Docket: 2008-804(IT)I

BETWEEN:

BARRY J. BRADLEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 10, 2008, at Halifax, Nova Scotia

Before: The Honourable Justice T. E. Margeson

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Kendrick Douglas

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the Appellant's 2003, 2004 and 2006 taxation years are dismissed and the Minister's decision is confirmed.

Signed at Toronto, Ontario, this 28th day of January 2009.

"T. E. Margeson"

Margeson J.

Citation: 2009TCC15
Date: 20090128
Docket: 2008-804(IT)I

BETWEEN:

BARRY J. BRADLEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Margeson J.

[1] The facts in this case are not in dispute. It was agreed at the outset by the Appellant that he was incarcerated in Springhill Penitentiary in April 2003 and that he continued to be incarcerated throughout 2003, 2004 and 2006 (the "period under appeal") until at least November 2007.

[2] It was agreed by the Respondent that during the period under appeal the Appellant did pay G.S.T. on all purchases that he made inside the institution and that he paid G.S.T. on purchases made on his behalf from sources outside the institution.

[3] The Appellant worked at the institution and received money for his work. He believes that he is qualified for the G.S.T. rebate because he had to pay G.S.T. on whatever he purchased. He opined as to why the government collected G.S.T. from him when he was not entitled to the rebate.

[4] His position was that the government should make the inmates exempt from the G.S.T. when they make purchases.

[5] The store within the institution where he is incarcerated is run by the institution in the same way as any store is operated on the outside. He believed that section 122.5 of the *Income Tax Act* has no relation to this issue.

[6] He admitted that the Tax Court of Canada had advised him that if he wished to raise a *Canadian Charter of Rights and Freedoms* ("*Charter*") argument during his appeal, that he had to give the proper notice before the Court could strike down a section of the *Act* and that he had failed to do so in accordance with section 57 of the *Federal Courts Act*, R.S. 1985, c.F-7, as amended.

[7] Counsel referred to the case of *Yun v. Minister of National Revenue*, [2008] 2 C.T.C. 2465, and took the position that the Court should hear the *Charter* argument, and if there is any merit in it, to adjourn the case to permit the proper notices to be given under the *Federal Courts Act, supra*, as well as under section 19.2 of the *Tax Court of Canada Act*, R.S. 1985, c. T-2 and to the Attorney General of Canada under the *British Columbia Constitutional Question Act*, R.S.B.C. 1996, c. 68.

[8] This Court proceeded to hear the *Charter* argument on that basis. Simply put, the Appellant argued that the denial by the Minister to grant him the Goods and Services Tax Credit ("GSTC") during the relevant period violated his rights under sections 1 and 15 of the *Charter*.

Argument by the Respondent

[9] Counsel argues that there are three issues here:

1. Is the Appellant entitled to the GSTC; and
2. If he is not so entitled, is the effect of the relevant sections such as to violate his *Charter* rights; and
3. If the infringed provisions do offend subsection 15(1), are they justified under the *Charter*?

[10] The answer to question 1. is that paragraph 122.5(2)(*b*) disentitles him to the GSTC because he was confined to a prison or similar institution for a period of at least 90 days that includes the first day of the specified month.

[11] There can be no doubt that the Appellant was so confined.

2. There was no infringement of subsection 15(1) of the *Charter*;
3. Since there was no infringement of subsection 15(1), there is no argument under section 1.

[12] The appeal should be dismissed.

Analysis and Decision

[13] This issue has been addressed by the Tax Court of Canada on a number of occasions. In *Armstrong v. R.*, [1996] 1 C.T.C. 2745 Justice Mogan was faced with the identical argument that has been put forth here.

[14] Justice Mogan, as he then was, quoted from the Federal Court of Appeal in *Lister v. R.*, [1994] 2 C.T.C. 365 which concluded that the legislation was not discriminatory in its effect. In that case the argument was that they were discriminated against on the basis of age.

[15] The Federal Court of Appeal "found no evidence that the impugned provision reinforces disadvantages or promotes stereotyping".

[16] In *Armstrong v. R.*, *supra*, Justice Mogan found further that "the characterization of being in prison is not a ground analogous to race, religion, sex or ethnic origin". The prison population was not part of "a discrete and insular minority". He was in prison because of his conduct before he went into prison. He then dismissed the appeal.

[17] This same issue was considered thoughtfully by Justice Sobier in the case of *McKinnon v. Minister of National Revenue*, [1991] 2 C.T.C. 2284 when he said:

> Parliament has chosen to exclude those individuals who it saw fit not to benefit, namely certain types of prison inmates. This is a valid distinction since the objective is to assist low income families and individuals and not to benefit persons sewing [*sic*] prison terms.

[18] The distinction is made as part of a legitimate exercise of social policy-making which is Parliament's right. To strike this down would be tantamount to "overstating" the actual right being sought to be protected (*R. v. Big M Drug Mart Ltd*, [1985] 1 S.C.R. 295).

[19] The Court dismissed the appeal and found no violation of the *Charter*.

[20] The same conclusion was reached by Justice Bowie in *Mulligan v. R.*, [1997] 2 C.T.C. 2062 (T.C.C.) where he agreed with the decisions of Justices Sobier and Mogan.

[21] As Justice Bowie pointed out in *Mulligan, supra,* he considered himself bound by the decision of the Federal Court of Appeal in *Lister* where an enumerated ground of appeal was insufficient to find the provisions unconstitutional and so it would be contrary to all reason to find that denial of the credit based upon a ground not enumerated in section 15 of the *Charter* would be unconstitutional.

[22] This Court is satisfied that the above-referred to cases are squarely on point and are determinative of the issue before it.

[23] The appeals are dismissed and the Minister's assessment is confirmed.

Signed at Toronto, Ontario, this 28th day of January 2009.

"T. E. Margeson"

Margeson J.

CITATION:	2009TCC15
COURT FILE NO.:	2008-804(IT)I
STYLE OF CAUSE:	BARRY J. BRADLEYY AND HER MAJESTY THE QUEEN
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REASONS FOR JUDGMENT BY:	The Honourable Justice T. E. Margeson
DATE OF JUDGMENT:	January 28, 2009

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Kendrick Douglas

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

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