

Dockets: 2007-3789(GST)G
2007-3790(GST)G

BETWEEN:

JOSÉE OUELLETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 24, 2009, at Montréal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the appellant: Jean-Pierre Gagné
Counsel for the respondent: Gérald Danis

JUDGMENT

The appeal from the assessment for the period from January 1, 2002, to December 31, 2003, made under the *Excise Tax Act*, notice of which is dated May 11, 2006, is dismissed with costs in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 17th day of September 2009.

"François Angers"

Angers J.

Translation certified true
on this 30th day of October 2009

François Brunet, Revisor

Citation: 2009 TCC 443

Date: 20090917

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BETWEEN:

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REASONS FOR JUDGMENT

Angers J.

[1] This is an appeal from an assessment dated May 11, 2006, made under the *Excise Tax Act* (the Act) for the period from January 1, 2002, to December 31, 2003. It should be specified that the appellant filed a separate Notice of Appeal for each year in question. Since a single Notice of Appeal was sufficient to institute her appeal, I grant the respondent's request and dismiss the appeal bearing the following docket number: 2007-3790(GST)G. The Notice of Appeal for docket 2007-3789(GST)G covers the period in the notice of assessment.

[2] The appellant was assessed following an audit by a representative of the respondent for not having reported the taxable supplies she made as part of commercial activity related to selling narcotics, for which she should have been collecting and remitting the goods and services tax (GST) to the Receiver General.

[3] On November 5, 2003, over 300 police officers belonging to 12 police organizations conducted 38 searches of the members of various groups related to the Outaouais area Hells Angels. That extensive operation resulted in 31 arrests. That operation, known as "Ouragan" [Hurricane], followed an investigation initiated in 2002 by the Outaouais Escouade régionale mixte [joint regional taskforce] (ERM). On December 15, 2004, the ERM police officers started the third phase of Operation

Ouragan aimed at arresting six people involved in drug trafficking in the RCM of Antoine-Labelle, including the appellant.

[4] The evidence gathered by the ERM police officers was obtained from civil informants. It was from one of them that the appellant purchased the narcotics she resold. A table of the purchases made by the appellant during the period in question was filed in evidence (Exhibit I-1). The appellant purchased narcotics from the informant from March 30, 2002, to September 23, 2003. In 2002, she purchased \$139,400 worth of narcotics, and in 2003, \$173,915 worth of narcotics.

[5] According to the evidence led by the respondent, the narcotics purchased by the appellant were sold at resale prices usual for that sector of illegal activity, that is, with a 20% profit margin. Thus, the appellant made \$167,280 in sales during the year ending on December 31, 2002, and \$208,698 during the year ending on December 31, 2003. The unpaid net tax is \$26,318.46.

[6] The appellant acknowledged that she had pleaded guilty to charges of conspiring to commit a criminal offence, namely, cocaine trafficking, and of having trafficked cocaine and cannabis during the period in question. She also acknowledged that she had been sentenced to imprisonment.

[7] The respondent also imposed penalties on the appellant given the nature and source of the failure, namely, not reporting or paying her taxes, as well as interest given the amount of time that had elapsed since the obligation to pay arose.

[8] At the start of the trial, the appellant advised the Court that her objection to the assessment was restricted to two points: that her obligation to collect tax as an agent for the Minister of Revenue was invalid because she was acting under threat, and alternatively, that she did not sell the quantities of cocaine that the respondent claims.

[9] The appellant testified about her 17-year tumultuous relationship with her former spouse. In 2000, she ended the relationship because her former spouse was a compulsive gambler, used drugs and was sometimes violent. About two years later, she was approached by a certain André Bernier, who was known as the drug supplier in Mont-Laurier and whose true identity as an informant was not discovered by the appellant until after she was arrested in December 2004.

[10] According to the appellant, André Bernier asked her to repay the \$3,800 debt that her former spouse owed him. When the appellant refused to repay the debt, he allegedly said to the appellant while looking at her child [TRANSLATION] "It's not

hard to lose an eye". He also allegedly threatened the appellant verbally and brandished a club and a firearm while explaining to her what happens when you do not pay up.

[11] Therefore, she agreed to sell drugs in order to pay off her former spouse's debt. Throughout that venture, which lasted almost two years, she was aided by her spouse, who also pleaded guilty to similar charges.

[12] According to the appellant, Bernier did not want her to stop her activities. She stated that she had given him \$14,000 in 2003, because she made \$100 or \$200 payments once a week, as well as the \$5,000 or \$5,500 she received from the SAAQ following a car accident.

[13] The appellant admitted in cross-examination that she was in contact with her former spouse because of the children. However, she admitted that she did not know where he was between 2000 and 2002.

[14] During the period in question, the appellant met with Bernier once a week. He had assigned her a tavern where she went 4 to 5 times a week to sell drugs. She acknowledged that she had put in what she called [TRANSLATION] "a 3.5 cut" and that she divided up the drug into 14-gram bags. Her sales were profitable.

[15] The appellant's spouse confirmed that the appellant was a victim of threats from Bernier because her former spouse had not paid his debts and Bernier had demanded that the appellant pay him the money that he was owed.

[16] Thus, it must be determined whether the assessment dated May 11, 2006, is in keeping with the provisions in Part IX of the ETA and whether, because of the circumstances referred to by the appellant, she had indeed a duty to collect the tax payable by the purchaser and to remit it as the Minister's agent.

[17] This Court has already ruled that income from growing marijuana is taxable income under the *Income Tax Act* and that marijuana supplies are "taxable supplies" for the purposes of the Act (see *John Molenaar v. The Queen*, 2003 TCC 468). It is therefore obvious that the same goes for selling all other types of drugs and illegal substances. "Commercial activity" is defined as follows in the Act:

"commercial activity" of a person means

- (a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,
- (b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and
- (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;

The word "business" is defined as follows:

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement,. but does not include an office or employment;

[18] The word “supply” is defined, subject to sections 133 and 134, as the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition, while "taxable supply" means a supply that is made in the course of a commercial activity. Subsection 221(1) of the Act provides that every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect the tax under Division II payable by the recipient in respect of the supply and remit the positive amount of his or her net tax to the Receiver General under subsection 228(2) of the Act. Every person who makes such a supply is required to be registered (subsection 240(1) of the Act).

[19] There is no doubt that the activities the appellant engaged in were commercial in nature and that she was making a taxable supply within the meaning of the Act. Thus, she had to collect the tax payable and remit the positive amount of her net tax to the Receiver General. The fact that a commercial activity is illegal does not mean that a person can avoid the duty imposed on her by tax legislation. Tax authorities do not have to take into account the legality of an activity (see *65302 British Columbia Limited v. Canada*, [1999] 3 S.C.R. 804 S.C.C.).

[20] Therefore, during the period in question, the appellant was an agent of her Majesty in Right of Canada and had a duty to collect and remit GST to the Receiver General. I cannot agree with the argument of her counsel, who maintains that,

because of the constraints imposed by Bernier, there was no principal-agent relationship, as required by the Act. It is difficult to believe that the appellant acted under duress throughout the entire period in question. She “cut” and divided cocaine for profit, and she admitted to using the profits of her sales to pay for gas and soft drinks as well as to repay Bernier. Where was her former spouse from 2000 to 2002, and why did she pay \$14,000 to Bernier for a debt of \$3,800? The story is fraught with implausibilities that undermine the appellant's credibility.

[21] The same is true concerning the evidence put forward by the appellant with regard to the quantity of narcotics she had sold. The only evidence filed by the appellant is that her sales of narcotics brought in only \$8,500 (\$14,000 - \$5,500), that is, part of the sum paid to Bernier. The appellant was unable to give more details about her sales, while the respondent provided very well documented evidence of all the purchases of narcotics made by the appellant for the purpose of reselling.

[22] Thus, the appellant did not discharge her burden of proof. The appellant also provided no evidence that could entitle her to input tax credits. The penalties and interest are amply warranted in this case.

[23] The appeal is therefore dismissed with costs.

Signed at Ottawa, Canada, this 17th day of September 2009.

"François Angers"

Angers J.

Translation certified true
on this 30th day of October 2009

François Brunet, Revisor

CITATION 2009 TCC 443

COURT FILE NOS: 2007-3789(GST)G and 2007-3790(GST)G

STYLE OF CAUSE: Josée Ouellette and Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 24, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: September 17, 2009

APPEARANCES:

Counsel for the appellant: Jean-Pierre Gagné
Counsel for the respondent: Gérald Danis

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