Docket: 2017-1912(GST)I

BETWEEN:

INTERNATIONAL HI TECH INDUSTRIES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 15, 2017 at Vancouver, British Columbia

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant:	Roger Abou-Rached
Counsel for the Respondent:	Jamie Hansen

JUDGMENT

The appeal from the assessment raised March 6, 2016 under the *Excise Tax Act* (Canada) for the Appellant's quarterly reporting period ending September 30, 2015 is dismissed, without costs.

Signed at Toronto, Ontario, this 31st day of May 2018.

"B. Russell"

Russell J.

Citation: 2018TCC107
Date: 20180531
Docket: 2017-1912(GST)I

BETWEEN:

INTERNATIONAL HI TECH INDUSTRIES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

Introduction:

[1] In this appeal the corporate Appellant, International Hi Tech Industries Inc. (IHI), based in British Columbia, claims input tax credits (ITCs) under the *Excise Tax Act* (Canada) (Act) totalling $5,683.95. These claimed ITCs were included in GST registrant IHI's return for its quarterly reporting period ending September 30, 2015 (Period), although filed September 10, 2015. On March 6, 2016 the Minister of National Revenue (Minister) assessed IHI a net GST adjustment for that Period, denying the subject ITCs on the basis that IHI had not claimed same within the four year limitation period specified in paragraph 225(4)(b) of the Act. IHI has appealed that assessment to this Court.

Evidence:

[2] Evidence at the hearing consisted of testimony of the president of IHI, Mr. R. Abou-Rached, and documents tendered by both parties. The evidence established that the claimed $5,683.95 of ITCs was comprised of the following amounts:

a) a $440.87 uncontested reconciliation error;

b) $481.18 of GST specified in an invoice of the law firm DuMoulin Boskovich to IHI totaling $11,567.91 for legal services that firm had provided, which invoice IHI paid by cheque dated October 7, 2008; and

c) $4,761.90 of GST paid to the law firm Parlee McLaws LLP by two IHI cheques respectively dated June 25, 2009 and September 24, 2009, each in the amount of $50,000, in compliance with an Alberta court order that IHI pay $100,000 (inclusive of GST) as security for costs.

[3] The evidence was that a B.C. company named Garmeco Canada International Consulting Engineers Ltd. (Garmeco), which owned a group of companies including IHI (the Garmeco group), put financially-troubled IHI in funds to meet financial obligations including making the three above-referenced payments to the said law firms. The evidence also was that effective December 15, 2001 IHI and another Garmeco group company had, as debtors of Garmeco, executed a general security agreement in favour of Garmeco and several other Garmeco group companies, individually and collectively identified for purposes of that agreement as the secured party(ies) (Ex. A-5).

[4] Additionally, IHI was at all material times a GST registrant, required to file GST returns on a quarterly basis. IHI declared bankruptcy on November 19, 2010, and I understand was subsequently discharged from bankruptcy. On September 10, 2015 it filed its GST return for the quarter ending September 30, 2015, claiming therein the subject ITCs.

[5] The ITCs in respect of the aforementioned $481.18 of GST had first become claimable in IHI's quarter ending December 31, 2008, with that period's GST report due by January 31, 2009 (and four years later being January 31, 2013). Half of the aforementioned GST total of $4,761.90 was paid in the quarter ending June 30, 2009, with the GST report for that quarter due July 31, 2009 (and four years later being July 31, 2013). The other half of the aforementioned GST total of $4,761.90 was paid in the quarter ending September 30, 2009, with the GST report for that quarter due October 31, 2009 (and four years later being October 31, 2013).

[6] As such the question arises whether the subject ITCs were claimed out of time. Paragraph 225(4)(b) of the Act provides:

225(4) Limitation [period for ITC claims]

> An input tax credit of a person for a particular reporting period of the person shall not be claimed by the person unless it is claimed in a return under this Division filed by the person on or before the day that is
>
> (b) where the person is not a specified person during the particular reporting period, the day on or before which the return under this Division is required to be filed for the last reporting period of the person that ends within four years after the end of the particular reporting period;

[7] Basically the effect of this provision is that a person other than a specified person (it is undisputed that IHI was not a specified person) must claim ITCs in a return filed not later than the last day for filing a return for the reporting period ending within four years after the end of the reporting period in which the tax was paid and hence the right to claim the ITCs arose. In respect of the dates noted in paragraph 5 above, the Respondent submits that claiming these ITCs only in the return for the reporting period for the quarter ending September 30, 2015 renders these ITCs as having been claimed two years or more beyond this statutory four year limit.

[8] IHI's argument is that the subject ITCs had been claimed on a timely basis by its related company Garmeco, and this was because a CRA officer had advised (possibly because of the general security agreement) that Garmeco rather than IHI should claim these ITCs. There is no suggestion that Garmeco had not claimed these ITCs within the applicable four year period provided by paragraph 225(4)(b). However, for other reasons the Minister had denied Garmeco's claim for the subject ITCs as well as for other claimed ITCs. The entire matter ended up in this Court, pursuant to an appeal brought by Garmeco, resulting ultimately in the judgment and reasons for judgment styled, *Garmeco Canada International Consulting Engineers Ltd. v. The Queen*, 2015 TCC 194.

[9] In that matter my colleague Justice V. Miller concluded that all the ITCs there at issue, including the subject ITCs herein, were not validly claimable by Garmeco. IHI asserts that that Court found that the subject ITCs were instead IHI's, and in this regard refers to items 1, 2 [sic 4] and 7 of paragraph 47 of the *Garmeco* reasons for judgment. It appears that the Court in *Garmeco* denied Garmeco's claim for the subject ITCs on the bases that the underlying $481.18 was "for services provided to the Garmeco Companies so they could enforce the security they held against the assets of IHI" and the claimed ITCs for the underlying GST amount of $4,760.90 were denied as the GST had been paid, "for legal services provided to IHI in its action against CNRL".

[10] The *Garmeco* judgment was rendered August 12, 2015. Within 30 days, on September 10, 2015 as noted above, IHI submitted its claim for the subject ITCs.

[11] While these statements from *Garmeco* do not explicitly express that IHI would have been the proper claimant of the subject ITCs, that would appear to be the only plausible alternative. And, who could validly claim these ITCs was not the question before the Court in any event. However, even on the basis that *Garmeco* did unequivocally state that IHI would have been the proper claimant, that would not mean that IHI now can point to the *Garmeco* decision and require the Minister to credit it with the claimed ITCs.

[12] Rather, no provision of the Act excuses IHI from having to meet all requirements for entitlement to the subject ITCs, thus including the four year limitation on claiming these ITCs specified in paragraph 225(4)(b). In fact IHI as shown above is well outside this four year limitation in respect of the entirety of the subject ITCs herein sought.

[13] Similarly, in respect of the assertion (unchallenged by the Respondent) that a CRA officer several years ago advised IHI and Garmeco that the subject ITCs should be claimed by Garmeco (as was in fact done, as discussed), does not assist IHI in this appeal. Jurisprudence has well established that estoppel cannot override the law. "The doctrine [of *estoppel in pais*] had no application where a particular interpretation of a statute had been communicated to a subject by an official of the government, relied upon by that subject to his or her detriment and then withdrawn or changed by the government." (*Goldstein v. Her Majesty*, 96 DTC 1029 (TCC) at 1034.) Thus, a taxpayer claiming reliance on errant advice by a CRA official does not help IHI. The law must be applied, notwithstanding that an official responsible for administering the law misinterpreted it in communicating to a taxpayer.

[14] A related question is can the fact that Garmeco claimed the subject ITCs within the permissible four year period per paragraph 225(4)(b) be relied upon by IHI to prevent paragraph 225(4)(b) being raised against it? The answer turns on the wording of paragraph 225(4)(b), set out above. Unfortunately for IHI this provision (set out above) is drafted very restrictively, having in it multiple references to "the person", thereby making clear that it is "the person" who is claiming the ITCs, and not any other person, including a person who had previously claimed, who must abide by the statutory four year limitation.

[15] I accordingly have no choice but to dismiss this informal procedure appeal, however on a without costs basis.

Signed at Toronto, Ontario, this 31st day of May 2018.

"B. Russell"

Russell J.

CITATION:	2018TCC107
COURT FILE NO.:	2017-1912(GST)I
STYLE OF CAUSE:	INTERNATIONAL HI TECH INDUSTRIES AND HER MAJESTY THE QUEEN
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REASONS FOR JUDGMENT BY:	The Honourable Justice B. Russell
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APPEARANCES:

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