Docket: 2017-4072(GST)G

BETWEEN:

9267-9075 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 12 and 13, 2019, at Montreal, Quebec

Before: The Honourable Justice Johanne D'Auray

Appearances:

Counsel for the appellant:	Julie Gaudreault-Martel
Counsel for the respondent:	Michel Rossignol

JUDGMENT

The appeal against the reassessment made under the *Excise Tax Act* (ETA), notice of which is dated August 12, 2016, for the period from March 1, 2013, to February 28, 2014, is quashed as no notice of objection was filed by the appellant against this assessment.

The appeal against the reassessment made under the ETA, notice of which is dated August 12, 2016, for the period from March 1, 2014, to February 28, 2015, is dismissed as the appellant has not met the conditions set out in sections 231 and 232 and subsection 225(1) of the ETA.

Costs are awarded in favour of the respondent.

Signed at Ottawa, Canada, this 16th day of July 2020.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 27th day of August 2021.
François Brunet, Revisor

Citation: 2020 TCC 53
Date: 20200716
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BETWEEN:

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REASONS FOR JUDGMENT

D'Auray J.

[1] At the hearing, the appellant withdrew its appeal with respect to the reassessment dated August 12, 2016, for the period from March 1, 2013, to February 28, 2014. I consequently will address only the appeal concerning the reassessment dated August 12, 2016, for the period from March 1, 2014, to February 28, 2015.

I. Facts

[2] Alain Desmeules is a director and principal shareholder of the company 9031-1671 Québec inc. (Pretech). This company operates in the construction sector, notably in the alignment of foundations through the installation of piles.

[3] 9211-1632 Québec inc. is a management company, of which Mr. Desmeules is also a director and shareholder.

[4] The company Roger Bisson inc. (Bisson) also operates in the construction sector, notably in the alignment of foundations through the installation of piles. Pretech and Bisson decided to pool their expertise and form a consortium.

[5] The company 9210-6905 Québec inc. was incorporated for this purpose on June 10, 2009, and operates under the name Consortium Bisson-Pretech (9210). The

company holding shares in 9210 is 9211-1632 Québec inc., the management company of Messrs. Desmeules and Bisson.

[6] On August 27, 2012, the appellant company, 9267-9075 Québec inc. (9267), was incorporated. Mr. Desmeules is the president and shareholder of 9267.

[7] 9267 operates in the area of patent protection and exploitation as well as intellectual property commercialization. 9267 is required to file an annual goods and services tax (GST) return, and its fiscal year ends on February 28.

[8] Mr. Desmeules is a civil engineer. He owns patents, trade-marks and domain names. Mr. Desmeules places the value of these assets at $700,000.

[9] On September 25, 2012, Mr. Desmeules sold to 9267 the patents, trade-marks and domain names he owned. Mr. Desmeules rolled over his assets in this regard in accordance with section 85 of the *Income Tax Act* (ITA) in exchange for 700,000 shares of 9267 valued at $700,000.

[10] Under a contract entitled [TRANSLATION] "Contract for the Sale and Purchase of Domain Name Assets" (sales contract), on September 26, 2012, 9267 sold only the domain names to 9210 for $500,000 plus taxes (GST of $25,000 and QST of $49, 498.75), ie. a total of $574,498.75. The contract closing date was September 26, 2012.[1]

[11] On September 26, 2012, 9267 and 9210 entered into a second contract entitled [TRANSLATION] "Contract for Licence to Use and Develop Intellectual Property" (licence contract). Under this licence contract, 9210 agreed to pay royalties to 9267 for the use of intellectual property owned by 9267. This contract included a termination clause empowering 9267 to terminate the contract at any time subject to appropriate notice if 9210 initiated proceedings under any form of insolvency or bankruptcy legislation.

[12] In 2013, 9210 paid $25,000 to 9267 for the domain names (six monthly payments of $4,166.67). The GST totalled $1,087.20 (six monthly payments of $181.20).

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[1] Respondent's book of exhibits, I-1, Tab 6.

[13] At September 2013, the balance payable by 9210 to 9267 for the purchase of the domain names was therefore $549,874.98. The balance payable at September 2013 in relation to the GST was $23,912.81.

[14] Mr. Desmeules testified that in 2013, 9210 experienced serious financial hardship because a major foundation repair project in Trois-Rivières was cancelled. 9210 was no longer able to pay its creditors.

[15] Mr. Desmeules testified that in view of 9210's financial problems, Mr. Bisson withdrew from the operation of 9210 and sold him the shares he held in 9210 for one dollar. Accordingly, the name Roger Bisson inc. no longer appeared in 9210's share register as of June 21, 2013. Mr. Desmeules consequently became the sole shareholder of 9210.

[16] On July 5, 2013, a trust was created by the de Santis family. The de Santis family trust became the principal shareholder of 9267. Mr. Desmeules' spouse, Brooke de Santis, was the beneficiary of the trust.

[17] During testimony, Mr. Desmeules indicated that the purpose of establishing the trust and transferring ownership of shares of 9267 to the de Santis family trust was to protect the intellectual property owned by 9267.

[18] The financial problems of 9210 led the financial institution to require additional guarantees. In the fall of 2013, the financial institution required that 9210 be managed by a trustee. Management of 9210 was consequently mandated to Stéphane De Broux of Richter Advisory Group Inc.

[19] On March 24, 2014, 9210 filed a proposal under the *Bankruptcy and Insolvency Act* (BIA). The proposal process was completed in September 2014. As of 2014, $549,875 relating to the sale of the domain names to 9210 was still listed on 9267's balance sheet under accounts receivable.

[20] 9267's GST returns[2] were not submitted on time. Mr. Desmeules explained that he had had to look after 9210's dealings first. Mr. Desmeules testified that in

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[2] In Quebec, tax returns include the GST and QST. However, insofar as this Court's jurisdiction is limited to the GST, I decided to refer, for the purposes of these reasons, to [TRANSLATION] "the GST return."

2016, as soon as he saw a glimmer of hope, he asked his accountant, Mr. Kakkar, CPA, to look after 9267's accounting and tax affairs.

[21] M. Kakkar testified that 9267 was unable to collect from 9210 the balance of $549,874.98 related to the sale of the domain names because 9210 had filed a proposal under the BIA. According to Mr. Kakkar, this debt had become uncollectible for 9267, since it was impossible for all creditors to be paid under the proposal.

[22] Mr. Kakkar determined that the bad debt had been incurred during the period between March 1, 2014, and February 28, 2015. Accordingly, he recorded the bad debt in 9267's financial statements ended February 28, 2015.[3]

[23] Mr. Kakkar prepared two GST returns for 9267 in 2016.

[24] The first GST return for 9267 is dated March 29, 2016, and covers the period from August 27, 2012, to February 28, 2013. This return reflects the sale of the domain names by 9267 to 9210 conducted on September 26, 2012, for $500,000. According to this return, 9267 had to submit to the Receiver General $26,581.87 in GST, $23,912.81 of which related to the domain names.[4]

[25] The second GST return is also dated March 29, 2016, and covers the period from March 1, 2014, to February 28, 2015. In this return, 9267 requested input tax credits (ITCs)/GST adjustments of $23,912.81. Mr. Kakkar explained that 9267 never received $500,000 from 9210 for the sale of its domain names. In actuality, 9210 paid to 9267 only a total of $25,000 including $1,087.20 in GST.

[26] Mr. Kakkar explained that since the debt had become uncollectible, the purpose of 9267's second GST return was to adjust the GST to reflect the fact that it had not received the amount of $500,000. As a result, 9267 was seeking a refund of $23,912.81.

[27] The ministre du Revenu du Québec, on behalf of the Minister of National Revenue (Minister), accepted the first GST return indicating that 9267 had to pay

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3 Respondent's book of exhibits, I-2, Tab 11.

4 $23,912.81 = $25,000 (GST on consideration of $500,000) – $1,087.20 (GST amount already remitted by 9267).

$23,912.81 in GST on the sale of the domain names for $500,000. This assessment is not at issue.

[28] However, the Minister refused to adjust the GST in accordance with the second GST return submitted by 9267. According to the Minister, the provision governing bad debts, namely section 231 of the ETA, did not apply in the circumstances, nor did subsection 232(2) of the ETA.

II. Positions of the parties

[29] The respondent argues that subsection 231(1) and section 232 do not apply to this case in the light of the facts already established in evidence:

> The contract between 9267 and 9210 for the sale of the domain names was signed on September 26, 2012. The contract provisions include the following:
>
> - 9267 sells to 9210 the domain names pretech qc.ca, pretech.ca, pretech.us, pretech.com, bissonpretech.com, consortiumpretech.com, consortium pretechbisson.com and pretechbisson.com for $500,000.
>
> - The assets are transferred to the purchaser, 9210, at the closing date, September 26, 2012. This contract comes into force at the date of its signing, also September 26, 2012.
>
> - Clause 2.02 of the contract provides that at the contract closing, purchaser 9210 shall pay to seller 9267 $78,875 in payment of the applicable taxes (GST and QST). The closing date is defined in clause 8.08 of the contract as September 26, 2012. The contract consequently provides that 9210 shall pay the entire GST amount on September 26, 2012.
>
> - Clause 7.01 of the contract also provides that purchaser 9210 shall pay to 9267 any taxes (GST and QST) due on the purchase price on September 26, 2012.
>
> - The contract provides that in the event of default on payment on the part of purchaser 9210, seller 9267 shall provide written notice to 9210 to make the payment owed.
>
> - Clause 10.01 of the contract stipulates [TRANSLATION] "that to guarantee the sale price and its other obligations hereunder,

> purchaser 9210 grants to seller 9267 a first-ranking universal movable hypothec on all assets sold and transferred."

[30] The respondent submits that no documents or explanations were produced as evidence by 9267 to explain why the contract clauses concerning payment of the GST were not followed. According to the contract, the GST was to have been paid on September 26, 2012.

[31] The respondent submits further that 9267 has not explained why, upon default of payment in 2013, written notice was not given by 9267 to 9210 as provided in the contract. Additionally, the evidence has not shown why no hypothecary right was exercised by 9267 against 9210 as provided in the contract, particularly since 9210 did not file its proposal under the BIA until March 2014. Although 9210 did make certain payments, they were not made in compliance with the sales contract.

[32] Moreover, the list of 9210's guaranteed and non-guaranteed creditors drawn up by the trust subsequent to the proposal under the BIA does not include the debt in the amount of $549,874.98 in favour of 9267. The sole debt in favour of 9267 indicated by the trustee on the list of creditors is the amount of $8,613.71. Mr. Desmeules testified that the trustee refused to include the debt to 9267 in the proposal. That being said, the evidence does not show why the trustee refused to do so, and he did not testify.

[33] In addition, the debt of $549,874.98 to 9267 is not listed in 9210's balance sheet drawn up by the trustee. However, Mr. Desmeules certified upon signing the balance sheet and lists appended to the financial statements prepared by the trustee that these documents were, to his knowledge, a complete and true reflection of 9210's position at June 16, 2014.[5]

[34] On July 17, 2014, the Superior Court of Québec authorized the sale of 9210's assets to 9306-4897 Québec inc. The latter is a corporation whose principal shareholder is Brooke de Santis, Mr. Desmeules' spouse. The domain names were purchased by 9306-4897 Québec inc. for $5,000. They had been sold to 9210 for $500,000 in September 2012.[6]

[35] The respondent has shown that 9267's GST returns were filed late. The GST return for its fiscal year ended February 28, 2013, was supposed to be filed by 9267

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5 Respondent's book of exhibits, I-1, Tab 9, at p. 144.

6 Respondent's book of exhibits, I-2, Tab 17.

by May 31, 2013. Said return was filed by 9267 in March 2016. With respect to its year ended February 28, 2015, 9267's GST return for the period from March 1, 2014, to February 28, 2015, had to be filed by 9267 by May 31, 2015. The return was filed in March 2016.

[36] Mr. Desmeules testified that after the trustee was appointed to manage 9210, his priority was to work with the trustee to get 9210 back on the rails. As a result, 9267's GST returns and financial statements were not prepared on time. These documents were prepared by Mr. Kakkar upon request from Mr. Desmeules when 9210's operations took a turn for the better.

[37] The period at issue is reflected in the second GST return dated March 29, 2016, covering the period from March 1, 2014, to February 28, 2015. In this return, 9267 applied for ITCs/adjustments in the amount of $23,912.81.

[38] 9267 submits that contrary to what is stipulated in the sales contract between 9267 and 9210, 9267 never received the sale price of $500,000 for the sale of the domain names to 9210. 9267 submits in this regard that the balance owing became uncollectible. As a result, section 231 of the ETA permitting a reduction of the net tax when a supply has become a bad debt applies. In the alternative, 9267 argues that section 232 of the ETA permits it to reduce its net tax when a consideration is reduced. In this case, the consideration for the domain names was reduced from $500,000 to $25,000. The GST payable must therefore be adjusted to reflect the decrease in the sale price. 9267 argues further that subsection 225(1) of the ETA allows it to adjust the net tax to reflect the actual transaction, that is, consideration of $25,000 for the domain names rather than consideration of $500,000. The GST is therefore to be calculated on the actual transaction.

III. Analysis

Does subsection 231(1) addressing bad debt apply to the facts of this case?

[39] Subsection 231(1) of the ETA provides as follows:

> Bad debt — deduction from net tax
>
> **231 (1)** If a supplier has made a taxable supply (other than a zero-rated supply) for consideration to a recipient with whom the supplier was dealing at arm's length, it is established that all or a part of the total of the consideration and tax payable in respect of the supply has become a bad debt and the supplier at any time writes off the bad debt in the supplier's books of account, the reporting entity for the supply

may, in determining the reporting entity's net tax for the reporting period that includes that time or for a subsequent reporting period, deduct the amount determined by the formula

$$A \times B/C$$

where

A

is the tax in respect of the supply;

B

is the total of the consideration, tax and applicable provincial tax remaining unpaid in respect of the supply that was written off at that time as a bad debt; and

C

is the total of the consideration, tax and applicable provincial tax in respect of the supply.

Reporting and remittance conditions

(1.1) A reporting entity is not entitled to deduct an amount under subsection (1) in respect of a supply unless

(a) the tax collectible in respect of the supply is included in determining the amount of net tax reported in the reporting entity's return under this Division for the reporting period in which the tax became collectible; and

(b) all net tax remittable, if any, as reported in that return is remitted.

[Emphasis added.]

[40] Under paragraph 231(1.1)(b) of the ETA, one of the conditions for the application of subsection 231(1) is that all net tax remittable, if any, as reported in that GST return is remitted.

[41] In *Ministic Air Ltd.*,[7] Justice Bowie wrote at paragraph 17 of his decision that the applicant for a refund concerning a bad debt under subsection 231(1) of the ETA must show that the GST was remitted in respect of the taxable supply:

> Subsection 231(1) also requires the applicant for a refund to show that the supply in respect of which the debt was incurred was a taxable supply, and the GST was in fact reported and remitted in respect of each invoice for which the refund is claimed.
>
> However, the claim was made in the return for the month of March, at which time the GST on those supplies, or at least a large part of them, remained unpaid.

[Emphasis added.]

[42] The evidence shows that 9267 did not pay the GST in respect of the taxable supply, namely the sale of its domain names to 9210, upon filing its return. As a result, subsection 231(1) of the ETA does not apply in the present case, as the condition in paragraph 231(1.1)(a) is not met. Since this condition was not met, 9267 may not take advantage of this provision.

[43] However, although I have already decided that subsection 231(1) of the ETA does not apply in this case, I am also of the view, as submitted by the respondent, that 9267 has not shown that it made every possible effort to collect the balance owing. As a result, it has not met another of the conditions for the application of subsection 231(1) of the ETA. For example, 9267 did not use the means available under the sales contract for collecting the debt. It did not exercise the hypothecary right available to it as stipulated in the contract. This right could have been exercised before 9210 filed a proposal under the BIA. What is more, 9210's debt to 9267 is not reflected in the proposal documentation prepared by the trustee, although Mr. Desmeules confirmed that all of 9210's debts were listed in it. Without testimony from the trustee, it is difficult to understand why the debt concerning the domain names is not listed in the documents prepared by the latter.

Does section 232 of the ETA apply given the facts of this case?

[44] In the alternative, 9267 also argues that in the circumstances, section 232 of the ETA applies, which provides as follows:

> Refund or adjustment of tax

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[7] *Ministic Air Ltd. v. The Queen*, 2008 TCC 296.

Adjustment

(2) Where a particular person has charged to, or collected from, another person tax under Division II calculated on the consideration or a part thereof for a supply and, for any reason, the consideration or part is subsequently reduced, the particular person may, in or within four years after the end of the reporting period of the particular person in which the consideration was so reduced,

(a) where tax calculated on the consideration or part was charged but not collected, adjust the amount of tax charged by subtracting the portion of the tax that was calculated on the amount by which the consideration or part was so reduced; and

(b) where the tax calculated on the consideration or part was collected, refund or credit to that other person the portion of the tax that was calculated on the amount by which the consideration or part was so reduced.

Credit or debit notes

(3) Where a particular person adjusts, refunds or credits an amount in favour of, or to, another person in accordance with subsection (1) or (2), the following rules apply:

(a) the particular person shall, within a reasonable time, issue to the other person a credit note, containing prescribed information, for the amount of the adjustment, refund or credit, unless the other person issues a debit note, containing prescribed information, for the amount;

(b) the amount may be deducted in determining the net tax of the particular person for the reporting period of the particular person in which the credit note is issued to the other person or the debit note is received by the particular person, to the extent that the amount has been included in determining the net tax for the reporting period or a preceding reporting period of the particular person;

(c) the amount shall be added in determining the net tax of the other person for the reporting period of the other person in which the debit note is issued to the particular person or the credit note is received by the other person, to the extent that the amount has been included in determining an input tax credit claimed by the other person in a return filed for a preceding reporting period of the other person; and

(d) if all or part of the amount has been included in determining a rebate under Division VI paid to, or applied to a liability of, the other person before the particular day on which the credit note is received, or the debit note is issued, by the other person and the rebate so paid or applied exceeds the

> rebate to which the other person would have been entitled if the amount adjusted, refunded or credited by the particular person had never been charged to or collected from the other person, the other person shall pay to the Receiver General under section 264 the excess as if it were an excess amount of that rebate paid to the other person
>
> > (i) if the other person is a registrant, on the day on or before which the other person's return for the reporting period that includes the particular day is required to be filed, and
> >
> > (ii) in any other case, on the last day of the calendar month immediately following the calendar month that includes the particular day.

[Emphasis added.]

[45] Section 232 of the ETA allows a supplier of goods or services, at its option, to adjust a tax in favour of a purchaser, to refund it to the purchaser or to issue the purchaser a credit note if the amount exceeds the rebate to which the supplier would have been entitled or if the consideration is reduced in whole or in part for any reason. In that case, under subsection 232(3), adjustments are to be made to the calculation of the net tax for each party. For example, if the price is reduced, the seller has collected and remitted excess taxes and may consequently reduce its net tax in relation to the excess ITCs remitted, while the purchaser has to increase its net tax because it claimed excess ITCs.

[46] According to 9267, the sales contract for the domain names was terminated upon 9210's proposal under the BIA. 9267 argues that as a result of this termination, the consideration receivable for the domain names decreased from $500,000 to $21,743. If the taxes are added, the consideration receivable decreases from $574,875 to $25,000.

[47] I reject the appellant's argument that the sales contract for the domain names was terminated. No evidence has been produced that might lead me to conclude that the sales contract for the domain names was terminated. The sales contract for the domain names does not contain an automatic termination clause. I do understand that the licence contract was indeed terminated in the light of the termination clause in that contract. However, the two contracts have different purposes and objects. I cannot accept 9267's argument that the sales contracts for the domain names and the licence contract must be analyzed as a whole and that I must apply the termination clause in the licence contract to the sales contract for the domain names.

[48] In addition, 9210 did not issue a credit note to 9267, nor did the latter issue a debit note to 9210 reflecting an adjustment in the sale price.

[49] According to 9267, the issuance of a debit or credit note is futile since 9210 filed a proposal under the BIA. In any case, 9267 argues that the trustee would have refused to issue a credit note to 9267. It is easy to understand why the trustee was not at all interested in issuing a credit note to 9267, as 9210 would have had to reimburse a portion of the ITCs it had already claimed in relation to the transaction. As a result, an additional debt would have to have been recorded in 9210's financial statements prepared in relation to the proposal.

[50] 9267 consequently argues that a credit or debit note is not necessary to engage subsection 232(2) of the ETA. In reaching this conclusion, 9267 is citing on *Vivaconcept International Inc. v. The Queen*[8] (*Vivaconcept*) and *North Shore Power Group Inc. v. Canada (North Shore)*.[9]

[51] *Vivaconcept* is not useful to 9267, as that case confirms that a credit or debit note must be issued to engage subsection 232(1) or (2) of the ETA. The issue in *Vivaconcept* is whether the credit note was issued within a reasonable time.

[52] In *North Shore*, the Federal Court of Appeal reiterates that credit notes must be issued to engage section 232. However, the Court states that the Tax Court of Canada erred in concluding that the word "credit" in subsection 232(1) takes its meaning from the commercial terms "credit note" and "credit memorandum." According to the Federal Court of Appeal, the word "credit" in section 232 should have the meaning prescribed in *Le Petit Robert*: *opération par laquelle une personne met une somme d'argent à la disposition d'une autre; (operation whereby someone puts a sum of money at the disposal of someone else)*. Justice Woods explained, for the Federal Court of Appeal, that a credit note qualifies under subsection 232(1) if the sum due is put at the disposal of the purchaser. In this regard, Justice Woods wrote:

> I do not suggest that money must actually be set aside, but it is not sufficient if there is no sum at the disposal of the purchaser.

[53] In *North Shore*, the company that had issued credit notes, Menova, had become bankrupt. Being insolvent, Menova was unable to reimburse North Shore.

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8 *Vivaconcept International Inc. v. The Queen*, 2013 TCC 336.

9 *North Shore Power Group Inc. v. Canada,* 2018 FCA 9.

Justice Woods therefore concluded that section 232 of the ETA did not apply because the GST had not been credited to (put at the disposal of) North Shore. *North Shore* stands for the proposition that a credit or debit note is not sufficient to engage section 232; the issuance of the note must put a sum at the disposal of the purchaser. However, Justice Woods does not conclude in *North Shore* that a credit or debit note is not necessary to engage section 232. On the contrary, she concludes that credit notes are necessary to engage section 232. However, section 232 does not apply to the facts of the appeal in *North Shore*. As a result, credit notes were not necessary. This case is consequently of no assistance to 9267 in seeking to apply section 232 to the facts of this case.

[54] Contrary to 9267's position, I am of the view that the language in subsection 232(3) of the ETA requires that a credit note or debit note be issued to the supplier or the purchaser. In addition, the note must include the prescribed information in order to engage subsections 232(1) and 232(2) of the ETA, to ensure that both parties adjust their taxes, with one reducing its net tax and the other increasing it. In the present case, the sales contract for the domain names was not terminated. Moreover, 9210 was not bankrupt. The trustee could have issued a credit note to 9267.

[55] In this regard, Justice Sommerfeldt stated in *Gem Health Care Group Limited v. The Queen*[10] that the issuance of a credit note is critical and not a mere procedural formality that may be ignored. At paragraph 98, he wrote:

> [98] In my view, section 232 of the ETA sets out the procedure that should have been used by GEM to adjust the GST/HST corresponding to the management fees that were ultimately reduced in 2009.https://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/218322/index.do?iframe=true - https://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/218322/index.do?iframe=true There was no evidence that GEM issued credit notes or that Melville Ridge and the owner of the North Hills nursing home issued debit notes. In my view, the issuance by a supplier of a credit note in a situation such as this is critical, as it enables the recipient to ascertain whether the supplier will reduce or refund (as the case may be) the GST/HST, or whether it will be necessary for the recipient to apply for a rebate of tax under section 261 of the ETA. The issuance of a credit note, where required by paragraph 232(3)(a) of the ETA, is not a mere procedural formality that may be ignored. Counsel for GEM submitted that the year-end adjusting entries in the accounts of GEM were the equivalent of a credit note; however, as those adjusting entries did not contain the prescribed information required by the *Credit Note and*

[10] *Gem Health Care Group Limited v. The Queen*, 2017 TCC 13, at para. 97.

> *Debit Note Information (GST/HST) Regulations*, those entries were not sufficient to satisfy the requirement of paragraph 232(3)(a) of the ETA. Accordingly, I am of the view that GEM was not entitled to claim an ITC in respect of an amount of GST/HST calculated by reference to the amount of the reduction in the management fees.
>
> [Emphasis added.]

[56] I am consequently of the opinion that section 232 of the ETA is not engaged in this case.

Does subsection 225(1) of the ETA apply to the facts of this case?

[57] At the hearing, 9267 also argued that subsection 225(1) of the ETA allowed it to adjust its net tax. I note that this subsection was not raised in 9267's notice of appeal. However, as the respondent did not object to this argument, I decided to determine whether 9267 can adjust its GST based on subsection 225(1) of the ETA.

[58] Subsection 225(1) of the ETA provides as follows:

> Remittance of Tax
>
> Net tax
>
> 225 (1) Subject to this Subdivision, the net tax for a particular reporting period of a person is the positive or negative amount determined by the formula
>
> A - B
>
> where
>
> A
>
> is the total of
>
> > (a) all amounts that became collectible and all other amounts collected by the person in the particular reporting period as or on account of tax under Division II, and
> >
> > (b) all amounts that are required under this Part to be added in determining the net tax of the person for the particular reporting period; and
>
> B

is the total of

> (a) all amounts each of which is an input tax credit for the particular reporting period or a preceding reporting period of the person claimed by the person in the return under this Division filed by the person for the particular reporting period, and
>
> (b) all amounts each of which is an amount that may be deducted by the person under this Part in determining the net tax of the person for the particular reporting period and that is claimed by the person in the return under this Division filed by the person for the particular reporting period.

[Emphasis added.]

[59] 9267's argument with respect to subsection 225(1) is as follows:[11]

- For the 2012-2013 period, given that the applicable method is accrual accounting, the applicable consideration was $500,000 and the tax collectible was therefore (ELEMENT A).

    a) $25,000 in GST; and

    b) $49,875 in QST.

- With respect to ELEMENT B, the credits being inputs were considered for this period.

- However, given that 1) the consideration was not paid in full; 2) the contract was terminated; and 3) 9210 filed a proposal, the consideration was reduced to $25,000 and all of these conditions arose in 2014, a tax return should have been filed for the period reflecting this situation.

- As a result, the applicable consideration for the 2014-2015 period became $21,743.88 and the tax collectible (ELEMENT A) was $0 since it was reported as having been previously collected.

- The tax in this calculation (ELEMENT B) must be reduced by $23,912.81, and the only tax to be remitted is $1,087.20 in GST.

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[11] Written argument of 9267, at para. 57.

- Ultimately, taxpayers should be assessed according to their reality. They cannot owe a tax that was not paid.

- They are only agents for the Crown and must remit what they collect as provided in section 222 of the ETA.

[60] As Justice Sommerfeld of this Court explained in *Gem Health Care Group Limited v. The Queen*,[12] subsection 169(1) of the ETA or, in this case, subsection 225(1), does not allow an ITC or an adjustment to be claimed where the consideration is reduced. That is exactly what 9267 is attempting to do in this case.

[61] The purpose of subsection 225(1) of the ETA is to calculate the net tax. Accordingly, to engage paragraph 225(1)(b), the amount subtracted under that paragraph must be deductible under a provision of Part IX of the ETA authorizing a deduction of this type. For example, if an amount is deductible under section 231 governing bad debts, then the amount calculated under section 231 reduces the net tax in accordance with the calculation provided in paragraph 225(1)(b). Subsection 225(1) does not, on its own, allow an adjustment of the tax.

IV. Decision

[12] *Gem Health Care Group Limited v. The Queen*, 2017 TCC 13, at para. 97.

[62] Consequently, the appeal is dismissed with costs.

Signed at Ottawa, Canada, this 16th day of July 2020.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 27th day of August 2021.
François Brunet, Revisor

CITATION:	2020 TCC 53
COURT FILE NO.:	2017-4072(GST)G
STYLE OF CAUSE:	9267-9075 QUÉBEC INC. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	December 12 and 13, 2019
REASONS FOR JUDGMENT BY:	The Honourable Justice Johanne D'Auray
DATE OF JUDGMENT:	July 16, 2020

APPEARANCES:

Counsel for the appellant:	Julie Gaudreault-Martel
Counsel for the respondent:	Michel Rossignol

COUNSEL OF RECORD:

For the appellant:

Name:	Julie Gaudreault-Martel
Firm:	BCF LLP
For the respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada