

TAX COURT OF CANADA
RE: EXCISE TAX ACT

2004-4750(GST)G

BETWEEN **NETTOYAGE DOCKNET INC.**
Appellant

-and-

HER MAJESTY THE QUEEN
Respondent

[OFFICIAL ENGLISH TRANSLATION]

Before the Honourable **BRENT PARIS**, Tax Court of Canada,
Nicolet, Quebec, **October 20, 2006.**

REASONS FOR JUDGMENT

APPEARANCES:

FRANÇOIS DAIGLE
Counsel for the Appellant

FRANK ARCHAMBAULT
Counsel for the Respondent

Clerk/Technician: Jacqueline Clermont

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GST-4894

JEAN LAROSE, O.S.

1 REASONS FOR JUDGMENT

2 JUSTICE PARIS: The Appellant is
3 contesting a reassessment of GST by the Minister of
4 National Revenue concerning the period from September 1,
5 1999, to August 31, 2003. According to the Minister, the
6 Appellant failed to collect and remit GST on \$57,176 in
7 taxable supplies and claimed \$326.55 in input tax credits
8 to which it was not entitled. Consequently, the Minister
9 determined that the Appellant's net tax liability for the
10 period was \$3,610.69.

11 The Appellant claims to have reported all
12 its taxable supplies for the period and says that it did
13 not fail to collect any of the requisite GST. The
14 Appellant carried on a business that provided ventilation
15 duct cleaning, furnace-hood degreasing, and various
16 cleaning services. In the spring of 2004, the Appellant
17 underwent a GST and QST audit. Before the audit began,
18 the Appellant's premises were robbed and all the
19 accounting books from the taxation years prior to 2002,
20 as well as some of the records for the year 2002, were
21 stolen.

22 Faced with this unavailability of records,
23 the auditor referred to the Appellant's financial
24 statements for the fiscal years ended August 31, 2000,
25 and August 31, 2001, to establish the Appellant's total

1 taxable supplies for those periods.

2 The income reported on the financial
3 statements was higher than the taxable supplies reported
4 by the Appellant for GST purposes. The amount of the
5 discrepancy was \$35,972 for the first fiscal year and
6 \$21,204 for the second fiscal year. The auditor assumed
7 that all the income posted to the financial statements
8 had been received by the Appellant in consideration of
9 taxable supplies. The Appellant claims that the
10 discrepancies in question are attributable to the fact
11 that the Appellant earned income from GST-exempt supplies
12 and that the income posted to the financial statements
13 included an amount for work in progress.

14 The Appellant tendered evidence of tax-
15 exempt customers through the witness Ms. St-Arnaud, who
16 testified that, each year, the Appellant had some
17 contracts with tax-exempt entities, but that the invoices
18 for those customers for the years 2000 through 2002 were
19 among the documents stolen.

20 Ms. St-Arnaud had managed to give the
21 auditor two invoices for these customers, and those
22 invoices were accepted, but she says that all the other
23 invoices were stolen. She tried to draw up a list of
24 contracts (Exhibit A-7) based on the information provided
25 by the customers; the list shows roughly \$12,500 in

1 contracts. Both of the invoices accepted by the auditor
2 are on the list.

3 Ms. St-Arnaud, and Mr. Lesage, the
4 Appellant's accountant, also testified that the fiscal
5 year ended August 31, 1999, included an amount for work
6 in progress that was not billed during that year. Mr.
7 Lesage was unable to specify the amount, but he believed
8 it was approximately \$24,000.

9 According to the Appellant, it was
10 impossible to present a more accurate picture of its
11 taxable sales for the period in issue because of the
12 theft of its documents and records. Yet, according to its
13 lawyer, it managed to show that the method used by the
14 auditor did not yield an accurate result, which would be
15 sufficient to reverse its burden of proof.

16 Where a taxpayer does not have complete
17 documentation to establish its tax liability under the
18 Act, it can still provide other evidence to substantiate
19 its position. In *Susteras v. The Queen*, Justice Hamlyn of
20 this Court stated, at page 6:

21 The proof could be as simple as
22 precise detailed oral evidence
23 that clearly addresses each
24 disallowed amount and
25 substantiates the claim. For this

1 to occur, the Appellant would have
2 to provide specific detailed
3 credible evidence. When the oral
4 evidence falls to generalizations,
5 unproved assertions or arguments,
6 this presentation does not amount
7 to other acceptable evidence.

8 In the instant case, I must determine whether the
9 Appellant has adduced sufficient evidence to show that
10 there were errors in the assessments.

11 As far as the contracts with tax-exempt
12 customers are concerned, Ms. St-Arnaud did not see fit to
13 obtain a copy of the invoices from the customers listed
14 on Exhibit A-7. Ms. St-Arnaud said that the customers
15 still have these invoices, but she did not ask them for a
16 copy. Without the details concerning the dates of these
17 contracts, it is difficult to accord Exhibit A-7 much
18 weight. Moreover, Ms. St-Arnaud explained that the
19 Appellant did not want to call these witnesses to testify
20 because of the cost and because she did not want to
21 bother them.

22 Even if I accept that the Appellant made
23 certain zero-rated supplies attributable to the years in
24 issue, I have no way of knowing the dollar amount of
25 these contracts. Ms. St-Arnaud's testimony lacked detail,

1 and this shortcoming was not offset by other sufficiently
2 probative and credible evidence.

3 Neither Ms. St-Arnaud nor Mr. Lesage were
4 able to provide the value of the Appellant's WIP under
5 its contract with the Université du Québec in late August
6 1999. In my view, Mr. Lesage's suggestion that it was
7 roughly \$24,000 was a very imprecise estimate – almost a
8 guess. But the Respondent tendered Exhibit I-2, which
9 consists of documents that were prepared by the engineer
10 responsible for the project at the Université du Québec
11 and provide details regarding the progress of the work on
12 a weekly basis as well as certain monetary amounts tied
13 to the work that was done. These documents tend to show
14 that the value of the Appellant's work in progress under
15 the contract was approximately \$30,000 at the end of
16 August 1999.

17 Although the documents show that the
18 Appellant issued invoices for almost all these amounts,
19 Ms. St-Arnaud explained that the Appellant had not issued
20 invoices for them at that point. I accept her
21 explanations and, on the basis of this evidence, I accept
22 that the work in progress at the end of August 1999 was
23 worth \$30,000.

24 What remains to be determined is the
25 effect on the Appellant's GST liability when an amount

1 for work in progress is included in the Appellant's
2 income for its fiscal year ended August 31, 1999, but
3 that amount is invoiced in 2000. In my opinion, the
4 effect would be the opposite of what the Appellant seems
5 to be arguing. If the Appellant collected GST on amounts
6 that were included in its income in a prior year, the GST
7 collected would represent more than 7% of the income
8 reported for the year. However, in the Appellant's case,
9 the GST collected in 2000 represented less than 7% of
10 income.

11 Therefore, in my opinion, even if the
12 Appellant issued invoices in the year 2000 for work that
13 was in progress in 1999, this does not account for the
14 discrepancy between the GST that was remitted and the GST
15 that the Appellant should have remitted based on its
16 income.

17 No evidence was provided in connection
18 with the input tax credits; there is nothing before the
19 Court that shows that the auditor erred in disallowing
20 the ITCs in question. In sum, the Appellant has not
21 discharged its burden to prove, on a balance of
22 probabilities, that the assessments in issue were
23 excessive.

24 For these reasons, the appeal is
25 dismissed.

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Translation certified true
on this 1st day of August 2007.

Brian McCordick, Translator