

Docket: 2012-2372(GST)G

BETWEEN:

GEORGE STAMATOPOULOS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal called for hearing on April 29, 2014, at Montreal, Quebec.

Before: The Honourable Justice Johanne D'Auray

Appearances:

Counsel for the Appellant:

Laurent Tessier

Jean-François Poulin

Counsel for the Respondent:

Benoît Denis

ORDER

UPON the appellant's oral motion at the hearing for leave of the Court to file an amended amended notice of appeal;

AND after hearing the parties' submissions;

THIS COURT ALLOWS the appellant to amend the amended notice of appeal, the amended amended notice of appeal being deemed to have been filed with this Court on the date of the present order, and ORDERS :

The appellant shall serve the amended amended notice of appeal on the respondent, and the respondent shall have 60 days after being served with the amended amended notice of appeal to file a reply to the amended amended notice of appeal.

The appellant shall pay the respondent costs of \$700, regardless of the outcome of the appeal.

The hearing scheduled for April 29, 2014 is adjourned.

The appeal shall be set down for hearing on Monday, October 20, 2014, at 9:30 a.m., for a duration of five days, before the Tax Court of Canada, at 30 McGill Street, Montreal, Quebec.

Signed at Ottawa, Canada, this 26th day of May 2014.

"Johanne D' Auray"

D' Auray J.

Translation certified true
on this 1st day of December 2014.

Erich Klein, Revisor

Citation: 2014 TCC 169
Date: 20140526
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BETWEEN:

GEORGE STAMATOPOULOS,

Appellant,

and

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Respondent.

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REASONS FOR ORDER

D' Auray J.

[1] Before the hearing of the appeal began, the appellant presented an oral motion for leave of the Court to file an amended amended notice of appeal.

[2] The respondent is not contesting the amendments the appellant identified in his amended amended notice of appeal, except for the addition of paragraph 8.1 of the amended amended notice of appeal, which states the following:

[TRANSLATION]

Every month and at the time his GST/QST return was filed, the appellant submitted form VDZ-350.49-V, "Subcontracting Expenses Information Return: Clothing Industry", to the ARQ as required by the ARQ, and identified all the subcontractors with which he did business.

[3] According to the respondent, form VDZ-350.49-V, Subcontracting Expenses Information Return: Clothing Industry (the form) must be submitted with the Quebec sales tax (QST) return and not with the goods and services tax (GST) return. Thus, for GST purposes, this form is not relevant. Consequently, the respondent argued that I must not allow this amendment.

[4] The rule regarding amendments is section 54 of the *Tax Court of Canada Rules (General Procedure)*. Section 54 states the following:

A pleading may be amended by the party filing it, at any time before the close of pleadings, and thereafter either on filing the consent of all other parties, or with leave of the Court, and the Court in granting leave may impose such terms as are just.

[5] The courts have generally given a broad interpretation to the rules regarding amendments. Thus, in *Canderel Ltd. v. Canada*, [1994] 1 F.C. 3, Justice Décary, in a unanimous decision of the Federal Court of Appeal, stated the following general rule regarding amendments:

. . . the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice. . . .

[6] An amendment should therefore be allowed as long as it would not result in an injustice to the other party not capable of being compensated by an award of costs. The amendment must also serve the interests of justice.

[7] The respondent in the present case does not allege that she would suffer an injustice not capable of being compensated by an award of costs. Rather, she argues that the form attached to the QST return is simply not relevant for GST purposes.

[8] In my opinion, the issue is more complex than it may first appear. It is clear that the forms attached to the QST return are only required for QST purposes, and not for GST purposes. Therefore, the forms themselves are not relevant for GST purposes.

[9] However, a pragmatic approach is needed. The appellant, as a registrant, files his GST and QST returns with the Agence du Revenu du Québec (ARQ) together. The form identifying the subcontractors is attached to the QST return. The ARQ auditor administers the two taxes together. It is therefore very possible that the auditor would use for GST purposes the information on the form attached to the QST return.

[10] In this regard, section 69.0.1 of the *Tax Administration Act* allows the ARQ to communicate information contained in a tax record to another government without the consent of the person concerned.

[11] Thus, in the present case, for GST purposes, the ARQ auditor may, in accordance with section 69.0.1 of the *Tax Administration Act*, communicate to the CRA (Canada Revenue Agency) information regarding subcontractors contained on the form. On this form the registrant is required to provide the following information for each subcontractor:

- the name, address and telephone number;
- the total of the amounts charged for the work (that is, the total of the amounts that you paid or that you owe with respect to the work for the reporting period concerned, minus any portion you reported for a previous period);
- the identification and file numbers (if the subcontractor is a QST registrant) and the amount of QST payable with respect to the amounts reported;
- the social insurance number, if the subcontractor is an individual and is not registered for the QST.

[12] Under the agreement with respect to the administration by Quebec of Part IX of the *Excise Tax Act* relating to the goods and services tax ("Canada-Quebec Agreement), the ARQ administers the GST in Quebec.

[13] Since the ARQ administers the two taxes in Quebec, that is, the GST and the QST, the exchange of information relating to the administration of both taxes is facilitated.

[14] Under the *Tax Administration Act*, the ARQ may, for GST purposes, use the information it obtained in the administration of the QST. The converse is also true: as a consequence of the Canada-Quebec Agreement the ARQ is likewise authorized, under subsection 295(5) of the *Excise Tax Act*, to communicate for QST purposes information it obtained in the administration of the GST.

[15] The question of whether the information on the forms was or was not used for GST purposes in the present case is an issue the Court will determine at the hearing. As a result, I am of the view that at this stage of the proceedings it would be unwise to conclude that the forms identifying the subcontractors are not relevant for GST purposes.

[16] The amendment required by the appellant would not result in an injustice to the respondent that is not capable of being compensated by an award of costs, and so I allow the amendments indicated in the amended amended notice of appeal.

[17] That being said, the motion for amendment could have been filed well before the morning of the hearing. As a result, costs of \$700 are awarded to the respondent.

[18] This Court **ALLOWS** the appellant to amend the amended notice of appeal, the amended amended notice of appeal being deemed to have been filed with this Court on the date of the order herein, and **ORDERS**:

The appellant shall serve the amended amended notice of appeal on the respondent, and the respondent shall have 60 days after being served with the amended amended notice of appeal to file a reply to the amended amended notice of appeal.

The appellant shall pay the respondent costs of \$700, regardless of the outcome of the appeal.

The hearing scheduled for April 29, 2014 is adjourned.

The appeal shall be set down for hearing on Monday, October 20, 2014, at 9:30 a.m., for a duration of five days, before the Tax Court of Canada, at 30 McGill Street, Montreal, Quebec.

Signed at Ottawa, Canada, this 26th day of May 2014.

"Johanne D' Auray"

D' Auray J.

Translation certified true
on this 1st day of December 2014.

Erich Klein, Revisor

CITATION: 2014 TCC 169

COURT FILE NO.: 2012-2372(GST)G

STYLE OF CAUSE: GEORGE STAMATOPOULOS v. THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: April 29, 2014

REASONS FOR ORDER BY: The Honourable Justice Johanne D' Auray

DATE OF ORDER: May 26, 2014

APPEARANCES:

Counsel for the appellant: Laurent Tessier
Jean-François Poulin

Counsel for the respondent: Benoît Denis

COUNSEL OF RECORD:

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