

Docket: 2012-1720(GST)I

BETWEEN:

9188-7646 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 26, 2012, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the appellant: Micheline Charbonneau

Counsel for the respondent: Michel Rossignol

JUDGMENT

The appeal from the assessment made pursuant to Part IX of the *Excise Tax Act*, for which the notice is dated March 15, 2011, and has no distinctive number, for the two quarterly periods of October 1, 2008, to December 31, 2008, and January 1, 2009, to March 31, 2009, is allowed with costs and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 21st day of March 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 3rd day of May 2013.
Elizabeth Tan, Translator

Citation: 2013 TCC 85
Date: 20130321
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REASONS FOR JUDGMENT

Masse D.J.

[1] This is an appeal from an assessment for which the notice is dated is March 15, 2011, with no distinctive number, made pursuant to Part IX of the *Excise Tax Act* (the ETA) for the following two quarterly periods: October 1, 2008, to December 31, 2008, and January 1, 2009, to March 31, 2009 (the relevant periods) established for the appellant, 9188-7646 Québec Inc. (Sport Auto Plex). The amount of the assessment is \$4,770, which represents input tax credits (ITCs) the appellant claimed and obtained, allegedly in overpayment, erroneously or ineligibly, regarding the goods and services tax (GST) it paid in the provision of two lots of shoes it claims to have obtained. Moreover, the respondent claimed \$476.23 for interest on arrears for a total of \$5,246.23. The respondent claims that the net tax the appellant should have claimed for the relevant period is \$699.45. The assessment was confirmed by a decision on the objection rendered February 3, 2011, hence this appeal.

[2] The respondent claims that the ITCs the appellant claimed and obtained ineligibly are for ITCs for the provision of goods allegedly acquired from a dubious supplier, 6809821 Canada Inc. (Canada Inc.). The respondent claims that Canada Inc. is a provider of false invoices or so-called invoices "of convenience", and the appellant never obtained the lots of shoes it claims to have obtained. Moreover, the supporting evidence for the disallowed ITCs are false and/or the information the

appellant provided was inadequate and does not meet the standards required under subsection 3(4) of the *Input Tax Credit Information (GST/HST) Regulations* (the Regulations).

Factual background

[3] It is undisputed that the appellant is a legal person duly incorporated and registered for the purposes of Part IX of the ETA. During the relevant periods, it operated a used car dealership, doing business as "Sport Auto Plex". Between December 2008 and March 2009, Sport Auto Plex conducted two isolated transactions, outside its usual activity, namely the purchase for resale of two lots of women's shoes—unusual for a car dealership. These two transactions and the related invoices are the subject of the present case.

[4] Stefano Pendenza (hereinafter Stefano) is the Chair and one of the shareholders of Sport Auto Plex. When he was 18, he worked with Pasqualino Cersosimo (hereinafter Pat) at Aldo, a shoe store. In August 2008, Pat went to Sport Auto Plex to purchase a car. The two men had not seen each other in a long time, so they talked at length and became reacquainted. Pat let Stefano know that he was in the business of importing and distributing shoes imported from China. Moreover, Pat purchased a car.

[5] Stefano explained that in the past he would purchase goods such as clothing or other items from a business with a liquidation warehouse on Chabanel Street. This business was Canada Inc. Stefano stated that the warehouse had been there for years. In December 2008, Stefano and Pat talked about the possibility of buying and distributing a large lot of women's shoes that Stefano had seen at the warehouse. The two of them went to the warehouse to examine the lot of shoes. Since Pat had experience in the shoe business, he wanted to be able to show his clients some samples, so Pat took photos of the shoes and showed them to potential clients. After testing the market in this manner, Stefano and Pat decided to purchase the lot of shoes. They negotiated with Albert Malka (Albert) and Sport Auto Plex purchased two lots of shoes. The first lot was sold from the warehouse directly to Nero Bianco, a well-known shoe store. Eventually, the second lot of shoes was delivered to the place of business of Sport Auto Plex in Bois-des-Filion. Since Stefano had very little experience in the shoe business, Pat was the one who found buyers because he had the expertise required. The shoes were sold or consigned to Pat's company, 9191-0299 Québec Inc. (hereinafter 9191). Then 9191 sold them to Nero Bianco and other bulk shoe purchasers and collected a 15% commission. All the shoes were eventually sold.

[6] The appellant submitted a book of documents to the Court as Exhibit A-1. The documents at Tab R-7 consist of two invoices issued by Canada Inc. to the appellant. Purchase invoice No. 4336 is dated December 22, 2008, for a total of \$78,466.19. Purchase invoice No. 4372 is dated February 11, 2009, and is for \$29,216.57. These two invoices are the subject of the present case.

[7] The documents at Tab R-8 consist of three cheques, Nos. 190, 191 and 217, with which the appellant allegedly paid for the shoes. Cheque No. 190 for \$39,233 is dated December 8, 2008; cheque No. 191 for \$39,233 is dated January 9, 2009, and cheque No. 217 for \$29,216.57 is dated February 9, 2009. These three cheques are all signed by Stefano, payable to Canada Inc., and state they are for "shoes" or invoice 4372.

[8] Tab R-9 includes an inventory of the shoes with the styles, colours, number of packages, number of pairs, prices and photos of the shoes. Tab R-10 includes the appellant's invoices issued to 9191. The purchase orders of various buyers are found at Tab R-11, and the delivery orders are at Tab R-12. The accounting documents establishing the GST collected on the resale and paid on purchases can be found at Tab R-13 and documents from Purolator courier indicating that the shoes were actually sent from the Sport Auto Plex warehouse to the purchasers are at Tab R-15.

[9] Stefano testified that he gave the Agence du revenu du Québec (the ARQ) all the documents he had in his possession to establish the fact he did indeed purchase and obtain the shoes and that he resold them. He paid GST and Quebec sales tax (QST) as indicated on the invoices at Tab R-7 of Exhibit A-1. He collected all the GST and QST due when the shoes were resold and remitted these taxes to the ARQ. He testified that he calculated the net tax properly and was eligible for the ITCs. Stefano said he had no knowledge that Canada Inc. provided invoices of convenience or was a tax offender. He tells us that the two invoices in question are not false invoices; they represent genuine transactions. He had been purchasing goods at the Chabanel Street warehouse for a long time. The company did no advertising, but it was a place people knew they could go to find bargains. It was a liquidation business.

[10] Stefano's testimony was not contradicted; in fact, Stefano was not cross-examined.

[11] Pat is an entrepreneur living in Terrebonne. He is the chair and director of 9191. He has always worked in the shoe business. His testimony supports Stefano's

regarding the way the two became reacquainted in August 2008. Around a month later, Stefano told him he might have a deal, namely a lot of shoes to sell. They went to see the shoes at the Chabanel Street warehouse. Pat thought it seemed like a good idea. Stefano and Pat met with Albert and he showed them the lot of shoes. Pat took photos of the shoes, which can be found at Tab R-9 of Exhibit A-1. He took photos to show the merchandise to his potential clients to determine whether they would be interested in purchasing the shoes. Then, Stefano and Pat decided to purchase the shoes. Nero Bianco made the first purchase of 1,000 pairs of shoes. This lot was sent from the Chabanel Street warehouse directly to the client. Once the second lot was transferred from the Chabanel Street warehouse to the Sport Auto Plex warehouse, Pat established an inventory of all the shoes, including photos, colours and styles of the shoes, so he could provide these to the potential buyers (see Exhibit A-1, Tab R-9). Pat was responsible for reselling the shoes. Once Pat found a buyer, Stefano would transfer the shoes to Pat who would then resell them to the potential buyers. This is why the invoices are in the name of Pat's company, 9191. Pat collected a 15% commission for this service.

[12] Liette Lavoie, Carole Girard and Lofti Rejeb are auditors for the ARQ. Their testimony is that Canada Inc. provided invoices of convenience and was a tax offender. They concluded that Canada Inc. had no commercial activity and therefore Canada Inc. did not genuinely provide the shoes to the appellant. They came to this conclusion for the following reasons, among others:

- a. Canada Inc. did business with a cheque-cashing centre rather than a bank. Moreover, the cheques in question were deposited at the cheque-cashing centre and then negotiated at a second cheque-cashing centre
- b. The address for Canada Inc. noted on the invoices in question is not a valid address; it does not exist.
- c. The address listed with the Quebec Enterprise Register is different than the one noted on the invoices.
- d. Canada Inc. used different addresses for different invoices.
- e. Canada Inc. had not produced any tax reports, income tax returns or payroll deduction reports since it began operating.
- f. Canada Inc. declared no employees.

- g. Canada Inc. had no transportation vehicle that would allow it to deliver merchandise. Moreover, Albert, the shareholder, director and chair of Canada Inc. did not own a car.
- h. Albert was the majority shareholder and chair of many companies whose tax numbers were retroactively cancelled due to fraudulent activity. He had also transferred his property in the past.
- i. Canada Inc. had an alleged business income of \$4,500,000. This business income is highly unlikely since Canada Inc. had neither the staff nor the equipment necessary to provide the goods and services it allegedly provided to its alleged clients.

It is therefore clear that Canada Inc. is a bogus company and a tax offender. Canada Inc. acts as a provider of invoices of convenience. It is also clear that Albert likely earned a living through means outside the tax law.

Appellant's position

[13] The appellant claims that according to the evidence on file, there is no doubt that the appellant truly purchased and received the two lots of shoes from Canada Inc. It is also undeniable that these shoes were all resold by Pat to shoe merchants. Moreover, all the information required by the ETA and the Regulations are in the documents at Exhibit A-1. At all times, the appellant acted in good faith and provided the Minister of National Revenue (the Minister) all the documentation he was asked to provide. The appellant had no knowledge that Canada Inc. was a provider of invoices of convenience or a tax offender. Stefano had been purchasing various goods from the liquidation warehouse for many years. The shoes were actually purchased, paid for, delivered and resold. The appellant paid the required GST and QST to Canada Inc. and it also collected these taxes from its clients and remitted them to the ARQ in accordance with the ETA. The appellant never claimed input tax credits to which it was not entitled and therefore the assessment should be vacated and the appeal allowed.

Respondent's position

[14] The respondent claims that Canada Inc. is a provider of invoices of convenience that does not conduct any commercial activity and, as a result, the appellant never acquired from Canada Inc. the goods for which it claimed the ITCs of

\$4,770 in the calculation of its net tax. If the appellant truly acquired these goods, it was from a supplier other than the one listed in the supporting documents for the period in question.

[15] Moreover, the respondent claims that two invoices allegedly established by Canada Inc. do not meet the requirements of subsection 169(4) of the ETA or of the Regulations. More specifically, the information is insufficient regarding the identity of the supplier, the validity of the supplier's address, the terms of payment and the description of the shoes acquired. Regarding the description of the shoes, the respondent claims that the brand, model, size and colour of each pair of shoes were not indicated on the invoices as required by the Regulations. It is the appellant's responsibility to obtain the information to establish the amount of the ITCs. The regulatory requirements are mandatory and must be strictly enforced.

[16] In addition, the respondent claims that the appellant showed a lack of care in dealing with Canada Inc. When a taxpayer conducts business with individuals or a corporate entity that is a tax offender, it is the taxpayer that deals with them that is responsible. It is the taxpayer's duty to conduct research for the purpose of ensuring that the suppliers are legitimate suppliers.

[17] The appellant did not meet its burden of refuting the presumptions on which the respondent based the assessment. The appellant therefore owes the Minister the amount of the assessment including interest and penalties.

Legislative provisions

[18] The relevant provisions regarding GST are section 169 of the ETA and section 3 of the Regulations:

Excise Tax Act

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:

...

169(4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed;

Input Tax Credit Information (GST/HST) Regulations

3. For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:

(a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than \$30,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business,

(ii) where an invoice is issued in respect of the supply or the supplies, the date of the invoice,

...

(iv) the total amount paid or payable for all of the supplies;

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$30 or more and less than \$150,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, and the registration number assigned under subsection 241(1) of the Act to the supplier or the intermediary, as the case may be,

...

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$150 or more,

(i) the information set out in paragraphs (a) and (b),

(ii) the recipient's name, the name under which the recipient does business or the name of the recipient's duly authorized agent or representative,

(iii) the terms of payment, and

(iv) a description of each supply sufficient to identify it.

Analysis

Appellant's commercial activities

[19] The respondent notes that the transactions in question were not conducted in the course of the appellant's commercial activity. The appellant operates a used car business. Buying and selling shoes is not related to the activities of this business whatsoever. This raises doubts as to the legitimacy of the transactions in question.

[20] I agree with counsel for the appellant, that although the purchase and resale of shoes is not the appellant's main activity, nothing in the Act prohibits a company from venturing into secondary activities on occasion or agreeing to a business opportunity that could generate an additional income. The fact that this venture was not consistent with the appellant's usual commercial activities is of little importance in this case and is not evidence that the invoices in question were invoices of convenience.

Address of Canada Inc.

[21] The respondent also claims that the address on the invoices in question is a non-existent address. Moreover, the fact the address on the invoices does not correspond to the address where Stefano and Pat allegedly went to see the shoes should have raised questions about the true identity of the supplier in question. The respondent claims that no evidence was submitted to show that the appellant verified the address of Canada Inc.

[22] The appellant claims that nowhere in the ETA does it state that the buyer must verify the accuracy of the supplier's address. Moreover, often the address of the warehouse is different from the head office or administrative offices of a company. Nothing prevents a company from having many facilities and warehouses. The fact the address on the invoices is different from the warehouse's address would simply not raise suspicions of malfeasance on the part of Canada Inc. The fact the address on the invoices is different from that of the warehouse is unimportant. In this case, Stefano and Pat dealt directly with Mr. Malka, the director of Canada Inc. They went to the Canada Inc. warehouse, the same warehouse from which Stefano was used to purchasing discount goods. Moreover, the GST and QST numbers of Canada Inc.

that appear on the invoices were valid at the time, and corresponded to the company. Therefore, it is difficult to imagine that the different address might have raised some concerns in the appellant regarding the true identity of the shoe supplier. Lastly, since Stefano, agent for the appellant, had visited the warehouse, had purchased and retrieved merchandise directly at the Canada Inc. warehouse on Chabanel Street, there was no reason to believe that the address on the invoice issued by Canada Inc. was a false address.

[23] I find that the difference in addresses is of little importance in this case.

Invoices of convenience

[24] The phenomenon of "invoices of convenience" is a strategy by which a taxpayer, the person being "accommodated", seeks the services of a "provider of invoices of convenience". This provider issues false invoices to the "accommodated" person for goods and services the provider did not provide and that the accommodated person did not receive. Invoices of convenience allow the accommodated person to claim ineligible ITCs in the net tax calculation.

[25] Having considered all the evidence on file, I find that the Minister is justified in concluding that Canada Inc. is a tax offender and is likely a provider of invoices of convenience. The issue is whether the invoices in question in the present case are invoices of convenience or if they represent actual transactions.

Imaginary or real shoes?

[26] I have already found that Canada Inc. was a tax offender and a provider of invoices of convenience. The respondent claims that the appellant did not truly receive the shoes. Given that Canada Inc. is in fact a questionable supplier, in the present circumstances, it is the appellant's responsibility to convince me that it truly did receive the lots of shoes and that the invoices in question are not invoices of convenience.

[27] Although there were a few contradictions between Pat's and Stefano's testimony, these contradictions are not surprising considering they were testifying about events that had taken place four years earlier. At any rate, these contradictions are of little significance. The evidence provided by Stefano and Pat convince me that the appellant truly did receive the two lots of women's shoes. The documents that were submitted to the Court as Exhibit A-1 in support of Stefano's and Pat's testimony are even more convincing. The photos at Tab 11, Exhibit A-1, taken

during the visit to the Chabanel Street warehouse in Montréal are convincing evidence. I accept that the shoes were resold and the delivery slips from Purolator indicate that the shoes were delivered to various shoe stores. These documents clearly show that the shoes were obtained and resold to companies that were very well known in the shoe business, such as Nero Bianca.

Is Canada Inc. the supplier of the shoes?

[28] The respondent claims that if the appellant truly did obtain the shoes and resold them, the appellant did not get them from Canada Inc. The respondent claims that Canada Inc. did not have the capacity to provide lots of shoes to the appellant because Canada Inc. did not have any commercial activity to the ARQ's knowledge. Therefore, the respondent claims that the appellant received the shoes from another supplier. This logic is not necessarily valid.

[29] Stefano was not contradicted or cross-examined and so his testimony along with Pat's was the only evidence regarding the origin of the shoes. Although the respondent's arguments warrant a presumption of validity, they are merely hypotheses and testimonial evidence that is not rejected takes precedence over a hypothesis. There is no evidence that the shoes came from any supplier other than Canada Inc. If this evidence existed, it was not submitted. It must be noted that the respondent's witnesses did not go to the Chabanel Street warehouse to verify whether there was actually a warehouse there.

[30] I come to the conclusion that there is no evidence that Canada Inc. was not the supplier of the shoes. In fact, the invoices and the testimonial evidence show that Canada Inc. was the supplier of the shoes; the purchase of the lot of shoes supports it, the cheques as consideration show it, the resales highlight it.

Sufficient information to establish the ITCs

[31] The respondent claims that the two invoices allegedly established by Canada Inc. do not meet the requirements under subsection 169(4) of the ETA and section 3 of the Regulations. More specifically, there is insufficient information regarding the supplier's identity, the validity of the supplier's address, the conditions of payment and the description of the supplies acquired. It is the appellant's responsibility to obtain sufficient information to establish the amount of the ITCs. The regulatory requirements are mandatory and must be strictly enforced.

[32] It is clear that the information required should be sufficient to establish the amount of the ITCs; no more and no less. If a registrant provides sufficient information to allow the ITCs to be calculated, he is not then required to provide more simply because the Minister asks for it. I also feel that the information and supporting documentation under section 3 of the Regulations may include more than just the invoices from a transaction. Although the invoices are very important supporting documentation, I do not feel that it is mandatory for all the required information to appear on the invoices. All the relevant documents in a registrant's possession, including invoices if that is the case, can provide the necessary information.

[33] The ETA and the Regulations have clear lists regarding the information to provide when claiming ITCs. Subsection 169(4) of the ETA states that the registrant may only claim ITCs if the information in the Regulations is provided. Section 3 of the Regulations clearly states that the information must include:

- a. the name of the supplier or name under which the supplier does business,
- b. the registration number assigned to the supplier,
- c. where an invoice is issued, the date of the invoice,
- d. the amount paid or payable for all of the supplies,
- e. the total tax paid in respect to the invoice,
- f. the name of the recipient,
- g. the terms of payment,
- h. a description of each supply sufficient to identify it.

[34] In *Key Property Management Corp. v. Canada*, 2004 TCC 210, [2004] G.S.T.C. 32, Bowie J. ruled that the purpose of subsection 169(4) of the ETA and section 3 of the Regulations is to protect the tax authorities against both fraudulent and innocent incursions. They can succeed in this purpose only if the requirements are considered mandatory and are strictly enforced. Campbell J. agreed with this position in *Davis v. Canada*, 2004 TCC 662, [2004] G.S.T.C. 134. She ruled that it is not possible to sidestep the provisions because they are "clearly mandatory". In *Les Pro-Poseurs Inc. v. The Queen*, 2011 TCC 113, affirmed by the Federal Court of Appeal, 2012 FCA 200 (CanLII), Bédard J. reiterated this argument.

[35] In the present case, did the supporting documents provided by the appellant contain enough information to establish the amounts of the ITCs?

[36] In this case, the invoices issued by Canada Inc. (Exhibit A-1, Tab R-7) give the name of the supplier, 6809821 Canada Inc. The registration number assigned to the supplier, 853436954RT0001, is indicated on the invoices. This number, attributed to Canada Inc., was valid at the time of the transactions. The date of the transactions, December 22, 2008, for invoice No. 4336 for \$78,466.19 and February 11 for invoice No. 4372 for \$29,216.57 are clearly indicated on the invoices. The cost of the shoes is indicated on the invoices. The amount of GST owing for each lot of shoes is clearly indicated. The name of the recipient, 9188-7646 Québec Inc., appears on the invoices. The three cheques themselves (Exhibit A-1, Tab R-8) indicate the terms of payment.

[37] Does the documentary evidence provide a description of each supply to sufficient to identify it? Invoice No. 4336 describes one lot of "7500 Ladies Shoes" at the unit price of \$9 and one lot of "336 Ladies Shoes" at the unit price of \$6. Invoice No. 4372 describes one lot of "4314 Ladies Shoes" at the unit price of \$6. The appellant claims that the description "one lot of ladies shoes" with the quantity and unit price of the shoes is sufficient to identify each invoice and establish the amount of the ITCs. However, the respondent claims that the brand, model, size and colour of each pair of shoes were not indicated on the invoices as required by the Regulations.

[38] I cannot agree with the respondent's argument on this. First, as I already noted, the information required may be established with supporting documents the registrant has other than invoices. Second, when we purchase something in a lot, it is not reasonable to ask for a detailed description of each item in the lot, especially when they are all similar and there are thousands of items. Moreover, the inventory at Tab R-9 of Exhibit A-1 including photos of the shoes gives us ample information and is a sufficient description for at least the second lot of shoes.

[39] The case law establishes what a sufficient description is for each supply. Supplies are services or goods. Bédard J., in *Les Pro-Poseurs Inc.*, *supra*, provides an example of a "sufficient description" to identify the supply of services such as in a case of construction work carried out:

[46] ... I am of the view that a description is sufficient if it allows the CRA to identify the work carried out by the suppliers. In my opinion, the invoices filed in

evidence by the appellants cannot meet the condition provided for in subparagraph 3(c)(iv) of the Regulations unless they include at least the following information:

(i) ...

(ii) The nature of the supply. In the case at bar, if we rely on the testimonies of Mr. Séguin and of those who testified in support of the appellants' position, almost all of the services rendered by the dubious subcontractors involved with the installation of drywall or the filling of joints. As a result, each of the invoices filed in evidence by the appellants should indicate, where appropriate, whether the dubious supplier installed drywall or whether it filled joints. In my view, each invoice should also indicate the number of square feet of drywall installed or installed with joint-filling compounds, as appropriate.

[40] In *Bijouterie Almar Inc. v. The Queen*, 2010 TCC 618 (CanLII), Lucie Lamarre J. explains the meaning of "sufficient description" when dealing with the supply of goods:

[71] The invoices...provide the general description "assorted gold jewellery". The Regulations state that the description must be sufficient to identify each supply. The Minister indicated in his assumptions that the description was not sufficient in that it contained neither the quantity or quality of jewellery supplied nor the consideration required for each item.

...

[75] The Regulations require a description of each supply sufficient to identify it. The respondent argued that to meet this requirement the invoice must show the quantity and quality of the jewellery supplied and the consideration for each item. The respondent did not, however, explain the basis for the requirements so identified by her.

[76] ... So the question that must be answered is the following: what is the meaning of the requirement in the Regulations that the information in the supporting documentation must include a description of each supply sufficient to identify it? The Regulations make no mention of the requirements that must be met according to the respondent. They speak of a description of each supply sufficient to identify it. What is the meaning of "each supply"? In the present case, can it be said that each item of jewellery is a supply, or is it each lot of jewellery that constitutes a supply? In the former case, the supporting documentation would be insufficient; in the latter, it might be sufficient. The parties did not place any emphasis on this point.

[77] In view of the scanty evidence presented to me in this regard and the rather vague terms used in the Regulations, and given my conclusion that the respondent

has not established the existence of accommodation invoices, I consider the invoices submitted to be in conformity with the Regulations. If, in the respondent's view, standard business practice in the industry does not meet the requirements of the Regulations, it is incumbent on the respondent to demonstrate more clearly that the requirements stated by her are those laid down in the Regulations. In the present case, my opinion is that the appellant has shown on the balance of probabilities that the invoices submitted do meet the requirements of section 3 of the Regulations.

[41] I agree with Lamarre J. If the expression "assorted gold jewellery" is a sufficient description to identify each supply, then the expression "7500 Ladies Shoes" is an equally sufficient description. Therefore, I find that the supporting documentation provided by the appellant gives a description sufficient to identify each supply and allow for the amount of the ITCs to be established.

Who is at risk—the buyer or the tax authorities?

[42] In this case, Stefano's testimony indicates that he did not know Canada Inc. issued invoices of convenience and that the company was the target of an ARQ investigation. There is no evidence of knowledge, conspiracy, collusion or fraud on the part of appellant.

[43] The appellant does not dispute that the law requires anyone who has paid GST amounts to a supplier must ensure that valid registration numbers are provided for the suppliers when they claim ITCs. The appellant claimed an ITC. The appellant states that at the time it dealt with Canada Inc. and at the time it claimed the ITC, Canada Inc.'s registration numbers were valid. The appellant claims that it is not responsible for the economic burden that results when a supplier is a tax offender and the appellant is unaware of this. The appellant claims that it always acted in good faith and conducted its due diligence.

[44] The appellant relies on *Joseph Ribkoff Inc. v. The Queen*, 2003 TCC 397, [2003] G.S.T.C. 162. In that case, it was determined that actual services had been rendered; that the appellant had paid taxes in good faith and that it was not the appellant's responsibility to bear the supplier's fraud. It is not the person who paid the GST for an invoice that is responsible for the fact the GST was not then remitted by the supplier, even when the supplier is not entirely reliable.

[45] However, the current case law seems to indicate that the flexibility granted to a registrant by *Ribkoff, supra*, likely no longer applies.

[46] A very informative example of this is provided by Boyle J. in *Comtronic Computer Inc. v. Canada*, 2010 TCC 55, [2010] G.S.T.C. 13. Boyle J. noted the following facts at paragraph 5:

[5] It has been determined that the invoices issued by five suppliers to Comtronic showed GST registration numbers that, while validly issued and current registration numbers, had been issued to persons other than the suppliers. This appears to be a case of wrongdoing on the suppliers' part. There has been no suggestion that Comtronic was complicit or aware in any way of any supplier wrongdoing. It is agreed that Comtronic paid for these supplies together with GST and received them. Apparently the GST collected from Comtronic was never remitted by the suppliers. It is noted that by operation of law, the GST paid by Comtronic and received by the suppliers was received by the suppliers as the Crown's agent.

[47] Boyle J. wondered whether it was the Canadian buyer or the Canadian government that bears the risk related to illicit acts carried out by the supplier in such circumstances. He comes to the conclusion that it is the Canadian buyer that must bear the risk. Boyle J. made note of this, as did Archambault J. at first instance in *Systematix Technology Consultants Inc. v. The Queen*, 2006 TCC 227, affirmed by the Federal Court of Appeal, 2007 FCA 226 (CanLII), at paragraphs 29 and 30 of *Comtronic, supra*:

[29] In this case I am bound to follow the Federal Court of Appeal's decision in *Systematix*. I should note, however, that (as noted by Archambault J. of this Court in deciding the *Systematix* case at first instance) this strict approach can result in unfairness to a purchaser who pays the GST in good faith. It leaves Canadian businesses bearing the risk of fraud, identity theft, and wrongdoing and effectively requires them to put into place risk management practices in dealing with new and continuing suppliers to identify supplier information that may require further investigation. A result such as this may prove harsh and unfair but it is open to Parliament to legislate such a regime and I am bound to apply that legislation as it has already been interpreted by the Federal Court of Appeal.

[30] Whether it is the purchaser or the fisc that should bear the risk of supplier identity theft and wrongdoing in GST collection and remittance matters is a valid policy question to be debated. However, in circumstances such as those before me, the Federal Court of Appeal has ruled that Parliament has already turned its mind to this question. The Tax Court cannot reopen the question.

[48] Boyle J. specifically notes, at paragraph 33, that the approach in *Ribkoff, supra*, could no longer apply since the Federal Court of Appeal decision in *Systematix, supra*:

[33] With respect to both of the appellant's arguments, I am unable to see how the broad wording of the relevant provisions and the interpretation thereof by the Federal Court of Appeal that the wording is mandatory and should be strictly enforced, and which requires that the ITC claimant have the registration number assigned to the supplier, should result in any different outcome in this case. Similarly, while Archambault J. at trial in *Systematix* did distinguish *Ribkoff* and the Federal Court of Appeal found no error on the part of the trial judge, I cannot discern how this Court's approach in *Ribkoff* and other earlier cases survive the Federal Court of Appeal's decision in *Systematix*.

[49] In the present case, the respondent claims that the testimony of the witnesses for the appellant indicates that no evidence was submitted to show that the appellant verified the tax numbers of Canada Inc. and the respondent therefore argues that the appellant must bear the consequences of not inquiring into the legality of the supplier's business, regardless of whether or not it acted in good faith.

[50] The appellant claims that it always acted in good faith and with due diligence in all circumstances. There is no evidence of knowledge, conspiracy, collusion or fraud on the part of the appellant. The appellant had no knowledge that Canada Inc. was the subject of an investigation by the Minister or that Canada Inc. was a tax offender or that Canada Inc. was a provider of invoices of convenience. The appellant states that it had no reason to think that Canada Inc. was a malicious supplier. The appellant claims that once it acted in good faith and showed due diligence it cannot be held responsible for the misconduct of its supplier. The appellant met the requirements regarding ITC claims, and the Minister cannot place more on its shoulders. The appellant claims that imposing the responsibility on the buyer of ensuring the supplier is not a fraudster is inconsistent with the legal requirements. Only the Minister can know whether a registered supplier is an offender.

[51] The strict approach outlined by *Systematix* and *Comtronic, supra*, is not absolute. It requires businesses to implement risk management measures in their relations with suppliers and to determine what information provided by the suppliers might require more thorough research.

[52] Batiot D.J. provides an example in *9183-2899 Québec Inc. v. The Queen*, 2013 TCC 8 (heard on October 4, 2012, decision dated January 11, 2013), a case similar to the present case. The appellant had done business with a tax offender whose registration numbers were valid at the time of the transactions. Despite the fact the supplier was a provider of invoices of convenience, the appellant did indeed receive

and pay for the supplies and paid the required tax. The supplier did not remit the tax to the Minister. Batiot D.J. accepted that the appellant did indeed receive the supplies and had no evidence of knowledge, conspiracy or collusion on the part of the appellant. The appellant relied on the fact the registration numbers of the questionable supplier were valid. Batiot D.J. allowed the appeal, finding that the appellant conducted the due diligence that was required and reasonable to avoid committing the error that the respondent attributed to it.

[53] In this case, there is nothing in the circumstances as known by the appellant that would require it to conduct further research into Canada Inc. Its registration number was valid at the time. Stefano, agent for the appellant, often purchased goods at the liquidation warehouse on Chabanel Street. Stefano and Pat went to the warehouse in person and verified the existence of the lots of shoes. They negotiated the purchase of the lots of shoes with Albert, the shareholder and director of Canada Inc. The appellant truly acquired the lots of shoes from Canada Inc. The appellant paid for the shoes and paid the required tax to Canada Inc. The registration numbers on the invoices were valid at the time and the appellant had no reason to believe they were not. The appellant resold the shoes, collected the required GST and remitted this tax to the ARQ as it was required to. The respondent was the only one to know whether Canada Inc. was involved in illegal commercial activity and the only one able to verify whether this supplier was an offender. The appellant had no reason to believe that Canada Inc. was a provider of invoices of convenience or a tax offender. Since Canada Inc.'s GST number was valid, the amounts the appellant paid to the company are input that can be claimed against its remittances to the ARQ. In this case, and in the absence of knowledge, conspiracy, collusion, fraud or negligence on the part of the appellant, it could legitimately believe, as a reasonable, diligent and informed person in its field of activities, that the author of the invoices it produced in support of its claim was the true supplier of the shoes. Moreover, the appellant had no reason to believe that the supplier would not remit the GST it collected from the appellant for these invoices to the ARQ.

Conclusion

[54] The appellant met its burden of proof to demolish the respondent's assumptions: *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336 (S.C.C.).

[55] For these reasons, the appeal is allowed with costs.

Signed at Montréal, Quebec, this 21st day of March 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 3rd day of May 2013.
Elizabeth Tan, translator

CITATION: 2013 TCC 85

COURT FILE NO.: 2012-1720(GST)I

STYLE OF CAUSE: 9188-7646 QUÉBEC INC. v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 26, 2012

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse,
Deputy Judge

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