

BETWEEN:

SNF L.P.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 12, 13, 14 and 15, and September 28, 29
and 30, 2015, at Montreal, Quebec.

Before: The Honourable Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Louis Tassé
Rachel Robert
Counsel for the Respondent: Catherine-A. Boisvert
Louis Riverin

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated June 7, 2011 and bears no number, in respect of the period from January 1, 2009 to September 30, 2010, is allowed with costs and the appellant is entitled to the Input Tax Credits claimed, less the amount in respect of purchases from Ms. Bergeron and the purchase from Mr. Dubé-Vanier on September 17, 2010. The quantum of the penalty assessed pursuant to section 285 of the *ETA* will be cancelled save and except for that portion attributable to the ITCs claimed for supplies acquired from Ms. Bergeron. Interest will be reduced accordingly.

Signed at Ottawa, Canada, this 29th day of January 2016.

"Gerald J. Rip"

Rip J.

Citation: 2016 TCC 12
Date: 20160201
Docket: 2013-1207(GST)G

BETWEEN:

SNF L.P.,

Appellant,

and

HER MAJESTY THE QUEEN,

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REASONS FOR JUDGMENT

Rip J.

INTRODUCTION

[1] The issue in this appeal is whether, or to what extent, a purchaser of goods who pays the required Goods and Services Tax ("GST") under Part IX of the *Excise Tax Act* ("*ETA*" or "*Act*") to a person who is registered as a supplier, but may not be a supplier, is entitled to input tax credits ("ITCs") if the purported supplier, among other things, does not remit the GST to the Receiver General. And if the purchaser in such circumstances is not entitled to ITCs, is it entitled to a rebate of tax paid in error? (Section 261 and subsection 296(2.1) of the *ETA*.)

[2] In short, the appellant, SNF L.P. ("SNF"), carries on a business of recycling metals purchased from various sellers of metal, each having registered for and received a GST and a Quebec provincial sales tax ("PST") number. The appellant paid twelve identified sellers for metal it purchased, including GST and PST. However, apparently unknown to the appellant, during the period from January 1, 2009 to September 30, 2010 these sellers did not remit the GST on the sales of the metal to the government. Revenu Québec denied the appellant ITCs of \$507,329.32 with respect to these sales, and also assessed a penalty of \$126,832.33 pursuant to section 285 of the *ETA* as well as both arrears and refund interest of \$33,929.11, the whole aggregating \$668,090.76.

[3] The Crown's position is, among other things, that during the period of this appeal the sellers-suppliers in question did not have the resources to make the actual supplies, that the names of the suppliers on the invoices for the supplies were not the names of the real suppliers, that they were "prête-noms"¹ for the actual suppliers. At trial the Crown conceded that the invoices were not "invoices of convenience" and did not question that SNF actually did purchase the supplies described on the invoices for the price indicated on each invoice.

[4] Each of the 12 suppliers was registered with a GST number when the supply was made. Each supplier was paid in cash, which, Mr. Herbert Black, the principal of SNF, declared, was the "norm" in the industry and is usually the choice of the supplier.

FACTS

[5] SNF is in the business of recycling industrial, commercial and residential metals (both ferrous and non-ferrous), which it sells in Canada and elsewhere. The appellant's principal place of business is located in Laval, Quebec. SNF was acquired by American Iron and Metal Company Inc. ("AIM") in 2008 and at the date of the trial was controlled by AIM. AIM was described by its president, Herbert Black, as the largest, or second largest, recycler of scrap metal in Canada: AIM operates 70 scrap yards in North America, has over 18,000 suppliers and in 2010 had sales of \$1.8 billion and made purchases of \$700,000,000. The appellant's own sales in 2010 were \$62,000,000. Mr. Black traced the history of AIM and how he made SNF into a profitable business. He stated that he himself is not involved in the day-to-day operations of SNF.

[6] SNF obtains scrap from four sources: (1) industrial production or manufacture of goods; (2) old cars and related products; (3) demolition of buildings; and (4) "bric-à-brac", that is, for example, people cleaning out their garages and disposing of metals.

[7] When a person, a supplier, brings scrap to the mill, SNF prepares an invoice (to itself) and pays the person for the scrap plus GST and PST. The reason SNF prepares its own invoices is that most suppliers themselves do not provide an invoice. Mr. Black stated that SNF relies on its own prepared invoices for the

¹ In the "Amended Reply to the Notice of Appeal", at paragraph 40(v), the Minister assumed that the said suppliers are "prête-noms" for true scrap metal suppliers who remain unknown. See paragraphs 49 to 52 of these reasons for a review of "prête-nom".

correct weight of material and the price that SNF will pay. Before paying a supplier, SNF will check if it has valid GST and PST numbers.

[8] Mr. Black challenged the respondent's view that it is necessary to have resources such as a scrap yard, trucks and employees to be in the scrap metal business and make supplies. He also complained of Revenu Québec's insistence that SNF make greater inquiries about its suppliers.

[9] In his evidence in chief and in cross-examination, which took the better part of a day, Mr. Black related his history in the scrap metal business. He explained that a scrap metal dealer does not have to have a yard to operate. Some people "work out of an office and buy and sell material all over the world" without yards. He recalled someone working out of the old Mount Royal Hotel lobby buying and selling scrap over a pay phone. Mr. Black added that a dealer can use SNF trucks to pick up and deliver scrap for sale. He himself had part ownership in a company, Cardinal Metal, that has no scrap yard but is in the business; the company buys scrap at various yards and sells the scrap to AIM. As Mr. Black explained it: "Sometimes you call a guy who has a yard but he has no trucks. Sometimes you have a guy who has trucks but he has no yard. Sometimes you have guys who have no trucks and no yards."

[10] Mr. Black complained that AIM and its related companies have "no resources [to determine the legitimacy of a supplier] without cooperation from the tax department to find out if [a] . . . company was paying their taxes properly or doing what they were supposed to do . . ." AIM and its related companies have a system in place to ensure they are dealing with legitimate suppliers. Out of over a thousand suppliers, transactions with only 12 suppliers are being questioned by the tax authorities. He stated that he has gone to Revenu Québec to report a person going bankrupt with one company and starting a new company also selling scrap. He also reported, he said, people constantly changing company names. He insisted that he even suggested paying the GST and PST on purchases directly to Revenu Québec but this offer was not considered. He also remarked that if he knows of a "prête-nom" operating in the business, he does not purchase from that person.

[11] SNF also keeps watch to ensure it does not purchase stolen materials, Mr. Black testified. If, for example, brand new ingots are being sold, SNF concludes they were stolen and does not purchase them.

[12] Respondent's counsel queried Mr. Black with respect to litigation in Superior Court undertaken by AIM against several former employees of SNF, as

well as against corporations in which they may have had an interest, for fraud at its facilities in Lévis, Quebec and other locations. The fraudulent transactions apparently took place before AIM acquired SNF.

[13] One of the defendants was Daniel Picard, erstwhile general manager in Lévis. The defendants were sued by AIM for, among other things, fraud and theft, including fiscal fraud and false deliveries of metal in 2003, involving "prête-noms" corporations. Four defendants, including one Daniel Picard and his son Steve, were accused of issuing false purchase invoices to several companies acting as "prête-noms" for metal delivered or "allegedly delivered" by a corporation, Nittolo Metal (2000) Inc., the total amount paid being "at least \$10,624,608.59", of which \$499,964.28 was GST and \$745,946.46 was PST, none of which was remitted to the proper fiscal authorities. In the pleadings, AIM named five corporations involved in the sales and the people for whom each "prête-nom" was acting.

[14] One of the purported suppliers acting as a "prête-nom" in Lévis was "Impériale", which was using the GST and PST numbers of Imperial Oil Ltd. and used a post office box as its postal address.

[15] Mr. Black strongly denied that the Lévis scheme could be compared to the situation at bar and that, therefore, SNF ought to have been aware of it. He questioned the Crown's claim that as a result of the Lévis situation in which a fictitious invoice scheme had been in place earlier, SNF ought to have been more alert and cautious concerning the 12 suppliers. In Lévis, he said, false GST and PST numbers were being used. At bar, GST and PST numbers were given to the purported suppliers and any verification with the government would have confirmed that any given supplier did have valid tax numbers. Also, at bar, there was no collusion by SNF employees. Also, neither SNF nor anyone at SNF could or did benefit from the actions of the 12 suppliers.

[16] When Mr. Black discovered what was taking place in Lévis, he recalled, all the "15 people . . . were fired in the same day" and the government was informed. Apparently what Mr. Black referred to as a "scam" had begun before AIM purchased SNF. He explained that Mr. Picard had been fired earlier by SNF, before AIM owned SNF, and when AIM hired Mr. Picard later on, he had no idea of Picard's history. Later, AIM hired Sylvain Ouellette, who, Mr. Black testified, had a scheme in concert with Mr. Picard. In all, Mr. Black estimated he was "robbed" of \$27.5 million "over a period of six, seven years" not only through false invoices but also through gas coupons and, as AIM's pleadings state, false expense account claims, theft of cash, and charging for personal renovations and a multitude of

personal expenses. The police also were called by SNF to investigate what had transpired.

[17] I infer that the evidence respecting this activity was presented to demonstrate that SNF had a history of complicity in fraudulent schemes and the supplies acquired from the 12 suppliers were nothing new. I agree with Mr. Black that the facts at bar do not resemble what took place in Lévis.

APPELLANT'S EVIDENCE

[18] The twelve suppliers, referred to in the appellant's pleading as "Contentious Suppliers", and the ITCs claimed and disallowed are as follows:

<u>Name of supplier</u>	<u>ITCs claimed and disallowed</u>
(a) 9165-4384 Québec Inc. (Robert McDuff)	\$ 125,191.96
(b) 9222-1043 Québec Inc. (Patrick Parent)	17,761.52
(c) Alain Deroy, Recyclage de métaux	16,289.46
(d) Alexandre B. Riel, Recyclage de L'Épiphanie	35,875.62
(e) Jérémie Sergerie, Recyclage de L'Épiphanie	32,929.77
(f) Éric Dubé Vanier	112,655.42
(g) Benoît Scott, Métallique Ben	22,374.77
(h) Noël Nicolas	30,558.39
(i) Patrick Scott enr.	9,914.57
(j) Pierre Daraiche	53,122.58
(k) Réjean Trudeau	27,723.06
(l) Valérie Bergeron	13,545.67

[19] Éric Roussel is the manager of the Logistics/Transportation Division at AIM. He is responsible for everything related to the transportation of containers,

for the scales, the truck scales and car crushing. He has worked for SNF since 2004 and held many positions before becoming the manager of Logistics/Transportation.

[20] SNF, Mr. Roussel stated, purchases all types of metal, ferrous and non-ferrous, magnetic and non-magnetic for recycling. Brass and copper, for example, are non-ferrous metals. Non-ferrous metals, according to Mr. Roussel, have greater value than ferrous metals. The value of metal, he said, depends on its quality, including the type of alloys in the metal. Invoices prepared by SNF sometime refer to Number 1 and Number 2 copper for example. Number 1 copper is clean copper; Number 2 copper may be contaminated (e.g. with paint or other impurities) and is of a lower quality. The value of metals also fluctuates based on the market.

[21] The majority of the metal provided to SNF by the 12 suppliers was non-ferrous, Mr. Éric Roussel testified. He stated that SNF purchases approximately 45,000 tons of non-ferrous metal, mainly copper, in a year compared to purchases of 550 tons of ferrous metal. He estimated that on any given day there are at least 200 deliveries to SNF.

[22] Mr. Roussel divided SNF's suppliers into four groups: pedlars, pedlar-dealers, dealers and industrial accounts. Each type of supplier is dealt with differently. The pedlar is a person who comes in off the street and brings supplies to SNF that may originate from cleaning a garage or from junk collected on the street. He is asked for photo identification, usually a driver's permit, his address and his social insurance number. A pedlar is not in the scrap business and is not registered for GST purposes. A register of authorized persons is maintained for pedlars, however.

[23] Pedlar-dealers have a better appreciation of metal and bring larger quantities to SNF. They may have contacts in the business and secure scrap from building demolitions, for example. They are registered for GST purposes.

[24] Dealers usually have a scrap yard of their own, an area where they purchase and store scrap and keep containers and trucks. They may make deliveries to SNF with their own container trucks or SNF may pick up scrap at a dealer's site and deliver to its own premises. Of the 12 suppliers, only two, Alexandre B. Riel and Jérémie Sergerie, are dealers; the others are pedlar-dealers, according to Mr. Roussel.

[25] An industrial supplier may be a railway, for example, or other business in an industry that uses various metal products and sells any excess to SNF.

[26] Container trucks bringing material to SNF's yard may be owned by SNF or the supplier, or borrowed or rented by the supplier from third parties. If it is an SNF container, the supplier is charged for its use. In such a case, the supplier would phone SNF and arrange a pick-up for delivery to SNF.

[27] A supplier would have opened an account with SNF before it could sell material to SNF. On opening an account, Mr. Jean Masson, a buyer for SNF, would usually meet the prospective supplier and obtain the supplier's tax numbers, both GST and PST, usually by receiving a copy of a Revenu Québec stamped receipt of an application for registration for GST and PST, including a registration number, address and [TRANSLATION] "as many details as possible to open the account". He would then refer the application for a new account to head office, that is, AIM's head office, for approval.

[28] The supplier usually would telephone Mr. Masson to negotiate a price, which depended on the quality of the metal, whether it was ferrous or non-ferrous, and, of course, the market price at the time. Quantity may also be factored into the quoted price. Mr. Masson estimated that in 2009-2010 he himself would get 40 calls a day from 100 to 120 suppliers, mainly pedlar-dealers and dealers, selling about \$30 million worth of scrap a year. He would process suppliers' accounts. Once a price was negotiated, it was valid for a limited number of hours. Mr. Masson would enter the details of the proposed transaction in the appellant's electronic system.

[29] The process of how a supplier would approach AIM to sell metal, including the weighing of the metal, the issuance of a scale ticket, the issuance of an invoice and payment in cash by AIM, was similar to the procedure applied by SNF in the appeal at bar.

[30] Mr. Masson is not present on delivery of the material nor is he involved in preparation of the invoice. His responsibilities end when he hangs up the telephone after negotiating the price of the delivery. The head office does not require any specimen signatures when an account is opened and Mr. Masson is not required to secure from the supplier a list of persons who will make deliveries on its behalf or who are authorized to receive payment in cash for the supplier.

[31] SNF has at least two scales to weigh scrap being sold to it. Nancy Bouliane was in charge of SNF's main or large scale. She supervises the weighing of the trucks as they enter. When a truck arrives at the scale, the driver informs her who the supplier is. If the supplier is already a client and registered, identification is not requested. Her main job is to prepare a scale ticket for suppliers. She cannot always confirm, on delivery of the scrap, that it is the same scrap as that with respect to which the supplier negotiated with Mr. Masson, and in such a case she would get in touch with Mr. Masson.

[32] A scale ticket contains the contract number, the date of the transaction and the name of the supplier; it may contain the licence plate number of the truck, the material delivered, the gross weight of the material and the truck, and the weight of the empty truck without the material, and indicate whether the truck is an AIM truck or a supplier's vehicle. There is an adjustment for any waste in the truck such as dirt, snow, ice, or water. Ms. Bouliane says she checks the tax numbers for each invoice. She issues the invoice for SNF but verifies neither the signature nor identity of the person acting for the supplier. She would ask for a pedlar's and new client's identification.

[33] Ms. Bouliane stated that she knows nine of the 12 suppliers, that they made the disputed deliveries themselves and that it was they who received payment. This is not in accord with Mr. Masson's evidence that some suppliers had others make deliveries. She does not know Patrick Parent, Patrick Scott and Réjean Trudeau.

[34] Michel Belisle is an attendant on the non-ferrous scale. He is not involved in billing, payment or negotiations. Mr. Belisle stated that the driver or supplier would hand him a scale ticket prepared by Ms. Bouliane. Mr. Belisle weighs the scrap on his scale and the truck is weighed on the large scale. If there is a difference between the two scales, the material is reweighed. If there is a dispute as to quality, Mr. Belisle is expected to make a decision. If everything is in order, Mr. Belisle enters the information on the computer and issues a material purchase ticket identifying the customer, i.e. the supplier, and indicating the supplier's address, the date of transaction, the payment amount, the GST number, the PST number, the contract number, the vehicle, the commodity, the weight, the unit price and the total price and whether payment is by cheque or in cash at an ATM machine. The material purchase ticket is the invoice.

[35] Information on scale tickets may vary. For example, a scale ticket issued to Jérémie Sergerie includes the truck registration number and indicates whether the material was delivered in the supplier's truck or an AIM truck. This is not indicated

on a scale ticket issued to Éric Dubé Vanier. The former scale ticket consists of two pages and indicates the gross weight ("full truck") on page 1 and both the gross weight and the weight of the empty truck on page 2 to determine net weight. The adjustment for impurities or contaminants is on page 2. The scale ticket for Mr. Dubé Vanier describes the truck licence number or driver as "Rouge" and describes the metals and their weight, as well as the contaminant factor, all on one page. On several other invoices, the driver is referred to by a nickname, Megadeth, because someone at SNF thought the driver reminded him of a member of a heavy metal band known as "Megadeth". Ms. Bouliane identified this person as Alain Deroy although, according to Mr. Roussel, Mr. Deroy was never asked to identify himself because he made deliveries for several suppliers, including Pierre Daraiche.

[36] Mr. Masson was questioned concerning his knowledge of each of the 12 suppliers when each became a client of SNF. He acknowledged that he met Robert McDuff, Patrick Parent, Éric Dubé Vanier, Benoît Scott, Noël Nicolas, Pierre Daraiche and Valérie Bergeron. He knew of Alexandre Riel. He apparently knew Jérémie Sergerie.

[37] Mr. Masson did not recall meeting Alain Deroy, Patrick Scott and Réjean Trudeau.

[38] According to Mr. Masson, Robert McDuff himself delivered metals to SNF. Mr. Parent, said Mr. Masson, also delivered material himself or had a person named Sylvain deliver for him. Sylvain also delivered material to SNF on behalf of Mr. Dubé Vanier, stated Mr. Masson. Mr. Dubé Vanier also delivered material himself. Although Mr. Masson did not know Alain Deroy. Mr. Deroy received cash payments aggregating \$375,000 from SNF during a five-month period.

[39] Alexandre Riel, Mr. Masson recalled, worked with the same Luc Pimparé who was associated with Mr. Sergerie. It was Mr. Pimparé who sent the documents required by SNF for Mr. Riel. The business address of Recyclage de l'Épiphanie was the same address as that of Mr. Pimparé and Jérémie Sergerie; they purportedly used the same yard.

[40] Mr. Benoit Scott and Mr. Pierre Daraiche delivered material themselves as did Mr. Noël Nicolas, although Mr. Nicolas frequently had another person deliver for him.

[41] Ms. Valérie Bergeron was introduced to Mr. Masson by Mr. Robert McDuff. On the opening of her account, Robert McDuff informed Mr. Masson that it would be he who would call Mr. Masson to negotiate the sales and it would be he who would deliver the scrap for Ms. Bergeron. I note that Ms. Bergeron began to transact business with SNF at the time when the GST and PST numbers registered to Mr. McDuff ceased to be valid.

[42] At trial, there were various invoices to the same supplier that contained apparently different or illegible signatures. Catherine Legault also works at the scales with Ms. Bouliane; she was not a witness. However, Ms. Bouliane testified that Ms. Legault issued for a supplier several invoices that had different signatures, none of which correspond to that of the supplier. In particular, respondent's counsel pointed out to her two invoices issued in the name of Éric Dubé Vanier, each with different purported signatures of Mr. Dubé Vanier. Similarly, purported signatures of Mr. Pierre Daraiche on three invoices were different; no signature was verified. It appears that SNF's main search was to ensure that the GST registration number was that of the purported supplier.

CROWN'S EVIDENCE

[43] The auditors of Revenu Québec, Daniel Fugère, Sylvie Jasmin, Caroline Tanguay, Jean-Yves Barrette, Sylvie Larocque, Vivianne Abd-el Malek, Caroline Marcil, Martin Delisle and Sophie Claveau, who worked on the files of the 12 suppliers reviewed information available to the public as well as information in the Revenu Québec files that are of a confidential nature, including, I infer, income tax returns of the 12 suppliers. The following is a summary of evidence by these Revenu Québec auditors with respect to each of the 12 suppliers, some of the evidence having been mentioned earlier in these reasons:

- i) 9165-4384 Québec Inc. ("4384") (12 invoices in evidence)

The GST registration number for 4384 was issued on July 1, 2006 and was cancelled April 19, 2011. SNF created an account for 4384 on March 10, 2009 and 4384 made sales to SNF during the period from March 10, 2009 to August 18, 2010.

Mr. McDuff appears to be the sole shareholder of the corporation.

During the 19-month period at issue, 4384 made supplies to SNF in the amount of \$2,503,839.20. SNF paid GST on these supplies. All supplies were paid in cash. On some days, 4384 made more than one delivery. 4384 owned a few – the number is not in evidence – commercial trucks.

According to Mr. Fugère and Ms. Jasmin, who audited both Mr. McDuff and 4384, Mr. McDuff had not filed any personal income tax return with Revenu Québec for the years 2006 to 2009 and 4384 did not file any income tax and GST/PST returns. Mr. McDuff, they add, filed for bankruptcy on two occasions before 2006. There is no record of discharge.

Twelve invoices were produced at trial. On the scale tickets the drivers were identified as "Ben", "Mc Duff", "Bleu", "Delvan" and another as "Lavigne". The tax numbers are not included on ten of the invoices produced but are stated on the other two invoices. The signatures on the invoices varied and included "McDuff", "René Paré", "Dalpé" and "Marie-Michelle Ouellette".

4384 did not report to the Registraire des entreprises of Quebec that it had any employees.

ii) 9222-1043 Québec Inc. ("1043") (5 invoices)

The GST registration number for 1043 was issued on April 21, 2010 and was cancelled December 21, 2010. SNF created an account for 1043 on September 1, 2010 and purchased supplies from 1043 during September 2010.

On receipt of 1043's application for a GST/PST registration a Revenu Québec official apparently wrote on the application [TRANSLATION] "risky registration".

The shareholder of 1043 is Patrick Parent. 1043 carried on its business as Recyclage Inter-Rives, as well as under its own name.

In one month during the period in issue, 1043 sold to SNF supplies aggregating \$355,230.40, all paid for in cash. Deliveries to SNF were made by "Sylvain".

1043 did not own any vehicle registered with the Société de l'assurance automobile du Québec ("SAAQ"), nor did it hold any commercial recycling permit. 1043 did not declare to the Registraire des entreprises that it had any employees. The address of 1043 was a single-family residential property, the owner of which is unknown.

1043's address indicated on SNF invoices could not be found, according to Ms. Tanguay.

No Quebec income tax return or GST/PST tax returns were filed by 1043 for any period in issue. Mr. Parent also failed to file income tax returns since 2006; his sources of income for 2006 and 2007 were in part employment insurance and welfare.

A scale ticket from SNF refers to 1043 delivering metal in a "Beige" truck. The signatures on the invoices were illegible, according to the auditor.

The respondent's evidence is that 1043 was a "prête-nom" for "Sylvain". There was no evidence to the contrary.

iii) Alain Deroy (8 invoices)

The GST registration number for Mr. Deroy was issued on January 7, 2008; he became bankrupt on March 22, 2001. SNF created an account for Mr. Deroy on January 29, 2010 and purchased supplies from him from February to June 2010.

Mr. Deroy sold SNF supplies for the sum of \$325,798.20 during a five-month period, all paid in cash. Deliveries were made by "Megadeth".

Both Mr. Deroy and Mr. Parent faxed their applications for GST/PST registration from the same dépanneur.

Mr. Deroy's telephone number was that of his father. He gave this number on his GST application as well as to SNF. His declared place of business was a residential building owned by his father in St-Amable, according to Mr. Barrette and Ms. Jasmin.

Mr. Deroy owned three pleasure vehicles and one truck that was registered with the SAAQ. He did not report any employees to the Registraire des entreprises.

According to his 2006 and 2007 Quebec income tax returns, Mr. Deroy reported income of [TRANSLATION] "more or less" \$6,000. He did not file income returns for 2008 and 2009, nor did he file any GST return.

According to at least one scale ticket, Mr. Deroy, or "Megadeth", delivered supplies to SNF in a "Ram Blanc". The GST number and Mr. Deroy's name and purported signature were on all invoices.

The evidence by Ms. Jasmin that Mr. Deroy was a "prête-nom" of Megadeth was not controverted.

iv) Alexandre B. Riel (13 invoices)

The GST registration number for Mr. Riel was issued on April 15, 2010; his file was lost by Revenu Québec. SNF created an account for him on April 29, 2010 and purchased supplies from Mr. Riel between May 6 and September 29, 2010.

Mr. Riel claimed to be carrying on business as "Recyclage de L'Épiphanie". In his application for GST/PST registration, he entered two addresses, one in Yamachiche and one in L'Épiphanie, the latter being used on SNF invoices.

During a five-month period, M. Riel supplied SNF with \$717,512.40 of material, all paid for in cash. All invoices included the GST number.

On a number of occasions, Mr. Riel used an SNF truck to deliver material. Also, on various scale tickets, "Pimparé", "Blanc" and "Laforce" appear as the driver. Signatures on invoices included

"ABR" and "Johanne Vallières", who is Mr. Pimparé's spouse, according to Ms. Jasmin.

Mr. Riel's address corresponded with the address of one Luc Pimparé, the [TRANSLATION] "recycling yard" in L'Épiphanie. According to Ms. Jasmin and Mr. Masson, Mr. Pimparé was an SNF supplier before the period in which Mr. Riel did business with SNF and Mr. Pimparé's address is the same as Mr. Riel's. Ms. Jasmin concluded that Mr. Riel is a "prête-nom" for Mr. Pimparé, and there is no evidence to the contrary.

v) Jérémie Sergerie (6 invoices)

The GST registration number for Mr. Sergerie was issued on March 18, 2009 and was cancelled April 18, 2011 or May 13, 2011; the exact date is unknown. SNF created an account for him on March 27, 2009 and purchased supplies from Mr. Sergerie from mid-March 2009 to May 7, 2010.

Mr. Sergerie's business address is the same as Mr. Riel's, that is the same recycling yard in L'Épiphanie as Mr. Pimparé. Like Mr. Riel, Mr. Sergerie also entered an address in Yamachiche as well as in L'Épiphanie when applying for GST/PST registration but used the L'Épiphanie address on SNF invoices.

The total amount of the supplies made to SNF during a 15-month period was \$658,595.40, all paid in cash. All invoices included the GST number.

Mr. Sergerie did not report any employees to the Registraire des entreprises.

The income Mr. Sergerie reported in 2007 and 2008 was from social assistance. There were no income tax returns or GST/QST returns in 2006 or 2009.

One of Mr. Sergerie's scale tickets indicates he used an SNF truck to deliver supplies; another indicates he used a "Beige" truck. The signatures on the invoices are either illegible or are those of other people such as "Johanne Vallières" or "Gilles Parent".

vi) Benoit Scott (6 invoices)

The GST registration number was issued to Mr. Scott on November 11, 2009 and was cancelled April 7, 2011. SNF created an account for him on November 12, 2009 and purchased supplies from Mr. Scott from mid-January to September 27, 2010.

Mr. Scott made supplies under the name Métallique Ben for a total of \$447,495.40 over a nine-month period. The supplies were paid for in cash.

Mr. Scott's place of business was in an apartment in a residential building.

He registered for GST/QST after Patrick Scott's tax numbers were revoked, but there is no evidence they were working together.

Mr. Scott owns a passenger vehicle and a Ford F-150 truck acquired from Noël Nicolas. He would call SNF and deliver the metal himself.

He did not report any employees, if he had any.

Mr. Scott had low income from 2006 to 2009, which included social assistance income in 2008 and 2009. Mr. Scott declared bankruptcy in 2007.

The various invoices submitted as evidence were ostensibly signed by Benoit Scott and include his tax numbers.

There is no evidence that Benoit Scott is a "prête-nom".

vii) Éric Dubé Vanier (24 invoices)

The GST registration number for Mr. Dubé Vanier was issued on June 16, 2008 and was cancelled September 17, 2010. SNF created an account for him on February 16, 2009 and purchased supplies from Mr. Dubé Vanier from February 25, 2009 to September 17, 2010.

On his GST/QST registration application is the notation [TRANSLATION] "risky registration".

Over a 19-month period, Mr. Dubé Vanier sold supplies to SNF for the amount of \$2,253,108.40, all paid for in cash. There was one day during which there were six transactions, said Ms. Jasmin, for the equivalent of \$130,000, also paid in cash. Over four different dates, two or three invoices can be traced to the same day. The GST number was included on all invoices. Signatures on invoices included a check mark, "Éric Dubé Vanier" and many illegible signatures.

Ms. Larocque testified that Mr. Dubé Vanier had two known addresses, which corresponded to residential addresses. His address shown on SNF invoices, according to Ms. Jasmin, is an apartment in a residential building where there is no commercial activity related to metal recycling SNF trucks would go to collect scrap metal at this residential address; in other instances, Mr. Dubé Vanier sent a red, white, black or a green truck.

Mr. Dubé Vanier did not own a vehicle registered in the SAAQ system. He did not report any employees.

In his Quebec income tax returns for 2008 and 2010, Mr. Dubé Vanier reported [TRANSLATION] "income security" income (social assistance benefits), and FOR 2009, no return was filed.

Ms. Larocque considered Mr. Vanier to be a "prête-nom" for Sylvain Lizotte. There is no evidence to suggest the contrary.

viii) Noël Nicolas (10 invoices)

The GST registration number was issued to Mr. Nicolas on June 18, 2009 and was cancelled November 4, 2010. SNF created an account for him on June 29, 2009 and purchased supplies from Mr. Nicolas from June 30 to December 23, 2009.

The amount of Noël Nicholas's supplies was \$611,167.80 over a six-month period. The supplies were generally paid for in cash; but sometimes payment was made with cheques, which were cashed at a cheque-cashing centre.

His business address was an apartment in a residential building.

Noël Nicolas did not file any tax returns during the period in question, but he was receiving social assistance benefits. He did not report any employees.

It seems that Mr. Nicolas owned several vehicles that were not authorized to operate. There was also a truck that Ms. Jasmin said was sold to Benoît Scott, but we do not have any supporting evidence. He called SNF and delivered the materials himself, but sometimes Megadeth delivered for Mr. Nicolas, according to Ms. Jasmin.

On one of the scale tickets, his truck is described as "Gris" ("Grey") and on another, as "Beige". Mr. Nicolas also used an SNF truck. There is no signature on the invoices or the signatures are illegible. Three of the invoices were issued on the same date.

The auditors believe that Mr. Nicolas is a "prête-nom" for Megadeth.

ix) Patrick Scott (2 invoices)

The GST registration number was issued to Mr. Scott on July 20, 2009; he ceased business operations October 22, 2010. SNF created an account for Mr. Scott on July 24, 2009 and purchased supplies from him from July 24 to October 22, 2009.

When Mr. Scott applied for GST/QST registration, Revenu Québec submitted his application to one of its auditors.

Patrick Scott sold metal to SNF, for \$222,923.40 in supplies over a three-month period. The supplies were paid for in cash.

His place of business is an apartment in a residential building. He did not have any employees registered with the Registraire des entreprises. He had no vehicle registered in the SAAQ system.

Ms. Jasmin testified that Mr. Scott received social assistance benefits in 2007. He did not file income tax returns for 2006, 2008 or 2009.

The invoices issued to Patrick Scott were signed by him and include his tax numbers. Mr. Scott used a white Ford truck to make the supplies.

x) Pierre Daraiche (10 invoices)

The GST registration number for Mr. Daraiche was issued on March 4, 2008 and was cancelled April 1, 2010. There is no evidence as to when SNF created an account for Mr. Daraiche but it purchased supplies from him during the period from January 5, 2009 to March 30, 2010.

Pierre Daraiche did \$1,062,461.60 worth of business with SNF over 15 months. The supplies were paid for in cash.

Mr. Daraiche was not registered with the Registraire des entreprises.

Mr. Daraiche had social assistance income in 2009 and low income in 2007. He did not file an income tax return for 2008. His reported income in 2006 was \$0.

The business address is an apartment in a residential building. He did not file any tax returns, but was registered from 2008 to 2010.

Ms. Jasmin and Mr. Delisle, Revenu Québec auditors, believe that Mr. Daraiche is a "prête-nom" for "Megadeth" and "Sylvain".

On the scale tickets, Mr. Daraiche's truck is identified as "Rouge" ("Red"), "Noir" ("Black") or "UHAUL".

On three different occasions, there are two or three invoices issued for the same day.

The signatures on the invoices, Ms. Jasmin stated, were illegible or different.

xi) Réjean Trudeau (6 invoices)

The GST registration number for Mr. Trudeau was issued on November 9, 2009 and was cancelled April 7, 2011. SNF created his account on November 11, 2009 and purchased supplies from Mr. Trudeau between November 12, 2009 and September 29, 2010.

The total of the supplies made to SNF was \$742,191.80 over an 11-month period. The supplies were paid for in cash. Mr. Trudeau signed the invoices, which included the GST number.

Mr. Trudeau had social assistance income in 2006 and 2008 and low employment income in 2007, according to Ms. Jasmin's testimony. He did not file an income tax return for 2009.

His business address is an apartment in a residential building. He did not report any employees.

Mr. Trudeau owned a few passenger vehicles registered with the SAAQ. Megadeth would deliver supplies for Mr. Trudeau. A truck identified as "350 Blanc" ("350 White") was noted on a scale ticket.

Ms. Jasmin believes that Réjean Trudeau is a "prête-nom" for Megadeth.

xii) Valérie Bergeron (9 invoices)

The GST registration number for Ms. Bergeron was issued on December 21, 2009 and was cancelled November 19, 2010. SNF created her account on January 19, 2010 and purchased supplies during August and September 2010.

Valérie Bergeron began doing business with SNF when Mr. McDuff's tax numbers ceased to be valid. She delivered to SNF a total of \$270,913.40 worth of metal over a two-month period. The tax numbers are included on the invoices and scale tickets.

Valérie Bergeron did not report any employees.

Ms. Claveau stated that Valérie Bergeron provided sales invoices she prepared regarding janitorial work for relatives. Her spouse is Steve McDuff, Robert McDuff's nephew. Ms. Claveau noted that the signatures, which appear on the SNF invoices are not Ms. Bergeron but in certain cases, Mr. McDuff's signatures. Other invoices are signed "Marie-Michèle Ouellette", "Franchesca D.", "Dalpé" and perhaps "MS".

Ms. Bergeron declared bankruptcy in 2008.

She had a passenger vehicle registered with the SAAQ but no licence to conduct trade in auto parts.

Ms. Bergeron's place of business is a residential address.

There were occasionally multiple trips on the same day for SNF and another company, PMR Refiners, according to Ms. Claveau. Two SNF invoices are for the same day and three other invoices are all for another date.

Ms. Claveau concluded that Valérie Bergeron was a "prête-nom" for Robert McDuff.

ANALYSIS

[44] Subsection 169(4) describes the requirements to be met in order to make an ITC claim for a reporting period:

A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and

(b) where the credit is in respect of property or a service supplied to the registrant in circumstances in which the registrant is required to report the tax payable in respect of the supply in a return filed with the Minister under this Part, the registrant has so reported the tax in

L'inscrit peut demander un crédit de taxe sur les intrants pour une période de déclaration si, avant de produire la déclaration à cette fin :

a) il obtient les renseignements suffisants pour établir le montant du crédit, y compris les renseignements visés par règlement;

b) dans le cas où le crédit se rapporte à un bien ou un service qui lui est fourni dans des circonstances où il est tenu d'indiquer la taxe payable relativement à la fourniture dans une déclaration présentée au ministre aux termes de la présente partie, il indique la taxe dans une

a return filed under this Part.

déclaration produite aux termes de la présente partie.

[45] The information that "may be prescribed" is set out in section 3 of the *Input Tax Credit Information (GST/HST) Regulations* ("*Regulations*"):

3. For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:

3. Les renseignements visés à l'alinéa 169(4)a) de la Loi, sont les suivants :

(a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than \$30,

a) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de moins de 30 \$:

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business,

(i) le nom ou le nom commercial du fournisseur ou de l'intermédiaire,

(ii) where an invoice is issued in respect of the supply or the supplies, the date of the invoice,

(ii) si une facture a été remise pour la ou les fournitures, la date de cette facture,

...

[...]

(iv) the total amount paid or payable for all of the supplies;

(iv) le montant total payé ou payable pour la ou les fournitures;

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$30 or more and less than \$150,

b) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 30 \$ ou plus et de moins de 150 \$:

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which

(i) le nom ou le nom commercial du fournisseur ou de l'intermédiaire et le numéro d'inscription attribué,

the supplier or the intermediary does business, and the registration number assigned under section 241 of the Act to the supplier or the intermediary, as the case may be,

...

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$150 or more,

(i) the information set out in paragraphs (a) and (b),

(ii) the recipient's name, the name under which the recipient does business or the name of the recipient's duly authorized agent or representative,

(iii) the terms of payment, and

(iv) a description of each supply sufficient to identify it

conformément à l'article 241 de la Loi, au fournisseur ou à l'intermédiaire, selon le cas,

[...]

c) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 150 \$ ou plus :

(i) les renseignements visés aux alinéas a) et b),

(ii) soit le nom de l'acquéreur ou son nom commercial, soit le nom de son mandataire ou de son représentant autorisé,

(iii) les modalités de paiement,

(iv) une description suffisante pour identifier chaque fourniture.

[46] The "supporting documentation" required in section 3 of the *Regulations* is described in section 2 of the *Regulations*:

"supporting documentation" means the form in which information prescribed by section 3 is contained, and includes

(a) an invoice,

(b) a receipt,

(c) a credit-card receipt,

(d) a debit note,

(e) a book or ledger of account,

« pièce justificative » Document qui contient les renseignements exigés à l'article 3, notamment :

a) une facture;

b) un reçu;

c) un bordereau de carte de crédit;

d) une note de débit;

e) un livre ou registre de

- | | |
|--|---|
| | comptabilité; |
| (f) a written contract or agreement, | f) une convention ou un contrat écrits; |
| (g) any record contained in a computerized or electronic retrieval or data storage system, and | g) tout registre faisant partie d'un système de recherche documentaire informatisé ou électronique ou d'une banque de données; |
| (h) any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable; (<i>pièce justificative</i>) | h) tout autre document signé ou délivré en bonne et due forme par un inscrit pour une fourniture qu'il a effectuée et à l'égard de laquelle il y a une taxe payée ou payable. (<i>supporting documentation</i>) |

[47] The liability of a person failing to remit or pay GST to the Receiver General is found in subsection 280(1) of the *ETA*.²

[48] As stated earlier in these reasons, the respondent's position in this appeal is that the 12 suppliers did not have the resources to make the supplies and that the suppliers named on the invoices were "prête-noms" and not the actual suppliers

² Subsection 280(1) reads as follows:

Subject to this section and section 281, if a person fails to remit or pay an amount to the Receiver General when required under this Part, the person shall pay interest at the prescribed rate on the amount, computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid.

Sous réserve du présent article et de l'article 281, la personne qui ne verse pas ou ne paie pas un montant au receveur général dans le délai prévu par la présente partie est tenue de payer des intérêts sur ce montant, calculés au taux réglementaire pour la période commençant le lendemain de l'expiration du délai et se terminant le jour du versement ou du paiement.

and therefore the invoices, *inter alia*, do not conform to the requirements of subsection 169(4) of the *Act* and section 3 of the *Regulations*.³

[49] A "prête-nom" arrangement is a contract that has been characterized as a simulation by which a mandatary executes a contract in his or her own name, but while acting on behalf of another, with the mandate remaining hidden to third parties.⁴ In *St-Jules c. Roy*,⁵ a Superior Court of Quebec decision, Lacoursière J.S.C. describes a "prête-nom" as a [TRANSLATION] "mandate with no representation". He refers to Denys-Claude Lamontagne,⁶ who wrote the following:

[TRANSLATION]

[1034] A prête-nom is a mandate without representation: clandestine, covert, not revealed to third parties. The intermediary "lends" his name to the mandator without revealing he is the mandatary to third persons. This is why he is personally liable under the terms of the act entered into with the third person. (2157 C.C.Q.).

[50] Article 2130 of the *Civil Code of Québec* ("*C.c.Q.*"). defines a mandate:

Mandate is a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.

That power and, where applicable, the writing evidencing it are called power of attorney.

Le mandat est le contrat par lequel une personne, le mandant, donne le pouvoir de la représenter dans l'accomplissement d'un acte juridique avec un tiers, à une autre personne, le mandataire qui, par le fait de son acceptation, s'oblige à l'exercer.

Ce pouvoir et, le cas échéant, l'écrit qui le constate, s'appellent aussi procuration.

³ "Supply" is described in subsection 123(1) of the *Act* as meaning the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition."

⁴ A. Coste, *De la Convention de prête-nom*, Paris, A. Giard, 1891, pp. 8-9.

⁵ 2007 QCCS 1813, par. 39.

⁶ D.-C. Lamontagne and B. Larochelle, *Droit spécialisé des contrats*, vol. 1 (Cowansville, Qc.;, Ed. Yvon Blais 2000), Livre IV, p. 619.

[51] Article 1451 of the *C.c.Q.* states that the following:

Simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, also called a counter letter.

Between the parties, a counter letter prevails over an apparent contract.

Il y a simulation lorsque les parties conviennent d'exprimer leur volonté réelle non point dans un contrat apparent, mais dans un contrat secret, aussi appelé contre-lettre.

Entre les parties, la contre-lettre l'emporte sur le contrat apparent.

[52] The Supreme Court of Canada has confirmed that the "prête-nom" contract is a lawful form of the contract of mandate.⁷ However, in *St-Jules c. Roy*, the Superior Court found that using a "prête-nom" is void if the purposes of the contract were illicit and caused harm to a third party.

[53] Since a "prête-nom" contract is a valid contract, the question then is whether the "prête-nom" is an intermediary of the true supplier whose name may appear on the documentation supporting the supply: paragraph 3(a)(i) of the *Regulations*. Section 2 of the *Regulations* defines "intermediary":

“intermediary” of a person, means, in respect of a supply, a registrant who, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply by the person; (*intermédiaire*)

« intermédiaire » Inscrit qui, agissant à titre de mandataire d’une personne ou aux termes d’une convention conclue avec la personne, permet à cette dernière d’effectuer une fourniture ou en facilite la réalisation. (*intermediary*)

[54] According to the Minister’s claims, "prête-noms" or so-called “shell corporations” would be excluded under this definition. The definition of "intermediary" requires the intermediary to cause or facilitate the supply by the principal. It is not the agent making the sale but the person with whom the agent has contracted. On the facts at bar, the respondent is alleging that an unknown person is the actual supplier, not the person with the GST registration number. Consequently, the supporting documentation does not meet the regulatory requirements if that documentation is not in the name of a true supplier or intermediary.

⁷ *Victuni A.G. v. Minister of Revenue of Quebec*, [1980] 1 S.C.R. 580 at 584 (TaxnetPro, paras. 7 and 8).

[55] The Minister submits that the 12 suppliers did not have the capacity to make the supplies. These suppliers could therefore not be considered as suppliers or intermediaries since they did not make the supplies or facilitate them.

[56] Subsection 169(4) requires an ITC claimant to provide certain prescribed information that will enable the amount of the ITC to be determined. The prescribed information required is, among other things, the name of the "supplier or the intermediary in respect of the supply . . . and the registration number assigned . . . to the supplier or the intermediary . . ."

[57] In *Systematix Technology Consultants Inc. v. Canada*,⁸ where the respondent was also questioning a taxpayer's right to ITCs on the basis of subsection 169(4), Sexton J.A., writing for the Federal Court of Appeal, was of the view

. . . that the legislation is mandatory in that it requires persons who have paid GST to suppliers to have valid GST registration numbers from those suppliers when claiming input tax credits.

[58] The Federal Court of Appeal in *Systematix* cited with strong approval the reasons of Bowie J. in *Key Property Management Corp. v. R.*:⁹

. . . The whole purpose of paragraph 169(4)(a) and the *Regulations* is to protect the consolidated revenue fund against both fraudulent and innocent incursions. They cannot succeed in that purpose unless they are considered to be mandatory requirements and strictly enforced. The result of viewing them as merely directory would not simply be inconvenient, it would be a serious breach of the integrity of the statutory scheme.

[59] Until the Federal Court of Appeal's judgment in *Systematix*, this Court had held that a recipient of supplies or services in good faith was not liable for the supplier's fraud in failing to remit GST paid by the recipient.¹⁰ *Systematix* has since

⁸ 2007 FCA 226, [2007] G.S.T.C. 74.

⁹ 2004 TCC 210, [2004] G.S.T.C. 32, para. 13.

¹⁰ See, for example, *Joseph Ribkoff Inc. v. The Queen*, 2003 TCC 397, [2003] T.C.J. No. 351 (QL), [2003] G.S.T.C. 104 (French), [2003] G.S.T.C. 162 (English); *Sport Collection Paris Inc. v. The Queen*, 2006 TCC 394, [2006] G.S.T.C. 91 (French), [2008] G.S.T.C. 26 (English).

been followed by this Court and the Federal Court of Appeal in *Les Entreprises DRF Inc. v. Canada (National Revenue)*,¹¹ *Comtronic Computer Inc. v. The Queen*¹², *Kosma-Kare Canada Inc. v. The Queen*,¹³ and *Pépinière A. Massé Inc. v. The Queen*,¹⁴ but compare *Salaison Lévesque Inc. v. The Queen*.¹⁵

[60] In his reasons in *Comtronic*, my colleague Justice Boyle took the Federal Court of Appeal's reference to "valid GST registration numbers from [the] suppliers" in *Systematix* "to mean GST registration numbers validly assigned to those suppliers". Justice Boyle added:

[29] In this case I am bound to follow the Federal Court of Appeal's decision in *Systematix*. I should note, however, that (as noted by Archambault J. of this Court in deciding the *Systematix* case at first instance) this strict approach can result in unfairness to a purchaser who pays the GST in good faith. It leaves Canadian businesses bearing the risk of fraud, identity theft, and wrongdoing and effectively requires them to put into place risk management practices in dealing with new and continuing suppliers to identify supplier information that may require further investigation. A result such as this may prove harsh and unfair but it is open to Parliament to legislate such a regime and I am bound to apply that legislation as it has already been interpreted by the Federal Court of Appeal.

[30] Whether it is the purchaser or the fisc that should bear the risk of supplier identity theft and wrongdoing in GST collection and remittance matters is a valid policy question to be debated. However, in circumstances such as those before me, the Federal Court of Appeal has ruled that Parliament has already turned its mind to this question. The Tax Court cannot reopen the question.

[61] The primary issue in *Comtronic* was whether the appellant was entitled to ITCs where the GST registration number of the supplier shown on the invoice was not that of the supplier but was a validly issued number belonging to someone else. This is different from the registration numbers at bar: all the registration numbers here belonged to the persons purportedly making the supply to SNF. The only issue in *Systematix* was "whether a proper GST registration number was provided on the invoices". The facts in both cases do not resemble those at bar.

¹¹ 2014 FCA 159.

¹² 2014 TCC 13.

¹³ 2010 TCC 55.

¹⁴ 2014 TCC 271.

¹⁵ 2014 TCC 36.

[62] In his reasons in *Systematix*, Archambault J. described the questionable invoices as falling into two different categories. The first category of invoices lacked the GST registration number. The Minister's database did not show any registration number having ever been issued to the supplier issuing these invoices.

[63] The second category of invoices provided a registration number but one that was not valid at the relevant time. Justice Archambault divided this category into three subcategories: a) cases in which a valid registration number appeared on invoices but only for a period prior to the relevant period because the Minister had revoked the number before the relevant period; b) cases in which there was a valid registration number for the supplier, but one not valid until after the relevant period; and c) cases in which the registration number on the invoice was invalid because it did not appear in the Minister's database and the evidence did not show that a valid registration number had been issued to the particular supplier.

[64] In the appeal at bar, GST registration numbers had been issued to each of the 12 suppliers and were in effect at all relevant times, except for a supply made by Mr. Dubé Vanier on September 17, 2010, the date his registration number was cancelled.

[65] Also, contrary to what was held in *Systematix*, SNF did verify whether the registration numbers were "bona fides", verifying each supplier's application and the Revenu Québec stamped acceptance, as well obtaining the addresses and telephone numbers, among other things of the 12 suppliers. The facts in *Systematix* do not indicate what efforts, if any, that taxpayer made to ensure that the suppliers had valid GST registration numbers.

[66] Revenu Québec, in its "Amended Reply to the Notice of Appeal" (actually, its reply to the amended notice of appeal), assumed that SNF did not provide it with information, including prescribed information, sufficient to establish the amount claimed as ITCs, and that the supporting documents and records of the appellant did not meet the requirements of the *Act* and its regulations. The "sufficient evidence" containing the required information to apply for an ITC need not all be contained or described on a single document but may be provided on several documents together: *Westborough Place Inc. v. The Queen*.¹⁶

¹⁶ 2007 TCC 155, para. 41 per Paris J.

[67] Before the Quebec Court of Appeal in *Agence du revenu du Québec c. Système intérieur GPBR inc.*,¹⁷ the basic question was "can an accommodation invoice be the basis for an ITC?" In *GPBR*, the taxpayer was involved in a network of businesses that used accommodation invoices, or false invoices.

[68] The taxpayer was successful in its appeal before the Court of Québec but the Crown succeeded in having the decision reversed by the Court of Appeal. Writing for the Court, Émond J.A. was of the view that the trial judge's conclusion:

46 . . . seems wrong to me, even dangerous, in that it provides directions which, if followed, may prove fraught with consequences. While it is true that the *AQST* and the *Regulation* do not expressly impose an obligation to check on the registrant, they do so indirectly by imposing strict ITC eligibility requirements. The ARQ is therefore right in stating that a registrant does have an obligation to check, which arises implicitly from the requirements under the *AQST* and the *Regulation* with regard to ITC claim eligibility.

47 I have pointed out that the prescribed requirements under section 201 *AQST* and sections 201R1 to 201R5 of the *Regulation* aim to protect the ARQ against inadmissible claims for tax refunds, whether fraudulent or not. These legal requirements are strict and should be rigorously applied. The good faith of a registrant claiming to be the victim of fraudulent schemes cannot be used to authorize the ARQ to accept an ITC claim that fails to comply with legal prescriptions. The ARQ has no latitude or discretion in this regard.

48 To ensure that ITC claims are admissible, it is in the interest of registrants to verify whether the invoices submitted to them by their suppliers actually originate from those who supply the service, from their mandatary, or from persons who have caused or facilitated the making of the supply. If they fail to do so, the consequences may prove to be very onerous. Registrants may be required to assume large losses if, as in the case of *GPBR*, the ITCs it claimed are based on accommodation invoices or false invoices.

49 The registrant's duty of verification and diligence is crucial, for its own protection.

[69] The Crown has not proven that the bulk of the invoices were accommodation or false invoices or that the supplies were not purchased by SNF for value, namely the amounts set out in the invoices. In fact, the evidence is to the contrary. On these two important facts, the appeal by SNF can be distinguished

¹⁷ [2015] J.Q. n° 8292 (QL), 2015 QCCA 1402 ("*GPBR*").

from that in *GPBR*. Further, at bar, there is a suggestion, if not actual evidence, of possible negligence on the part of Revenu Québec in issuing GST registration numbers to suppliers: this was not an issue in *GPBR*. In my view, there are sufficient differences of fact in the appeal at bar and that of *GPBR* that I am not compelled to follow the reasons of the Quebec Court of Appeal.

[70] I am satisfied that the information contained on the scale tickets, invoices and other documents issued at the times of sales, as well as the information obtained by SNF on a supplier opening an account, ordinarily meets the requirements of subsection 169(4) of the *Act* and sections 2 and 3 of the *Regulations*. The problem is that the supplier named on the documents is a "prête-nom" and not the actual supplier. The Minister's assumption that the suppliers were "prête-noms" has not been demolished. However, this does not settle the matter. If SNF made the necessary inquiries as to whether the person had a proper GST number, that was sufficient; and it did, except in the case of Valerie Bergeron, who was obviously acting under the direction of Mr. McDuff and was not a supplier. It was Mr. McDuff who was dealing with SNF and SNF ought to have realized this. SNF did not follow its own procedures in opening an account for Ms. Bergeron.

[71] The Minister's assumption that some of the 12 suppliers did not have the manpower or equipment to make the supplies was refuted by Mr. Black's evidence that one can purchase and sell scrap in several ways, with or without support of employees or equipment.

[72] The Minister also made some assumptions that are true but irrelevant: for example, that payment in cash prevents the tax authorities from verifying amounts in question in the hands of the alleged suppliers and that cheques by SNF to suppliers were cashed by SNF. Cash is legal tender and constitutes payment for services and goods. That it may be difficult for a third party to trace cash does not affect the purchase and sale itself or resulting in the registrant being prohibited from claiming ITCs.

[73] All the sales of supplies by each of the 12 suppliers were transactions for value carried out by SNF in its normal course of business. Except for Ms. Bergeron, SNF had taken reasonable precautions to verify that Revenu Québec had granted GST/PST registration numbers to each of the suppliers in question.

With respect to Ms. Bergeron, SNF ought to have been suspicious of her *bona fides* considering that Mr. McDuff was doing all the talking for her. There is no evidence that SNF or any of its employees were privy to, or complicit with the 12 suppliers, or any one or more of them, in, any nefarious scheme. I cannot find that SNF was wilfully blind to what eleven of the twelve suppliers were doing, notwithstanding the claim by the Crown.

[74] SNF reasonably assumed that the government authorities acted responsibly in issuing a registration number to each supplier. I doubt whether Revenu Québec would entertain a registrant, like SNF, querying government officials to ensure that they had acted properly in granting a particular supplier a GST number. Persons must have confidence in government because, among other things, they rely on government.

[75] The consideration Revenu Québec gives to applications for GST registration numbers troubles me. When at least three of the 12 suppliers applied for a GST number, Revenu Québec suspected that all was not in order. The words [TRANSLATION] "risky registration" were marked on the applications of 1043 and Mr. Dubé Vanier. Patrick Scott's application was sent for immediate audit. There was no evidence brought by the respondent to explain the reason for granting a GST registration number in such circumstances. Also, Benoît Scott declared bankruptcy in 2007 and had received social assistance in 2008 and 2009, yet, when he applied for a GST number in 2009, he anticipated annual income from business of \$60,000. There is no evidence that he had yet received his discharge from bankruptcy. Here, too, Revenu Québec granted a GST number. The GST applications for the other 11 suppliers indicate serious disparities between income in the years preceding the making of the application for GST registration and anticipated income. I do not know what weight Revenu Québec gave to these applications, bearing in mind the following assumption by the Minister:

- (n) Some, if not all, of the twelve (12) suppliers in question have no expertise in the industry concerned, and some of them or their managers, where the suppliers are corporations, are income security (welfare) recipients.

[76] The respondent criticizes the appellant – and, in fact, appears to have assessed the appellant – for not making sufficient inquiries to ascertain who were the real suppliers of the scrap metal. Yet Revenu Québec issued GST registration numbers to these suppliers without itself making, it appears, even cursory inquiries as to the *bona fides* of the 12 suppliers. To be fair, I believe many of the facts

assumed and pleaded by the respondent came to her attention after Revenu Québec issued the GST registration numbers and may not have been available to Revenu Québec earlier. However, with some insight when considering the applications for GST registration by the suppliers, Revenu Québec surely would have realized, for example, the facts it assumed in the above-quoted paragraph, i.e., that "some, if not all, of the twelve (12) suppliers ... have no expertise in the industry concerned, and some of them or their managers, where the suppliers are corporations, are income security (welfare) recipients", or in another assumption, i.e., they had no road vehicles "appropriate for the supplies".

[77] Businesses operate on a different rhythm than does government. It requires profit to survive; expenses must be controlled. Unlike government, it does not have the power to search the premises and records of other businesses and purported businesses. Businesses must rely on acceptable and legitimate practices used in the trade in which it operates. When a business suspects people it conducts business with are selling stolen property or that their practices are illegal, dishonest, disreputable or corrupt, for example, then, of course, the people running the business must acknowledge that possibility and make the necessary inquiries.¹⁸ This, SNF failed to do in purchasing scrap from Ms. Bergeron.

[78] A government does not issue GST registration numbers haphazardly leaving it to businesses to determine the legitimacy of a supplier. The fact that a person has been issued a GST registration number announces to the world that this person has the right to collect GST. A registrant cannot itself be reckless in determining whether a supplier is legitimate or not. However, neither the *Act* nor its regulations provide the registrant with any procedures to follow. For example, does the registrant have to make inquiries each time it purchases items from a supplier or is it sufficient to make inquiries, as SNF did, when the registrant prepares to make the first purchase from a supplier and an account is opened for the supplier? In my view it should be at the time the parties initiate their relationship, subject always to change if the registrant subsequently becomes aware that the supplier's legitimacy is suspect. Making inquiries at each purchase may be a costly expense to a

¹⁸ There are numerous decided cases. See for example *Joseph Ribkoff Inc. v. The Queen*, 2003 TCC 397, [2003] T.C.J. No 351 (QL), [2003] G.S.T.C. 104 (French), [2003] G.S.T.C. 162 (English); *Sport Collection Paris Inc. v. The Queen*, 2006 TCC 394, [2006] G.S.T.C. 91 (French), [2008] G.S.T.C. 26 (English); *Salaison Lévesque Inc. v. The Queen*, 2014 TCC 36, [2014] G.S.T.C. 6 (French), [2014] G.S.T.C. 110 (English).

registrant and would impede the business process. The registrant must rely on its own best efforts. When Revenu Québec or the Canada Revenue Agency issues a GST registration number to a person, that person becomes an agent of the Crown. The taxing authority must bear some responsibility with respect to whom it appoints as agents.

[79] Nevertheless, a registrant purchasing supplies or services from a person must use reasonable procedures to verify that the person is a valid registrant, that the registration number actually exists and that the number is registered in the name of that person. In addition, if the registrant suspects the person's legitimacy as a supplier, then the registrant purchases supplies at its own risk. SNF suffered such risk when it dealt with Ms. Bergeron.

[80] Otherwise, SNF made reasonable efforts to ensure that the suppliers and the GST registration numbers on invoices and in its files were legitimate.

[81] In the appeal at bar, the evidence suggests that the 12 suppliers operated a fraudulent scheme, either individually or in concert, to defraud not only the tax authorities but also SNF. I have no doubt that many of the 12 suppliers were not supplying scrap metal to SNF on their own account; the names of suppliers on the invoices were not those of the real suppliers. But SNF was not part of this exercise and was not aware of it when it purchased supplies from these suppliers. On the facts before me, SNF took reasonable precautions to ensure that the registration numbers were real and that they were issued to 11 of the 12 suppliers. The appellant did make reasonable inquiries to satisfy itself that the GST registration numbers were validly issued to 11 of the suppliers, and it had obtained sufficient evidence in various forms enabling the ITCs to be determined in accordance with subsection 169(4) and the relevant *Regulations*. That any or all of the other 11 suppliers may not have carried on a business or were "prête-noms" does not, on the facts, affect the appellant's right to claim ITCs.

[82] Again, one cannot expect a business, whether a small marginal business or a large business like the appellant and AIM with hundreds, if not thousands, of suppliers to make exhaustive inquiries of each potential supplier. There is a reasonable limit, economic or otherwise, to the extent to which a taxpayer must be diligent. Where the tax authorities do not make reasonable inquiries, it does not

follow that businesses should be expected to do the tax authorities' job or face a tax liability. This could not have been the intention of Parliament when it passed the GST legislation.

[83] That Mr. Dubé Vanier's GST registration number was cancelled on September 17, 2010, the same day SNF made its last purchase from him, means of course, that Mr. Dubé Vanier had no GST number at time of that sale. While SNF is not entitled to an ITC on this purchase I cannot find that SNF acted knowingly or with gross negligence within the meaning of section 285 of the *Act* in claiming an ITC on this purchase. However, with respect to Ms. Bergeron, SNF was sloppy, to a degree amounting to gross negligence, in accepting her as a supplier. The penalty under section 285 must prevail with respect to the ITCs claimed on the transactions with her. Again, SNF made not even a basic inquiry as to who she was.

[84] The appellant's alternate submission, put forward as the appeal unfolded, that it is entitled to a rebate since it paid GST in error to Mr. Dubé Vanier and Ms. Bergeron, must fail. Any amount paid to Mr. Dubé Vanier as of September 17, 2010 was not paid as GST since he was no longer authorized to collect GST. He had ceased to be an agent of the Crown. The amounts paid to Ms. Bergeron were paid by error but by error due to SNF's own negligence. I cannot view section 261¹⁹ of the *ETA* as contemplating a rebate on an error caused by the author's own inattention and carelessness. Entitlement to a rebate in either situation would open a Pandora's box of dubious and baseless claims, claims the legislator never heard of, much less contemplated.

[85] I will allow the appeal with costs. The appellant is entitled to the ITCs claimed, less the amounts in respect of purchases from Ms. Bergeron, and from Mr. Vanier on September 17, 2010 when he was no longer a registrant. The quantum of the penalty assessed pursuant to section 285 of the *ETA* will be cancelled save and except for that portion attributable to the ITCs claimed for supplies acquired from Ms. Bergeron. Interest will be reduced accordingly.

Signed at Ottawa, Canada, this 1st day of February 2016.

¹⁹ Subsection 296(2.1) effectively increases the two-year limit to claim a rebate.

"Gerald J. Rip"

Rip J.

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COURT FILE NO.: 2013-1207(GST)G

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v. HER MAJESTY THE QUEEN

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