Docket: 2012-1109(GST)I

BETWEEN:

ALEX BLOUIN
O/A CANTIN ÉLECTRONIQUE AB ENR.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 12, 2013, at Sherbrooke, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Chantale Paris

JUDGMENT

The appeal from the assessment made by the Agence du revenu du Québec on December 23, 2010, regarding Part IX of the *Excise Tax Act* for the periods from October 1, 2006, to December 31, 2006, from October 1, 2007, to December 31, 2007, from October 1, 2008, to December 31,2008, and from October 1, 2009, to December 31, 2009, is allowed simply to cancel the penalty. In all other respects, the assessment dated December 23, 2010, is confirmed.

Signed at Ottawa, Canada, this 22nd day of February 2013.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 28th day of March 2013
Janine Anderson, Translator

Citation: 2013 TCC 68
Date: 20130222
Docket: 2012-1109(GST)I

BETWEEN:

ALEX BLOUIN
O/A CANTIN ÉLECTRONIQUE AB ENR.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] The appellant is appealing an assessment made on December 23, 2010, by the Agence du revenu du Québec (Minister) regarding Part IX of the *Excise Tax Act* (ETA) for the periods from October 1, 2006, to December 31, 2006, from October 1, 2007, to December 31, 2007, from October 1, 2008, to December 31, 2008, and from October 1, 2009, to December 31, 2009.

Issue

[2] The appellant operates a company that sells electronics. In auditing the appellant's business, the Minister found discrepancies between the sales that were

reported by the appellant on which he collected goods and services tax (GST) and the sales that appear on the financial statements for the relevant period.

[3] Thus, the Minister found that the appellant failed to remit a total of $4,691.04 in GST.

[4] The appellant is of the opinion that he was not required to remit that amount because the amounts received, on which no GST had apparently been paid, were promotional allowances or "volume discounts" from suppliers, which are not taxable supplies pursuant to section 232.1 of the ETA. The section reads as follows:

> ***EXCISE TAX ACT***
>
> **232.1 Promotional allowances** — For the purposes of this Part, if
>
> (*a*) a particular registrant acquires particular tangible personal property exclusively for supply by way of sale for a price in money in the course of commercial activities of the particular registrant, and
>
> (*b*) another registrant, who has made taxable supplies of the particular property by way of sale, whether to the particular registrant or another person,
>
> (i) pays to or credits in favour of the particular registrant, or
>
> (ii) allows as a discount on or credit against the price of any property or service (in this section referred to as the "discounted property or service") supplied by the other registrant to the particular registrant,
>
> an amount in return for the promotion of the particular property by the particular registrant,
>
> the following rules apply:
>
> (*c*) the amount is deemed not to be consideration for a supply by the particular registrant to the other registrant.
>
> (*d*) where the amount is allowed as a discount on or credit against the price of the discounted property or service,
>
> (i) if the other registrant has previously charged to or collected from the particular registrant tax under Division II calculated on the consideration or part of it for the supply of the discounted property or service, the amount of the discount or credit is deemed to be a reduction in the consideration for that supply for the purposes of subsection 232(2), and

> (ii) in any other case, the value of the consideration for the supply of the discounted property or service is deemed to be the amount, if any, by which the value of the consideration as otherwise determined for the purposes of this Part exceeds the amount of the discount or credit, and
>
> (*e*) if the amount is not allowed as a discount on or credit against the price of any discounted property or service supplied to the particular registrant, the amount is deemed to be a rebate in respect of the particular property for the purposes of section 181.1.

[5] To the contrary, the Minister found that the income was actually sales commissions received by the appellant from his suppliers, which are taxable supplies.

Facts

[6] The appellant submitted into evidence samples of the cheque stubs paid to him by Bell Canada (Bell) (his primary supplier) that are the subject of this dispute.

[7] The appellant notes that the documents do not indicate that part of the amount paid corresponds to GST that was apparently paid by the supplier.

[8] He referred to the GST/HST P-243 policy statement on promotional allowances (which he submitted with his documents, in a bundle, under Exhibit A-1). In the statement, the appellant referred to example No. 2. It states that Manufacturer A makes taxable supplies by way of sale to distributors and retailers. Retailer B acquires supplies from Manufacturer A exclusively for resale in the course of its commercial activities. Manufacturer A agrees to provide an allowance or bonus to Retailer B to induce the signing of a new merchandising agreement. In that case, the allowance is not subject to GST. The appellant maintains that his case is similar to this example.

[9] The respondent called Marc Breton, a sales manager with Bell, to testify. The cheque stub that the appellant was referring to and that was reproduced in Exhibit I-1, tab 5, was submitted to him.

[10] Mr. Breton explained that it was indeed a sales commission paid to dealers further to a distribution agreement. Mr. Breton explained that, according to the agreement, commissions are paid with no invoicing.

[11] He explained that, when a dealer sells Bell products, the dealer enters the sale into a computer system. This informs Bell of the sale and Bell pays the dealer a commission. It may be an activation commission (for a first client) or simply a payment to the dealer in compensation for the installation that the dealer performed in Bell's place. The payments are made monthly and the dealer can verify the details of each of those payments in the computer system, by going to his or her account.

[12] The account details in relation to the cheque given as a sample by the appellant were provided in the document submitted as Exhibit I-1, tab 6. The document clearly indicates that it was a commission payment.

[13] The details on the commission or compensation paid, and the GST and provincial sales tax totals, are clearly indicated on the document. The total corresponds to the cheque amount. Josiane Déry, the appellant's accounting technician, pointed out that GST is normally collected only if the supplier indicates its GST registration number, and that that number was not on the cheque stub. She therefore determined that the payments made by Bell did not include any GST.

[14] In fact, suppliers write their registration number on the invoices that they produce. In this case, Mr. Breton explained that Bell was paying commissions based on the electronic information entered by the dealer on his sales. No written documents were sent so as to save costs. The computer system had existed since 2005. Mr. Breton also mentioned that Bell did not pay any allowances and very rarely paid "volume discounts".

[15] The appellant indicated that he had contacted Bell representatives and was simply told that all of the necessary information could be found on the cheque stub. He bought his business in 2004 and acknowledges that he did not pay attention to the existence of a distribution agreement with Bell. Because he was a small business owner, he had to use an intermediary body to market Bell products.

[16] The intermediary body provided him with a document, which he submitted in his bundle of documents (Exhibit A-1), explaining the compensation plan. It is clear from this very brief document that dealers are entitled to a certain amount of money for activating plans. Mr. Breton stated that the document was not from Bell, but probably from the intermediary body, and that the compensation amounts identified were pre-tax amounts. Mr. Breton also told the appellant that there was an internal sales service available to answer dealers' questions. He explained that it was up to each supplier to verify, in its electronic account, the state of its transactions. All

clients were informed of the change from paper to electronic correspondence in order to limit costs.

Analysis

[17] The appellant argues that he received promotional allowances and that he was not obligated to collect tax. He relies on the dictionary definition (Le Petit Larousse), which defines an allowance as a commission paid to an occasional intermediary.

[18] The GST/HST P-243 policy statement on section 232.1 issued in May 2004 by the Canada Revenue Agency (CRA) submitted by the appellant indicates at page 3 that section 232.1 applies where: a particular registrant [the appellant] acquires tangible personal property from a supplier [Bell or an intermediary body], exclusively for supply by way of sale for a price in money in the course of his or her commercial activities and another registrant [Bell] pays to, or credits in favour of, the reseller [the appellant], or allows as a discount on, or as a credit against, the price of any property or service supplied by that registrant to the reseller an amount in return for the promotion of the particular tangible personal property by the reseller.

[19] Thus, to be considered an allowance, there must be an agreement between the supplier and the reseller that the payment in question be made for the promotion of the product, or that the supplier allow a credit against or discount on the price of the product.

[20] In this case, several elements in the evidence support the finding that the appellant did not receive promotional allowances like he suggested.

[21] The cheque stub clearly states "comm" or "dealer compens" (Exhibit I-1, tab 5). According to Mr. Breton, commissions are paid when a new client is activated or in compensation for dealer installations. They are not paid for signing a new merchandising agreement, as was the case in the example given by the appellant. Finally and most importantly, Mr. Breton demonstrated that tax had indeed been paid and was part of the total on the appellant's cheque (Exhibit I-1, tab 6). Mr. Breton clearly stated that the amounts were commissions on which Bell paid GST.

[22] It is clear from the case law that, when tax is paid to a registrant, the registrant must remit that tax to the government even if the registrant believes that it was not obligated to collect the tax (see *Gastown Actors' Studio Ltd v. Canada*, [2000] F.C.J. No. 2047, at paragraph 10:

> 10 In our view, the respondent is responsible for remitting any GST it has collected with respect to its two year full time program and its independent study program, even though they are exempt supplies, as well as its part-time programs. We agree with the Crown that a taxpayer who has in fact collected GST, whether for services that are taxable or for services that are later determined to be exempt supplies, must remit those amounts and is liable to be assessed if they are not remitted. . . .

[23] Thus, because the appellant was unable to show that the amounts received were allowances under section 232.1 of the ETA, and, more importantly, because the respondent showed that the payments to the appellant included GST amounts, the appellant had to remit those taxes to the respective governments.

[24] Regarding the penalty imposed under section 280 of the ETA, I am of the view that it should be cancelled. Indeed, the appellant states that he was not made aware of the detailed statement of accounts established by Bell on the computer system. He had called Bell several times and was told that all of the information could be found on the cheque stubs. However, the GST amount paid was not indicated on the cheque stub. His accountant and accounting technician had informed him that they were allowances on which no GST was charged.

[25] I therefore find that the appellant showed that he made a reasonable error in his understanding of the facts in this case (see *Comtronic Computer Inc. v. The Queen*, 2010 TCC 55, paragraph 34 and 35).

[26] The appeal is allowed simply to cancel the penalty. In all other respects, the assessment dated December 23, 2010, under appeal is confirmed.

Signed at Ottawa, Canada, this 22nd day of February 2013.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 28th day of March 2013
Janine Anderson, Translator

CITATION:	2013 TCC 68
COURT FILE NO.:	2012-1109(GST)I
STYLE OF CAUSE:	ALEX BLOUIN O/A CANTIN ÉLECTRONIQUE AB ENR. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Sherbrooke, Quebec
DATE OF HEARING:	February 12, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice Lucie Lamarre
DATE OF JUDGMENT:	February 22, 2013

APPEARANCES:

For the appellant:	The appellant himself
Counsel for the respondent:	Chantal Paris

COUNSEL OF RECORD:

For the appellant:	
Name:	
Firm:	
For the respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada