Docket: 2016-5262(GST)I

BETWEEN:

BRIAN & DEBORAH DEWAN ENTERPRISES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 29, 2017, at Ottawa, Ontario.

Before: The Honourable Justice Johanne D'Auray

Appearances:

Agent for the Appellant:	Deborah Dewan Brian J. Dewan
Counsel for the Respondent:	Charlotte Deslauriers

JUDGMENT

The appeal from the reassessment made under the *Excise Tax Act*, notice of which is dated January 20, 2015 for the period from July 1, 2011 to June 30, 2012 is dismissed, without costs.

Signed at Ottawa, Canada, this 19th day of July 2017.

"Johanne D'Auray"

D'Auray J.

Citation: 2017 TCC 135
Date: 20170719
Docket: 2016-5262(GST)I

BETWEEN:

BRIAN & DEBORAH DEWAN ENTERPRISES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

D'Auray J.

[1] The facts are straight forward and were admitted by both parties. During the period under litigation, the appellant operated a transportation service business known as "Dewan Limousine" and was a GST/HST registrant.

[2] In 2011, due to its financial situation, the appellant started to liquidate its assets, notably three limousines (the "limousines") that had been used in the course of its commercial activities. These limousines were sold for an amount of $105,700.00. The appellant did not collect and remit GST/HST on the sales of the limousines, which amounted to $13,741.00.

[3] In this appeal, the provision applicable is section 141.1 of the *Excise Tax Act* ("*Act*"). The relevant portion states:

> **141.1 (1)** For the purposes of this Part,
>
> **(a)** where a person makes a supply (other than an exempt supply) of personal property that
>
> **(i)** was last acquired or imported by the person, or was brought into a participating province by the person after it was last acquired or imported by the person, for consumption or use in the course of commercial activities of the person or was consumed or used by the person in the

> course of a commercial activity of the person after it was last acquired or imported by the person, or
>
> the person shall be deemed to have made the supply in the course of the commercial activity;

[4] In this appeal, the appellant is deemed by subparagraph 141.1(1)(a) of the *Act*, to have made a supply in the course of its commercial activity, since the limousines sold by the appellant were used by it, in its commercial activity.

[5] Pursuant to section 221 of the *Act*, when a person makes a supply that is taxable, that person has to collect the GST/HST. Accordingly, the appellant should have collected an amount of $13,741.00 of GST/HST on the sale of the limousines.

[6] The provisions of the *Act* are clear. I have no choice but to dismiss the appeal.

[7] While this is sufficient to dispose of the appeal, I thought it was important to explain the relationship between the federal GST/HST regime and the Ontario provincial Retail Sales Tax (the Ontario "Motor Vehicle Tax"). It was not clear to the appellant why it had to remit the GST/HST since the person who acquired the limousines paid a tax of 13% upon the registration of the limousines at the Ministry of Transportation of Ontario.

[8] Confusion often arises from the misunderstanding that persons have regarding the separate tax systems of the GST/HST and the Motor Vehicle Tax. The two taxes have an identical rate of 13%, it is therefore easy to conflate the two taxes. However, the regimes in place for the two taxes are distinct systems and operate separately. These two taxes cannot be viewed as being one general sales tax.

[9] In this appeal, the purchaser of the limousines paid the Motor Vehicle Tax, but not the GST/HST. The appellant was under the impression that the GST/HST had been paid directly by the purchaser to the Ministry of Transportation. However, since there are two different systems, the fact that the purchaser paid the Motor Vehicle Tax to the Ministry of Transportation does not relieve the appellant, as a registrant vendor, from its obligation to collect and remit the GST/HST to the federal government as required under the *Act*.

[10] However, when a vendor that is a registrant collects the GST/HST when selling a vehicle used in the course of its commercial activity, there is an exemption from the Ontario Provincial *Retail Sales Tax Act*[1], which relieves the purchaser from having to pay the Motor Vehicle Tax.

[11] In practice, issues arise when the documentation provided to evidence the sale does not indicate that the vehicle is sold by a person that is a registrant. For example, the invoice does not indicate a registration number for GST/HST and it is clear from the invoice that no GST/HST has been charged on the sold vehicle. In these cases, the Ministry of Transportation correctly assumes that the transactions are private sales between non-registrants. In such cases, the Motor Vehicle Tax must be paid by the purchaser of the vehicle upon registration.

[12] This was exactly the case in this appeal. The invoice provided was unfortunately inadequate. Therefore, the 13% Motor Vehicle Tax was charged upon the registration of the limousines by the Ministry of Transportation.

[13] This situation places both the vendor and the purchaser in a disadvantageous position since the former is still liable to remit the GST/HST to the federal government, which should have been collected from the purchaser, and the latter is not eligible to claim input tax credits because he/she did not pay GST/HST on this specific transaction.

[14] To avoid this type of issue, clear documentation should be provided to the Ministry of Transportation, upon the registration of the vehicle.

[15] That said, if the Motor Vehicle Tax is erroneously paid by a purchaser upon registration of the vehicle, a purchaser may ask the Ministry of Transportation for a refund. Some conditions must be met for the Motor Vehicle Tax to be refunded. Only the purchaser will be allowed to request a refund and there is a statutory time limit after which it is not possible to claim a refund. The form is entitled "Application for Refund of Ontario Retail Sales Tax for Motor Vehicles Purchased Privately" and can be found on the Ontario Ministry of Finance's website. However, I do not know if the appellant meets the conditions for a refund in this appeal, the appellant could get in touch with the Ontario Ministry of Transportation to inquire.

---

[1] *Retail Sales Tax Act*, R.S.O. 1990, C.R. 31, at paragraph 4.2(1.1)(a) and subparagraphs 4.2(3)(b)(i) "specified vehicle" and 4.2(4)(b.1)(i).

[16] Although the appellant mistakenly believed that the GST/HST had been paid to the Ministry of Transportation, by the person who purchased its limousines, this was not the case.

[17] This is a very unfortunate situation but as I have already stated, I do not have any other choice than to dismiss the appeal.

Signed at Ottawa, Canada, this 19th day of July 2017.

"Johanne D'Auray"

D'Auray J.

CITATION:	2017 TCC 135
COURT FILE NO.:	2016-5262(GST)I
STYLE OF CAUSE:	BRIAN & DEBORAH DEWAN ENTERPRISES LTD. v HER MAJESTY THE QUEEN
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 29, 2017
REASONS FOR JUDGMENT BY:	The Honourable Justice Johanne D'Auray
DATE OF JUDGMENT:	July 19, 2017

APPEARANCES:

Agent for the Appellant:	Deborah Dewan Brian J. Dewan
Counsel for the Respondent:	Charlotte Deslauriers

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada