Citation: 2013 TCC 44
Date: **20130327**
Docket: 2012-3408(GST)I

BETWEEN:

FP NEWSPAPERS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Pizzitelli J.

[1] The Appellant, a corporation that owned 6,902,592 Class A Limited Partnership units in a Limited Partnership known as FPLP (the "Partnership") that carried on the business of newspaper publishing and printing, was denied Input Tax Credits ("ITCs") of $15,943.33 pursuant to an *Excise Tax Act* (the "*Act*") assessment and objected to the denial of only $5,039.77 of such ITCs which was confirmed by the Minister of National Revenue (the "Minister"). The only issue to be decided then is whether the Appellant is entitled to claim $5,039.77 in ITCs for the period January 1, 2011 to March 31, 2011 on the basis that it was a registrant under the *Act* who acquired services for consumption, use or supply in the course of an activity of a partnership of which it was a member pursuant to section 272.1 of the *Act* or on the basis it was otherwise engaged in commercial activities.

[2] The parties filed an Agreed Statement of Facts (the "ASF") immediately before the hearing which was accepted by the Court. In brief, the ASF sets out that the Appellant was the corporate successor to an Income Trust that converted to a corporate structure on December 31, 2010 pursuant to an Advisory Services Agreement that resulted in the Appellant owning the assets and being liable for all the liabilities of the Income Trust. As part of this reorganization, the Appellant

acquired the Limited Partnership units above mentioned entitling it to 49% of the distributable cash of the Limited Partnership. Under the terms of an Amended Certificate of Limited Partnership for the Partnership dated November 9, 2010, which of course applied to the Limited Partnership units later acquired by the Appellant, the Appellant or any limited partner was not required to provide any property or services besides the initial contribution of cash at the time the partnership units were purchased. The Appellant was not a general partner of the Partnership either.

[3] Pursuant to a brief Advisory Services Agreement dated December 31, 2010, the Appellant and the Partnership agreed that the Appellant would give the Partnership advice regarding capital investments and expenditures, financing options and opportunities and such other advisory services as mutually agreed upon, in consideration of a payment of $1,212.75 each calendar quarter; with only two payments having been made pursuant to invoices applicable to the first two quarters of 2011. The Appellant charged GST of $60.64 on such fees for each quarter. Under paragraph 2.2 of the Advisory Services Agreement under the Heading "Advisor Not Participating in Management", was the following provision:

> It is the intention of the parties that the Advisor is only providing advice to FPLP and is in no way participating in the administration, operation, management or control of FPLP or its business and any action by the Advisor which purports to take any such prohibited action will be null, void and of no force or effect.

[4] In addition, as per paragraph 29 of the ASF, under the Advisory Services Agreement the Appellant was responsible to pay, without reimbursement by the Partnership, all employment expenses, rent, other office expenses, miscellaneous expenses, and all other costs, expenses, and disbursements incurred in connection with providing the advisory services.

[5] In addition, paragraph 31 of the ASF provides that the Appellant's share of equity interest from the Partnership was $3,865,000 for the first six months of 2011 ending June 30, 2011, the same period for which is received a total of $2,425.50 for its advisory services which the parties agreed was a negligible component of the Appellant's business activities and a negligible source of income for the Appellant. In fact, in paragraph 33 of the ASF, the parties agreed: "At all material times, all or substantially all of the Appellant's business activities consisted of its investment in the Partnership". There is no dispute then that almost all of the Appellant's income for that period came from its investment in the Partnership through its holdings of the limited partnership units.

[6] It should also be mentioned that the ASF included agreement as to the invoices containing the GST paid for which the Appellant claimed ITCs as well as a listing and general description of the subject matter of those invoices; all in attached Schedule E to the ASF. Clearly, there is no dispute that these invoices related to distribution of dividends to the Appellant's shareholders, news releases respecting dividends and quarterly results of the Appellant, the listing fee for the conversion from an Income Trust to a corporation, legal and accounting fees for consultation and advice pertaining to the trust conversion and related matters. The only invoice that might be said to be in any way related to the Partnership was an invoice regarding a news release regarding the acquisition of a printing business by the Partnership for which GST of $38.40 was paid although it is in my view clear that such news release issued by the Appellant was intended to highlight the potential growth of the underlying assets owned by the Appellant and hence was for its benefit and not that of the Partnership.

Position of the Parties

[7] The Appellant takes the position, relying on section 272.1 of the *Act*, that since it is a member of the Partnership that it is deemed to be carrying on the commercial activities of the Partnership, i.e., the newspaper publishing and printing business and hence since it is engaged in this commercial activity and really no other, that it can claim the ITCs denied it regardless of whether the GST or HST payments it made were not otherwise for the direct benefit or account of the Partnership. Moreover, says the Appellant, since the invoices admittedly pertain to the set up and reorganization costs of the Appellant relating to the conversion from an Income Trust to corporate structure above discussed, or related to incidental financial services that are deemed to be part of the Appellant's commercial activities, that these expenses qualify as relating to the above commercial activities pursuant to subsections 141.1(3) and 185(1) of the *Act*. In essence says the Appellant, a partner is deemed to carry on the commercial activities of the Partnership and all its ITCs paid, whether pertaining to incidental financial services or start-up costs relating to the Appellant and not the Partnership, are to be treated as ITCs in relation to its deemed commercial activities; namely GST and HST paid on costs incurred by a registrant for consumption, use or supply in the course of activities of the Appellant deemed to be the commercial activities of the Partnership.

[8] The Respondent disagrees, arguing the Appellant is taking a far too broad interpretation of section 272.1 of the *Act*, in that the Appellant was not acting as a member of the Partnership in incurring such charges and that the charges have no

link or connection to the commercial activities of the Partnership and hence were not for the consumption, use or supply in the course of activities of the Partnership. In addition, the Respondent takes the position that the Appellant was primarily providing exempt services for which no ITCs can be claimed and that where substantially all of the consumption or use for which a person, other than a financial institution, is in the course of particular activities of a person that are not commercial activities, all of the consumption or use of the property or services by the person shall be deemed to be in the course of those particular activities pursuant to subsection 141(3) of the *Act*. The **Respondent** disputes that the Appellant supplies any exempt supplies and argues receiving exempt supplies, like interest payments on its partnership units is not the same as being in a non-commercial activity or supplying exempt supplies.

The Law

[9] The relevant provisions of the *Act* are:

> **169.** (1) Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:
>
> A × B
>
> where
>
> A is the tax in respect of the supply, importation or bringing in, as the case may be, that becomes payable by the person during the reporting period or that is paid by the person during the period without having become payable; and
>
> B is
>
> (*a*) where the tax is deemed under subsection 202(4) to have been paid in respect of the property on the last day of a taxation year of the person, the extent (expressed as a percentage of the total use of the property in the course of commercial activities and businesses of the person during that taxation year) to which the person used the property in the course of commercial activities of the person during that taxation year,
>
> (*b*) where the property or service is acquired, imported or brought into the province, as the case may be, by the person for use in improving capital property of the person, the extent (expressed as a percentage) to

which the person was using the capital property in the course of commercial activities of the person immediately after the capital property or a portion thereof was last acquired or imported by the person, and

(*c*) in any other case, the extent (expressed as a percentage) to which the person acquired or imported the property or service or brought it into the participating province, as the case may be, for consumption, use or supply in the course of commercial activities of the person.

…

123. (1) In section 121, this Part and Schedules V to X,

…

"commercial activity" of a person means

(*a*) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(*b*) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(*c*) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply;

…

"exempt supply" means a supply included in Schedule V; …

SCHEDULE V
(Subsection 123(1))

EXEMPT SUPPLIES

PART VII

FINANCIAL SERVICES

1. A supply of a financial service that is not included in Part IX of Schedule VI.

2. A supply deemed under subsection 150(1) of the Act to be a supply of a financial service.

…

123. (1)

…

"taxable supply" means a supply that is made in the course of a commercial activity;

…

"financial service" means

…

(*d*) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,

…

(*f*) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument,

…

"financial instrument" means

(*a*) a debt security,

(*b*) an equity security, …

(*d*) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest,

…

141. (1) For the purposes of this Part, where substantially all of the consumption or use of property or a service by a person, other than a financial institution, is in the course of the person's commercial activities, all of the consumption or use of the property or service by the person shall be deemed to be in the course of those activities. …

(3) For the purposes of this Part, where substantially all of the consumption or use of property or a service by a person, other than a financial institution, is in the course of particular activities of the person that are not commercial activities, all of the consumption or use of the property or service by the person shall be deemed to be in the course of those particular activities.

…

141.1 (3) For the purposes of this Part,

(*a*) to the extent that a person does anything (other than make a supply) in connection with the acquisition, establishment, disposition or termination of a commercial activity of the person, the person shall be deemed to have done that thing in the course of commercial activities of the person; and

(*b*) to the extent that a person does anything (other than make a supply) in connection with the acquisition, establishment, disposition or termination of an activity of the person that is not a commercial activity, the person shall be deemed to have done that thing otherwise than in the course of commercial activities.

…

185. (1) If tax in respect of property or a service acquired, imported or brought into a participating province by a registrant becomes payable by the registrant at a time when the registrant is neither a listed financial institution nor a person that is a financial institution because of paragraph 149(1)(*b*), for the purpose of determining an input tax credit of the registrant in respect of the property or service and for the purposes of Subdivision d, to the extent (determined in accordance with subsections 141.01(2) and 141.02(6)) that the property or service was acquired, imported or brought into the province, as the case may be, for consumption, use or supply in the course of making supplies of financial services that relate to commercial activities of the registrant,

(*a*) if the registrant is a financial institution because of paragraph 149(1)(*c*), the property or service is deemed, despite subsections 141.01(2) and 141.02(6), to have been so acquired, imported or brought into the province for consumption, use or supply in the course of those commercial activities except to the extent that the property or service was so acquired, imported or brought into the province for consumption, use or supply in the course of activities of the registrant that relate to

(i) credit cards or charge cards issued by the registrant, or

(ii) the making of any advance, the lending of money or the granting of any credit; and

(*b*) in any other case, the property or service is deemed, despite subsections 141.01(2) and 141.02(6), to have been so acquired, imported or brought into the province for consumption, use or supply in the course of those commercial activities.

…

272.1 (1) For the purposes of this Part, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

(2) Despite subsection (1), if property or a service is acquired, imported or brought into a participating province by a member of a partnership for consumption, use or supply in the course of activities of the partnership but not on the account of the partnership, the following rules apply:

> (*a*) except as otherwise provided in subsection 175(1), the partnership is deemed
>
> (i) not to have acquired or imported the property or service, and
>
> (ii) where the property was brought by the member into a participating province, not to have so brought it into that province;
>
> (*b*) where the member is not an individual, for the purpose of determining an input tax credit or rebate of the member in respect of the property or service and, in the case of property that is acquired or imported for use as capital property of the member, applying Subdivision d of Division II in relation to the property, subsection (1) does not apply to deem the member not to have acquired or imported the property or service and the member is deemed to be engaged in those activities of the partnership; and
>
> (*c*) where the member is not an individual and the partnership at any time pays an amount to the member as a reimbursement and is entitled to claim an input tax credit in respect of the property or service in circumstances in which subsection 175(1) applies, any input tax credit in respect of the property or service that the member would, but for this paragraph, be entitled to claim in a return of the member that is filed with the Minister after that time shall be reduced by the amount of the input tax credit that the partnership is entitled to claim.

Analyses

[10] I propose to firstly analyse what the activities of the Appellant were in order to determine whether the Appellant was engaged in commercial activities regardless of the deeming provisions of section 272.1 and then consider whether the provisions of section 272.1 would change the Appellant's entitlement to the ITCs claimed. During such process, I will consider whether it is necessary to deal with the other mentioned provisions of the *Act* above and if so address them accordingly.

1. The activities of the Appellant

[11] The Respondent takes the view that the Appellant's activities consist of non-commercial activities, regardless of the application of section 272.1 while the Appellant disagrees.

[12] The Appellant in fact argues that it does not primarily make exempt supplies while the Respondent argues it does based on the definitions under the *Act* and so cannot be entitled to ITCs as it was not primarily engaged in commercial activities

[13] There is no argument that subsection 169(1) above set out is the general rule for claiming input tax credits and effectively states that a registrant can claim as an ITC the GST that was paid in respect of property or services that was used by the registrant in the course of its commercial activities.

[14] In a constitutional challenge to the Federal Goods and Services Tax by the Province of Alberta in *Reference re: Goods and Services Tax (GST) (Can.)*, [1992] 2 S.C.R. 445, at paragraphs 2 to 4 the Supreme Court of Canada set out the scheme of the *Act* relating to the claiming of input tax credits, effectively stating that to the extent a purchaser of a taxable supply uses that good or service in the production of other taxable supplies, it is entitled to claim input tax credits and by definition to the extent that taxable supplies are not used by the purchaser to produce other taxable supplies, they are consumed by the purchaser and hence it is not able to claim the input tax credit or recover the tax it so paid. Likewise, the Court explained, exempt supplies and zero-rated supplies do not attract any tax, however, in exempt supplies, the vendor, while paying GST on purchases, cannot claim the input tax credit thereon.

[15] Based on the above section and the scheme of the *Act* pertaining to input tax credit, it is clear that if the Appellant is not buying taxable supplies for use in the production of taxable supplies, whether goods or services, or sells exempt supplies, then he cannot claim input tax credits.

[16] The question then becomes whether the Appellant is selling taxable supplies. Subsection 123(1) above defines a "taxable supply" as a supply that is made in the course of a commercial activity. A "commercial activity" is defined in the same subsection 123(1) as a business carried on by the person except to the extent to which the business involves the making of exempt supplies. "Exempt supplies" is defined to include a supply included in Schedule V of Part VII of the *Act*, which in turn lists the exempt supplies which includes "financial services". Financial Services is in turn also defined in paragraphs 123(1)(*d*) and (*f*) as follows:

> d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument; …

> f) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument.

[17] A "financial instrument" under subsection 123(1) includes (a) a debt security, (b) an equity security and (d) an interest in a partnership or any right in respect of such interest.

[18] The facts in this case as agreed in the ASF clearly establish that the Appellant's reason for existence was to hold the limited partnership units in the Partnership it acquired as a result of the reorganization of the Income Trust to the corporate structure discussed earlier. The ASF also establishes that the Appellant's share of the Partnership's income for the six-month period ending June 30, 2011, was $3,865,000 and that it paid dividends to its shareholders from income it received from the Partnership. It is clear from the definitions above that the acquisition of the partnership units, the receipt of interest from the Partnership as well as the payment of dividends to its shareholders are all exempt supplies and hence are not commercial activities. The definitions speak of receipt as well as payment to, and so both transactions are considered exempt supplies and hence all these activities are not considered a business that would qualify as a commercial activity of the Appellant and are activities that make up all or substantially all of the Appellant's business activities. What then is left? The Appellant does nothing else other than provide the negligible advisory services for negligible income, as it so agreed in the ASF, to the Partnership under the Advisory Services Agreement earlier referred to. It has no other activities of any kind other than activities not considered commercial activities by definition. If it has no commercial activity, then the services it supplies cannot be considered taxable supplies by definition above.

[19] It is clear from the facts the Appellant carries on no commercial activities other than self-admitted negligible advisory activity for which it received a total of $1,212.75 during the period covered under this appeal and which, as negligible, do not constitute anywhere near all or substantially all of its business activities as also admitted. Subsection 141(3) of the *Act* provides that where all or substantially all of the consumption or use of property or of a service by the registrant is in the course of particular activities that are not commercial activities, then all of the consumption or use of the property or service by the person will be deemed to be in the course of those activities. As the Respondent has pointed out, the case law is clear from numerous decisions including *Gamache v. R.*, 2002 FCA 254, [2002] G.S.T.C. 70 (F.C.A.), a decision of the Federal Court of Appeal, that "substantially all" means at least 90% and in the case at hand we are almost at 100% regardless of the deeming

section. Accordingly, the services purchased by the Appellant for which it claims an input tax credit are deemed to be fully for non-commercial activities and the Appellant is thus not entitled to claim ITCs in their regard.

[20] It follows as well, as the Respondent has pointed out, that if the Appellant has no commercial activities then it cannot be providing any taxable supplies and so accordingly it cannot claim any ITCs based on the above definitions as alluded to in the Supreme Court of Canada's decision in *Reference re: Goods and Services Tax* above.

[21] I believe that save for any exception to the above rules, the Appellant cannot be said to be conducting any business involving commercial activities for the purposes of the *Act*. The Appellant of course argues there is such an exception to the general rules and law above in the manner that section 272.1 applies.

2. Section 272.1 applicability

[22] The Appellant relies on a combination of subsections 272.1(1) and (2) to justify its position that the activities of the Partnership are the activities of the Appellant who is a partner and hence it carries on the commercial activity of publishing newspapers and printing and is entitled to all ITCs as earlier stated.

[23] The Appellant argues in paragraphs 12 and 13 of its written submissions that for GST/HST purposes, subsection 123(1) of the *Act* defines a "person" so as to include a partnership whereas pursuant to common law the partnership is not a separate legal entity and the business of the partnership is one and the same as the business of the partners. This results in a duality of two "persons" carrying on the same business hence an anomaly unique to GST/HST matters.

[24] Subsection 272.1(1), argues the Appellant, removes the threat of double taxation of the business transaction due to the above anomaly by providing that anything done by a person as a member of a partnership is deemed to have been done by the partnership and not by the partner, effectively aligning the responsibility for GST /HST reporting to only one person, the partnership, who is the taxpayer for purposes of the GST/HST Part IX of the *Act*. Indeed, the provision reads:

> 272.1 (1) For the purposes of this Part, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

[25] The Appellant however, in paragraph 15 of its written submissions also argues that subsection 272.1(2) however is an exception to the rule aligning reporting to only the partnership "to address the problem of reporting a separate action by any one of the partners on account of partnership business".

[26] The Appellant himself acknowledges that the provision deals with separate actions by any one of the partners "on account of the partnership business". It is clear that even in its argument the Appellant accepts that the action must be on account of the partnership business, in this case the business of publishing newspapers and printing.

[27] Notwithstanding this acknowledgment the Appellant seeks to hold out that the provisions should be interpreted so as to mean that any activity undertaken by a partner, regardless of whether it be related to the partnership business, should be considered an activity of the partnership. Frankly, this is not a position I can agree with and do not feel it is contemplated either by the provisions of subsections 272.1(1) or (2) nor the above admission by the Appellant himself.

[28] While I do not disagree with the Appellant's statement that subsection 272.1(2) allows an individual partner to report a separate transaction on account of partnership business, it is clear from the wording of those provisions that two conditions must be met, as the Respondent has stated.

[29] The first condition is that the individual partner must be acting in his capacity as a member of the Partnership. Clearly, an individual member may have multiple other business interests and undertake transactions that are subject to GST/HST reporting requirements that have nothing to do with the business of the Partnership, hence the logical need to tie the activities undertaken by the partner to the partnership for which he acts. To suggest otherwise would yield a ridiculous result. Clearly this interpretation is supported by both the wording in subsections 272.1 (1) and (2). Subsection 272.1(1) says that the thing done must be done "as a member of a partnership". The capacity in which the person carries out the act is spelled out and subsection 272.1(2) also references that the property or service must be acquired or imported by a member of the partnership, in my view referencing the same meaning of member in subsection (1). Any act done in a capacity outside of acting as a member of the partnership is not caught and presumably would be subject to the normal rules dealing with eligibility for ITCs discussed in the first part of this analyses and in which I concluded the Appellant would not be eligible to claim his ITCs.

[30] Based on subsection 272.1(1) then, when a person acts in a capacity as a member of a partnership, his acts are those of the partnership, effectively making the partnership the filing taxpayer unless the person falls within any exceptions. Subsection 272.1(2) is one of those subsections and starts off as reading:

> 272.1 (2) Notwithstanding subsection (1), where property or a service is acquired or imported by a member of a partnership for consumption, use or supply in the course of activities of the partnership but not on account of the partnership, the following rules apply: …

[31] Those following rules of course provide that the partnership is not the party that is deemed to have acquired or imported the property for GST/HST purposes which permits the transaction to be shifted back to the Partner level, thereby reversing the shift to the Partnership level that subsection 272.1(1) had effected. Then under paragraph (*b*) of subsection 272.1(2) the Partner who is not an individual, such as a corporation, is allowed to claim the ITC by being treated as if he acquired the property or service, again reversing the effect of subsection (1) and then treated as if he was engaged in the activities of the partnership to ensure he has a commercial activity which is deemed to be the same commercial activity that the partnership had.

[32] Clearly, the Appellant must be acting in his capacity as partner in carrying out these transactions for which he claims an input tax credit and I agree with the Respondent's argument that one can look to any evidence relating to acting in such capacity including as to whether he has the capacity to so act and the nature of the transactions for which an ITC is claimed to determine whether the member is acting as a partner of the partnership, in effect on its behalf or for its benefit.

[33] In this case, it is abundantly clear that the Appellant is only a limited partner and not a general partner and generally cannot legally bind the partnership under the laws applicable to limited partnerships which is also clear from the Amended Certificate of Limited Partnership above discussed which provides that a limited partner is not required to provide any property or service beyond the ordinary contribution for its Partnership unit. Moreover, under the Advisory Services Agreement executed between the Partnership and the Appellant, it is clear that aside from providing those limited advisory services, the Appellant, pursuant to the specific wording of such agreement "is in no way participating in the administration, operation, management or control of FPLP or its business and any action by the Advisor which purports to take any such prohibited action will be null, void and of no force or effect". Clearly, the Appellant has no legal capacity to act on behalf of the Partnership nor required to provide any property or services other than the negligible advisory service contracted for and discussed above and any such purported acts would be considered invalid; thus the first condition is not met.

[34] In analysing the ITCs claimed by the Appellant, it is also abundantly clear that none of the transactions described in the invoices were for the benefit of the newspaper and printing business of the Partnership but were solely for the benefit of the Appellant whose sole purpose of existence is admittedly to hold partnership units. In no way can I find that the activities described in the invoices, including consulting services relating to the conversion of the Income Trust to a corporate structure or news releases regarding its dividends declared or fees in relation to such dividends, to be activities of the Partnership and hence it follows that one cannot act in a capacity as a member of a partnership involving transactions that have nothing to do with the partnership's business.

[35] The second condition set out in subsection 272.1(2) is that the property or service acquired or imported by such member must be "for the consumption, use or supply in the course of the activities of the partnership". An analyses of the invoices in respect of which the Appellant claimed GST/HST as ITCs above clearly show none of the services mentioned were for the consumption, use or supply in the course of the Partnership's newspaper publishing and printing businesses. They were exclusively for the consumption, use and supply of the Appellant's Financial Services activities which as above indicated are exempt supplies.

[36] Clearly, the supply must be in some way used by the Partnership in its commercial activities. This is not only consistent with the general scheme of the *Act* that allows an ITC for taxable supplies used to produce taxable supplies earlier discussed, but is consistent with the Canada Revenue Agency GST\HST Policy Statement P-216 relied upon by the Appellant, which utilized a sample ruling to demonstrate that a partner will be eligible to claim ITCs in respect of property and services acquired or imported for consumption, use or supply in the course of the commercial activities of the partnership. The sample ruling itself required that connection consistent with the wording of subsection 272.1(2) above.

[37] The Appellant relied on the case of *B.J. Northern Enterprises Ltd. et al. v. Her Majesty The Queen*, [1995] 2839 ETC, in arguing that a partner was granted ITCs in relation to consulting services it hired its parent corporation to provide for use in the business activity of a partnership of which it was a member. In that case, Rip J. (as he then was) found as a matter of fact that the services paid for by the partner were a service for consumption, use or supply in the course of the partnership's activity and hence the partner qualified for the ITC on GST paid to supply that service pursuant to former subsection 145(2), the predecessor to section 272.1 herein. In that case, the service was consumed by or for the benefit of the activities of the partnership and so should have been allowed. In the case at hand however, as I have stated, none of the services in respect of which the Appellant claims an ITC were provided for the newspaper publishing and printing business of the Partnership. They instead are directly related only to the exempt activities of the Appellant. In short, the above case supports the Respondent's position.

[38] It is clear that the Appellant does not qualify for the exception in subsection 271.1(2) on the basis the two requirements above described have not been met.

Conclusion

[39] I find that the Appellant has not established that it incurred ITCs in relation to any commercial activity, neither one carried on by itself as I find it carried on no commercial activities, nor any commercial activity of a partnership that would be deemed to be carried on by it as a member. Accordingly, there being no commercial activity carried on by the Appellant, other than the negligible commercial activity of providing advisory services to the partnership that I have already determined would be deemed to be non-commercial activities pursuant to subsection 141(3) above, it follows that I cannot find that it acquired any property or services to be used to provide financial services related to any of its commercial activities pursuant to subsection 185(1) or that it incurred any start-up costs related to commercial

activities as contemplated by subsection 141.1(3) of the *Act* either. Even if the Appellant's advisory services were more than negligible, the ITCs claimed do no appear in any way related to the Partnership activities and would be denied in any event. The Appellant's appeal is dismissed. There shall be no order as to costs.

This Amended Reasons for Judgment is issued in substitution of the Reasons for Judgment dated February 5, 2013.

Signed at Ottawa, Canada, this **27th** day of **March** 2013.

"F.J. Pizzitelli"

Pizzitelli J.

CITATION:	2013 TCC 44
COURT FILE NO.:	2012-3408(GST)I
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REASONS FOR JUDGMENT BY:	The Honourable Justice F.J. Pizzitelli
DATE OF JUDGMENT:	February 5, 2013
DATE OF AMENDED REASONS FOR JUDGMENT:	**March 27, 2013**

APPEARANCES:

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