent the entire sales for Q1. The amounts were claimed as exempt from GST as exports.

[24] These invoices are also not sufficiently reliable. They are all numbered sequentially, and the total amount for ten items conveniently adds up to the round number of \$17,000. The invoices are simply not sufficiently reliable.

[25] Finally, I would comment generally concerning the documents introduced by the appellant at the hearing. In order for these documents to support further adjustments to net tax, the appellant must establish that the transactions reflected in these documents were not properly taken into account in the assessments. The appellant has failed to satisfy me on this.

[26] In the result, the only additional adjustments will be the two items mentioned above. The appeal will be allowed, and the assessments will be referred back to the Minister of National Revenue to make the following adjustments:

- (a) for Q1, additional ITCs in the amount of \$1,137 should be allowed,
- (b) for Q2, additional ITCs in the amount of \$453.59 should be allowed,
- (c) for Q3, GST collectible should be reduced by \$355, and
- (d) for Q4, GST collectible should be reduced by \$500.

[27] Each party shall bear their own costs.

Signed at Ottawa, Ontario this 15th day of March 2012.

“J. M. Woods”

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Woods J.

CITATION: 2012 TCC 85

COURT FILE NOS.: 2010-2509(GST)I and  
2010-2510(GST)I

STYLE OF CAUSE: ZENON KEDZIERSKI v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATES OF HEARING: February 7 and 10, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: March 15, 2012

APPEARANCES:

Agent for the Appellant: Robert Kedzierski  
Counsel for the Respondent: Christopher Kitchen

COUNSEL OF RECORD:

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Firm:

For the Respondent:

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