

Docket: 2012-4157(GST)I

BETWEEN:

SMART NET SYSTEMS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 21, 2013, at Nanaimo, British Columbia

By: The Honourable Justice Réal Favreau

Appearances:

Agent for the Appellant:

Doug Dickson

Counsel for the Respondent:

Shankar Kamath

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**JUDGMENT**

The appeal from the reassessments dated September 26, 2011 made by the Minister of National Revenue under Part IX of the *Excise Tax Act* concerning the reporting periods ending April 30, 2010 and April 30, 2011 is dismissed in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 28th day of June 2013.

"Réal Favreau"

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Favreau J.

Citation: 2013 TCC 212  
Date: 20130628  
Docket: 2012-4157(GST)I

BETWEEN:

SMART NET SYSTEMS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Favreau J.

[1] This is an appeal by way of the Informal Procedure against reassessments dated September 26, 2011, made by the Minister of National Revenue (the "Minister") under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the "Act") concerning the reporting periods ending April 30, 2010 and April 30, 2011 of the Appellant.

[2] The issue is whether the sale of agricultural netting is a zero-rated supply under the *Act*. The Respondent's counsel submits that the supply of agricultural netting is a taxable supply since the netting is not a prescribed property listed in the *Agriculture and Fishing Property (GST/HST) Regulations* (SOR/91-39) (the "*Regulations*") and section 10 of Part IV of Schedule VI of the *Act*.

[3] In computing its liability for net tax for the period from February 1, 2010 to April 30, 2011 (the "Period"), the Appellant filed its Goods and Services Tax ("GST") returns for the reporting periods ending on April 30, 2010, July 31, 2010, October 30, 2010, January 31, 2011 and April 30 2011 and reported supplies totalling \$1,580,835, GST collectible of \$9,996.36 and Input Tax Credits ("ITCs") of \$18,608.84 for a total net tax refund of \$8,612.48.

[4] On September 26, 2011, the Appellant was reassessed by the Minister for unreported GST collectible of \$17,222.21 and was assessed arrears interest of \$214.14 for the Period.

[5] On December 23, 2011, the Appellant filed a notice of objection to the reassessments only for the reporting periods ending April 30, 2010 and April 30, 2011. The Appellant did not object to the assessment for the reporting period ending July 31, 2010, nor to the reporting periods ending October 30, 2010 and January 31, 2011 because no adjustments were made by the Minister for the last two periods.

[6] In determining the Appellant's liability for net GST, the Minister made the following assumptions of fact set out in paragraph 6 of the Reply:

- a) at all material times, the Appellant was a corporation; **(admitted)**
- b) Doug Dickson and Leslie McIntosh each owned a 50% share of the Appellant; **(admitted)**
- c) at all material times, the Appellant was a GST registrant; **(admitted)**
- d) at all material times, the Appellant was required to file GST returns on a quarterly basis; **(admitted)**
- e) at all material times, the Appellant was in the business of importing and selling netting products; **(admitted)**
- f) at all material times, the Appellant imported and sold various netting products that were used for various purposes including agriculture, fishing, aquaculture, and sport; **(admitted)**
- g) the agricultural netting was used to protect crops from pests and predators; **(admitted)**
- h) the agricultural netting supplied by the Appellant differed from the netting that the Appellant supplied for purposes other than agriculture; **(denied)**
- i) the agricultural netting was not produced for use in fishing or aquaculture; **(denied)**
- j) in the reporting period ending April 30, 2010, the Appellant failed to collect GST of \$6,502.31 in respect of its sales of agricultural netting; and **(admitted)**

- k) in the reporting period ending April 30, 2011, the Appellant failed to collect GST of \$6,969.90 in respect of its sales of agricultural netting. (**admitted**)

[7] The Appellant's agent explained that when the Appellant began importing agricultural netting, he contacted the GST section of the Canada Revenue Agency ("CRA") in Ottawa and asked if agricultural netting fell under the same category as fish netting which was a zero-rated supply. He was told that the agricultural netting was zero-rated when supplied by way of sale. Based on that information, the Appellant imported and sold agricultural netting during the audit period without collecting GST.

[8] The CRA's position during the audit was that the supply of agricultural netting was subject to GST because the types of agricultural nettings sold by the Appellant were not produced for fishing or agricultural purposes, and because there was no provision for zero-rating netting specifically produced for use agriculturally within the categories of products related to agriculture listed in section 1 of the prescribed property schedule.

[9] Despite the Appellant's representations that there is no differentiation between nettings that are used for all the three industries: fishing, agriculture and aquaculture, and for the same purpose being to prevent crop loss from predators, CRA maintained its position but waived the interest portion related to the GST reassessments, and did not assess any penalty because the Appellant had exercised due diligence in seeking accurate information from CRA but was told repeatedly that agricultural netting was zero-rated.

[10] Farming and fishing/aquaculture are generally included within the same headings and articles in the *Act*. Products, such as netting, are used extensively for both fishing/aquaculture and agriculture but netting is not included under the subheadings of agriculture. This seems to be an omission or an oversight on the part of the legislator.

[11] As the Court's only jurisdiction is to apply and interpret the *Act* as written, the appeal is dismissed. The Appellant was, however, encouraged to request from the Department of Finance changes to the *Act* or to the *Regulations* to specifically cover netting used in the agriculture industry and to apply for a remission order under the *Financial Administration Act* to recover the amount of tax assessed.

Signed at Vancouver, British Columbia, this 28th day of June 2013.

"Réal Favreau"

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Favreau J.

CITATION: 2013 TCC 212

COURT FILE NO.: 2012-4157(GST)I

STYLE OF CAUSE: SMART NET SYSTEMS LTD. AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Nanaimo, British Columbia

DATE OF HEARING: March 21, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau

DATE OF JUDGMENT: June 28, 2013

APPEARANCES:

Agent for the Appellant: Doug Dickson

Counsel for the Respondent: Shankar Kamath

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada