Docket: 2007-1575(GST)I

BETWEEN:

BILL SLADE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 1, 2008, at Kingston, Ontario

Before: The Honourable Justice Valerie A. Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Julian Malone

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated June 5, 2006 and bears number 04DP0100624, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 13th day of March, 2008.

"V.A. Miller"

V.A. Miller, J.

Citation: 2008TCC151
Date: 20080313
Docket: 2007-1575(GST)I

BETWEEN:

BILL SLADE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller, J.

[1] In assessing the Appellant under the *Excise Tax Act* ("*Act*") for the period October 1, 2004 to March 31, 2005, the Minister of National Revenue (the "Minister") assessed goods and services tax ("GST") in the amount of $13,064.70 on the sale of a residential complex and denied input tax credits ("ITCs")claimed in the amount of $3,217.05.

[2] At the hearing of the appeal, the Appellant stated that he did have the documentation to support the ITCs claimed. However, he did not submit anything to support them. The appeal with respect to the issue of the ITCs is dismissed. The remaining issue in this appeal is whether the Minister was correct in assessing GST on the sale of the house and lot.

FACTS

[3] In January 2004 the Appellant and Harold Westendorp ("Westendorp") agreed to form a partnership to purchase a house, relocate it to a lot that the Appellant would purchase, rebuild the house and sell it. Their purchase of the house did not include the land on which the house was situated. In an agreement dated January 23, 2004, it

was agreed that the Appellant would provide the funds to move and rebuild the house on a new lot. It had been decided by the partners that the Appellant would purchase the lot described as “part of Blocks Q & S on Registered Plan 194” (“the lot”). For his 50% share of the project, Westendorp’s business, Harold’s Demolition & Recycling (“HDR”) would prepare the house for moving, move the house, and rebuild the house on the new lot. The Appellant was to hold title to the house and the lot.

[4] On January 24, 2004, the Appellant learned that the owners of the lot would not sell it to him but would sell the lot to Westendorp. The partners agreed that HDR would purchase the lot and then in turn would sell it to the Appellant. In an agreement dated January 26, 2004, HDR purportedly sold the lot to the Appellant. On January 28, 2004, the Appellant gave Westendorp $20,000 for the purchase of the house. The house was moved and construction on the house proceeded. The costs to rebuild the house greatly exceeded the amounts originally agreed on in the January 23, 2004 agreement. The Appellant testified that he spent approximately $190,000 on materials to rebuild the house.

[5] Problems arose when the Appellant tried to sell the house. The partners had a falling out. On November 5, 2004, the Appellant searched the title to the lot only to discover that the lot had never been transferred to HDR. The Appellant commenced an action against Westendorp, HDR and the owners of the lot. The action was eventually settled and the Appellant received title to the lot on March 15, 2005. He in turn sold the house and lot to a Mr. Running on March 15, 2005.

[6] After the construction of the house was completed on the lot, it was not occupied by anyone until it was sold to Mr. Running.

[7] The issue in this appeal is whether the sale of the residential complex is subject to GST or whether it is an exempt supply.

[8] To discern the answer, it is necessary to look at the definition of various terms in the *Act*. Pursuant to subsection 123(1) of the *Act* a “supply” means, among other things, the provision of property in any manner including a sale. This same subsection defines a “taxable supply” as a supply that is made in the course of a commercial activity. The *Act* defines “commercial activity” and an “exempt supply” as follows:

> "commercial activity" of a person means

…

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

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

[9] The Appellant's position is that the sale was an exempt supply as he sold a used residential property. Schedule V, Part I, section 2 exempts the sale of a used residential property as follows:

2. A particular supply by way of sale of a residential complex or an interest in a residential complex made by a particular person who is not a builder of the complex or, if the complex is a multiple unit residential complex, an addition to the complex, unless

(a) the particular person claimed an input tax credit in respect of the last acquisition by the person of the complex or in respect of an improvement to the complex acquired, imported or brought into a participating province by the person after the complex was last acquired by the person; or

(b) the recipient is registered under Subdivision d of Division V of Part IX of the Act and

(i) the recipient made a taxable supply by way of sale (in this paragraph referred to as the "prior supply") of the complex or interest to a person (in this paragraph referred to as the "prior recipient") who is the particular person or, if the particular person is a personal trust other than a testamentary trust, the settlor of the trust or, in the case of a testamentary trust that arose as a result of the death of an individual, the deceased individual,

(ii) the prior supply is the last supply by way of sale of the complex or interest to the prior recipient,

(iii) the particular supply is not made more than one year after the particular day that is the day on which the prior recipient acquired the interest, or that is the earlier of the day on which the prior recipient acquired ownership of the complex and the day on which the prior recipient acquired possession of the complex, under the agreement for the prior supply,

(iv) the complex has not been occupied by any individual as a place of residence or lodging after the construction or last substantial renovation of the complex was substantially completed,

> (v) the particular supply is made pursuant to a right or obligation of the recipient to purchase the complex or interest that is provided for under the agreement for the prior supply, and
>
> (vi) the recipient makes an election under this section jointly with the particular person in prescribed form containing prescribed information and filed with the Minister with the recipient's return in which the recipient is required to report the tax in respect of the particular supply.

[10] The Appellant has argued that he bought a house that was a used residential property; he renovated it with some used materials and he sold the house as a used residential property. The house that the Appellant bought was not the house that the Appellant sold. The documentary evidence submitted showed that he purchased the house for $20,000 and he spent approximately $190,000 on materials to construct the complex that he eventually sold.

[11] The *Act* does not define the term “residential property” but it does define “residential complex” which is the terminology used in Schedule V, Part I, section 2. A portion of the definition for a “residential complex” is as follows:

> "residential complex" means
>
> (a) that part of a building in which one or more residential units are located, together with
>
> > (i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
> >
> > (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,

[12] For our present purposes, a residential complex is the building, the lands subjacent to the building and the lands contiguous to the building that is reasonably necessary for its use and enjoyment as a home. Seen from this perspective, the Appellant did not purchase a residential complex when he purchased the house or an interest in the house without the land on January 28, 2004. He only acquired an interest in the residential complex when he purchased the lot on March 15, 2005. Consequently, when he sold the house and the lot on March 15, 2005 the Appellant

sold a residential complex. For the sale to qualify as an exempt supply, the Appellant must not be a builder as that term is defined in the *Act*.

[13] Paragraphs 123(1)(d) and (e) of the *Act* define a "builder" of a residential complex as a person who:

> (d) acquires an interest in the complex
>
> …
>
> (ii) in any case, before it has been occupied by an individual as a place of residence or lodging,
>
> for the primary purpose of
>
> (iii) making one or more supplies of the complex or parts thereof or interests therein by way of sale, or
>
> …
>
> (e) in any case, is deemed under subsection 190(1) to be a builder of the complex,
>
> …

[14] The Appellant acquired an interest in the complex on March 15, 2005 for the primary purpose of selling it. He is a builder in accordance with the *Act* and consequently, the sale of the complex is not an exempt supply.

[15] The Appellant testified that prior to entering into the transaction with Westendorp, he consulted with the Canada Revenue Agency ("CRA") to ascertain whether GST would be exigible on the sale of the property. He was informed that the sale was not taxable and as a result he did not collect GST when he sold the property. The Appellant also stated that on June 22, 2005 he was notified by CRA that there had been a mistake in the audit. He was offered the option of not receiving any more ITCs and not paying the GST on the house. As a result he did not submit any further claims for ITCs.

[16] I interpret the Appellant's statements as raising an issue of estoppel. The case law is clear that an assessment must be made pursuant to the provisions of the *Act* and it is not open to a taxpayer to set up an estoppel to prevent the operation of the

statute. (See, for example, *Woon v. M.N.R.*, [1950] C.T.C. 263 at paragraph 17, where Cameron, J. stated:

> 17 It is not necessary in this case, however, to consider the effect of the cases to which reference has just been made. It is sufficient to state that the assessment here under appeal was made pursuant to the terms of a statute and that, therefore, it is not open to the appellant to set up an estoppel to prevent its operation.

[17] In conclusion, the appeal is dismissed.

Signed at Ottawa, Canada this 13th day of March, 2008.

"V.A. Miller"

V.A. Miller, J.

CITATION:	2008TCC151
COURT FILE NO.:	2007-1575(GST)I
STYLE OF CAUSE:	Bill Slade v. The Queen
PLACE OF HEARING:	Kingston, Ontario
DATE OF HEARING:	February 1, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie A. Miller
DATE OF JUDGMENT:	March 13, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Julian Malone

COUNSEL OF RECORD:

For the Appellant:	
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Firm:	
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada