Docket: 2014-2599(GST)APP

BETWEEN:

JEAN-MICHEL DÉSIR,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on January 19, 2015, at Montréal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the applicant: The applicant himself

Counsel for the respondent: Philippe Gilliard

JUDGMENT

In accordance with the attached Reasons for Judgment, the applicant's application for an order extending the time in which a notice of objection to the reassessment of March 12, 2012, made under the *Excise Tax Act* may be filed is dismissed.

Signed at Ottawa, Canada, this 19th day of May 2015.

"Alain Tardif"

Tardif J.

Translation certified true
on this 3rd day of July 2015
Daniela Guglietta, Translator

Citation: 2015 TCC 126
Date: 20150519
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REASONS FOR JUDGMENT

Tardif J.

[1] This is an application under paragraph 304(1)(*a*) of the *Excise Tax Act* (the E.T.A.) by Jean-Michel Désir (the applicant), for an order extending the time for filing a notice of objection with the Minister of National Revenue (the Minister).

BACKGROUND

[2] On March 12, 2012, the Minister sent a notice of reassessment to the applicant based on the E.T.A. The conformity and quality of the notice was not challenged.

[3] On January 1, 2013, the applicant made an application for an extension of time. The applicant attached to his application a notice of objection together with documentation supporting his objection.

[4] On November 14, 2013, the Minister refused the application for an extension of time. Consequently, he sent a notice to the applicant, informing him that his application had been refused. In the notice, the Minister indicated to the applicant that he would have 30 days to ask the Tax Court of Canada to reconsider that decision. In other words, the application was refused because it was out of time.

[5] On April 15, 2014, the applicant sent a letter to the Minister in which he admitted that he had been late submitting a notice of objection. Once again, he attached his notice of objection and supporting documentation.

[6] On June 2, 2014, the Minister again responded, indicating to the applicant that he had exceeded the 30-day time limit for appealing to the Tax Court of Canada.

[7] On July 9, 2014, the applicant filed an application for an extension of time with this Court.

APPLICABLE STATUTORY PROVISIONS

[8] The relevant provisions of the E.T.A. read as follows:

> **301**. (1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.
>
> . . .
>
> **303.** (1) Where no objection to an assessment is filed under section 301, or no request has been made under subsection 274(6), within the time limit otherwise provided, a person may make an application to the Minister to extend the time for filing a notice of objection or a request and the Minister may grant the application.
>
> . . .
>
> (5) On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the person of the decision by registered or certified mail
>
> . . .
>
> (7) No application shall be granted under this section unless
>
> > *(a)* the application is made within one year after the expiration of the time otherwise limited by this Part for objecting or making a request under subsection 274(6), as the case may be;
>
> . . .

> **304.** (1) A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either
>
> > *(a)* the Minister has refused the application, or
> >
> > *(b)* ninety days have elapsed after service of the application under subsection 303(1) and the Minister has not notified the person of the Minister's decision,
>
> but no application under this section may be made after the expiration of thirty days after the day the decision has been mailed to the person under subsection 303(5).

[Emphasis added]

POSITION OF THE PARTIES

[9] In this case, the Minister submits that this Court has no discretion to hear the applicant's application for an extension of time given that he did not make it within thirty days of his notice of decision in accordance with subsection 304(1) *in fine* of the E.T.A. It is the Minister's position that this is a strict time limit.

[10] The applicant is essentially resorting to fairness arguments. He submits that, after receiving the Minister's notice of decision, he mandated his accountant to appeal to this Court. He thus attributes the non-compliance with the time limit to his accountant. If that is the case, it may be appropriate to question the extent of the mandate given to the accountant to assess the nature of his liability. However, this Court has neither authority nor jurisdiction over this issue.

ANALYSIS

[11] We begin by repeating each of the relevant deadlines in this case.

Time limit of 90 days to object

[12] First, under subsection 301(1.1) of the E.T.A., the applicant had 90 days after the notice of reassessment was mailed by the Minister to file a notice of objection. He therefore had until June 11, 2012, to object.

[13] The applicant missed this time limit.

Time limit of one year and 90 days to extend the time for filing an objection

[14] The applicant could then request an extension of time for filing an objection under section 303 of the E.T.A. However, as stated in paragraph 303(7)(*a*) of the E.T.A., this application must be made within one year after the expiration of the 90-day time period, that is, before June 12, 2013.

[15] The applicant complied with this time limit.

Time limit of 30 days to appeal from the Minister's decision

[16] Subsection 303(5) of the E.T.A. then requires the Minister to, with all due dispatch, consider said application for an extension of time and grant or refuse it. Also according to that subsection, the Minister shall send notice of the decision to the applicant.

[17] If the Minister fails to notify the taxpayer of the decision within 90 days, the taxpayer is free to apply to the Tax Court directly to rule on the application, pursuant to paragraph 304(1)(*b*) of the E.T.A.

[18] By informing the applicant of the refusal of his application on November 14, 2013, it took the Minister 295 days to notify him of his decision. However, during that time, the applicant never asked this Court to determine his application.

[19] The applicant rather relied on paragraph 304(1)(*a*) of the E.T.A.

[20] Indeed, on July 9, 2014, he filed with this Court an application requesting an extension of time for filing a notice of objection.

[21] It therefore took the applicant 237 days, since receiving notice from the Minister refusing his application, before filing a formal appeal with the Court.

[22] However, subsection 304(1) *in fine* of the E.T.A. requires that an appeal from the Minister's decision be filed within 30 days from the day the notice of decision has been mailed. In other words, this provision gave the applicant until December 16, 2013, to appeal to the Tax Court of Canada. However, by filing his appeal on July 9, 2014, he did so 205 days later.

[23] The applicant therefore missed this time limit.

[24] The Minister is of the view that this is a strict time limit. He relies, in particular, on two decisions, *9848-3173 Québec Inc. v. The Queen*, 2003 TCC 217,

and *Maman v. The Queen*, 2007 TCC 429, in which the Court clearly explained that subsection 304(1) *in fine* of the E.T.A. does not give decision-makers any discretion to deviate from the time limit of 30 days.

[25] I would add to those decisions *Bellemare v. The Queen*, 2013 TCC 381, in which Justice Boyle mentioned, at paragraph 7 of his decision, that "the thirty-day period, along with the one-year-and-90-day period, is fixed by law and this Court has no jurisdiction not to apply it on grounds of equity, fairness or otherwise."

[26] This passage illustrates the rigour with which Canadian courts apply the time limits in the E.T.A. See, in particular, *2786885 Canada Inc. v. Canada*, 2011 FCA 197; and *Pereira v. Canada*, 2008 FCA 264.

[27] Nothing more can be done to allow the applicant's application on the ground that the time limit error is attributable to the accountant. It is crucial to apply a statutory provision in the absence of any ambiguity.

[28] While the case is somewhat unique, I, unfortunately, cannot change anything. Indeed, the Minister reviewed the applicant's application for an extension of time, and on this occasion, 295 days elapsed before he mailed a notice of his decision. Such a time limit is plainly unreasonable; this was not a complicated matter.

[29] It is obvious that such a long period of time would lead the taxpayer to believe that his case had been finally resolved.

[30] Although one cannot ignore the law, a reasonable person may surely think that he or she is entitled to a time limit of more than 30 days if that person also had to wait 295 days before a decision was issued in his or her case. In other words, all parties to a dispute should be bound by the strictness of time limits.

[31] In procedural matters, minimum fairness requires that the parties to a dispute be subject to comparable rules, particularly with respect to time limits. However, from the moment the Minister finally decided to send a notice refusing his application for an extension of time, Parliament limited, without exception, to 30 days the time limit within which the applicant could appeal. I doubt that he, like a large majority of Canadian taxpayers, was aware of the possibility of appealing directly to the Court pursuant to paragraph 304(1)(*b*) of the E.T.A.

[32] There are no time constraints for the Minister to respond to an application made pursuant to subsection 303(1) of the E.T.A. His decision may be mailed to the taxpayer, on a completely discretionary basis, weeks, months, even years later.

[33] Such a practice may lead the taxpayer to believe that his or her application has been granted; use of the alternative or mechanism under paragraph 304(1)(*b*) of the E.T.A. is particular and not easily understandable from a layman's perspective.

[34] From the moment he or she receives a notice refusing his or her application, the taxpayer only has 30 days to appeal. Moreover, nothing in the E.T.A. requires the Minister to inform the taxpayer of said time limit of 30 days, as was the case here.

[35] The due diligence required of the taxpayer is disproportionately more demanding than that of the Minister, as the Minister can respond whenever he sees fit.

[36] This situation is made even more complex by the other time limits in the E.T.A. Indeed, both subsection 301(1.1) and section 306 *in fine* of the E.T.A. require a time limit of 90 days to object and appeal. Therefore, the taxpayer must be able to distinguish this time limit from the others.

[37] Furthermore, section 93.1.5 of the *Tax Administration Act* (the T.A.A.), the corollary to section 304(1) of the E.T.A. in QST matters, allows taxpayers to appeal the Minister's decision within 90 days after the day of mailing of the notice of his decision.

[38] A taxpayer therefore has more time to appeal to Court of Québec than to the Tax Court of Canada, which I find is fundamentally incoherent.

[39] Parliament should revisit the time limit of 30 days provided for in subsection 304(1) *in fine* of the E.T.A. In the case at bar, I cannot usurp the role of Parliament. I must follow the letter of the Act and the various decisions that have validated the rigour of the prescribed time limit.

[40] For these reasons, the appeal must be dismissed.

Signed at Ottawa, Canada, this 19th day of May 2015.

"Alain Tardif"

Tardif J.

Translation certified true
on this 3rd day of July 2015
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PLACE OF HEARING:	Montréal, Quebec
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REASONS FOR JUDGMENT BY:	The Honourable Justice Alain Tardif
DATE OF JUDGMENT:	May 19, 2015
APPEARANCES:	
For the applicant:	The applicant himself
Counsel for the respondent:	Philippe Gilliard
COUNSEL OF RECORD:	
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