[ENGLISH TRANSLATION]

Docket: 2015-4762(GST)I

BETWEEN:

RESTAURANT LOUPY'S INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 29, 2016, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Marc-Antoine Deschamps
Counsel for the respondent:	Edith-Geneviève Giasson

JUDGMENT

In accordance with the attached reasons for judgment, the appeal from the reassessment made under Part IX of the *Excise Tax Act*, notice of which is dated August 27, 2013, and bears no number, for the period from January 1, 2011, to March 31, 2011, is allowed. The assessment is referred back to Quebec's Minister of Revenue for redetermination and a reassessment based on the concession made by the appellant that the goods and services tax is payable in respect of the $57,500 sale price of the assets sold to Boston Pizza in Lévis, in the amount of $2,875.00.

Signed at Ottawa, Canada, this 25th day of November 2016.

"Réal Favreau"

Favreau J.

[ENGLISH TRANSLATION]

Citation: 2016 TCC 260
Date: 20161125
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BETWEEN:

RESTAURANT LOUPY'S INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from a reassessment made under Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the "ETA") by Quebec's Minister of Revenue, as the Minister of National Revenue's agent, hereinafter (the "Minister"), notice of which is dated August 27, 2013, and bears no number for the reporting period from January 1, 2011, to March 31, 2011 (the "Period").

[2] The August 27, 2013, reassessment was based on two separate lots of equipment when the sale occurred in the fall of 2011:

- The capital property "taken" by the buyer for which it paid $57,500; and
- The capital property "not taken" by the buyer. Its fair market value (the "FMV") was $222,934.06.

[3] Consequently, the Minister calculated the amounts of goods and services taxes (the "GST") as follows:

- Taxable supply on the sale price of the capital property "taken" = $2,875.00
- Deemed taxable supply on the FMV of the capital property "not taken" = $11,134.26

Total amount of unpaid taxes = $14,009.26 (plus interest and the late-filing penalty).

[4] The Minister made the reassessment at issue based, inter alia, on the following conclusions and assumptions of fact stated in paragraph 23 of the Reply to Notice of Appeal:

b) Throughout the relevant period, the appellant worked in the restaurant business;
c) Throughout the relevant period, the appellant was a registrant for the purposes of Part IX of the ETA;
d) On or about April 1, 2011, the appellant cancelled its tax numbers;
e) On that date, the appellant's balance sheet showed assets of $533,166.00;
f) The appellant was deemed to have disposed of its assets on the date that its tax numbers were cancelled;
g) The appellant sold part of its assets to "Boston Pizza" in Lévis (hereinafter the "buyer") for a sum of $57,500.00;
h) In this regard, the appellant produced a list of suppliers that did not provide any details on the equipment;
i) The appellant also provided a list of suppliers annotated by the buyer;
j) The annotated list indicated the equipment taken (sold) and not taken (not sold);
k) Based on the appellant's list and the list annotated by the buyer, the Minister divided the equipment into two (2) groups, the equipment acquired by the buyer and the equipment that was not acquired;
l) For the equipment acquired by the buyer, the Minister used a $57,500.00 sale price as the fair market value (hereinafter "FMV") of these assets;
m) The tax was therefore assessed on the amount of $57,500.00;
n) With respect to the equipment not acquired by the buyer, the Minister used 50% of the acquisition value as FMV to consider the amortization of these assets;
o) The FMV used for the equipment not acquired by the buyer was therefore $222,685.22 and the tax was assessed on this amount;
p) The appellant therefore owes the amount of the adjustments made to its net tax reported for the Period in the amount of $14,009.26, plus interest and penalties.

[5] At the opening of the hearing, the appellant recognized that the sale of the capital property to the Boston Pizza franchisee in Lévis was a taxable supply and that the amount of GST on the $57,500 sale price had not been collected nor remitted to the Minister by the appellant. The appellant also recognized that the only penalty imposed by the Minister was a late-filing penalty whose amount is not contested.

Gilles Lupien's testimony

[6] Gilles Lupien, a former professional hockey player, testified at the hearing to explain the circumstances surrounding the February 27, 2011, closure of his Boston Pizza restaurant.

[7] Restaurant Loupy's Inc. was incorporated on March 9, 2007, under Part IA of the Quebec *Companies Act* and subsequently under the Quebec *Business Corporations Act*.

[8] A registration number for purposes of the ETA was issued to the appellant on May 25, 2008, and the appellant started to operate its restaurant business on November 27, 2008, at the intersection of Autoroute 40 West and Des Sources Boulevard. The appellant had a 22-year Boston Pizza franchise and had also signed a 22-year lease with the Broccolini construction company to occupy the lot where the restaurant was located.

[9] Although it was not in arrears on the rent, on February 28, 2011, the appellant received a visit from a bailiff with a document ordering it to close the restaurant and empty the premises within 24 hours, leaving only the roof, the four walls and the floor. The reason cited for this forced closure of the restaurant was that the land on which the restaurant was located had been sold to a third party who did not want to have a restaurant operating there.

[10] Mr. Lupien initiated legal proceedings against Broccolini to be compensated for the losses caused by the closure of the restaurant.

[11] Forced to comply with the order, the appellant hired AMJ Campbell, a professional moving company, to remove all the contents of the restaurant, including everything fastened to the walls, all the kitchen equipment, the furniture, bar, safe, advertising sign and the cold room. The moving company provided the packaging material, labour (the movers and workers to dismantle the facilities and disconnect the computer equipment), handling and protection equipment, three

tractor trailers with drivers and warehousing of the property. The move cost $9,490.00 plus taxes.

[12] According to Mr. Lupien, AMJ Campbell did not make an inventory of the property placed in the trucks. However, Mr. Lupien determined the value of the equipment based on the suppliers' sales invoices. The value of the equipment was $962,285.90 (including taxes) and the book value of the equipment was $533,761.39 (not including taxes) on the date the restaurant was closed.

[13] After the restaurant closed, Mr. Lupien sought a buyer for all the equipment. He first received a ridiculously low offer of $25,000 from a friend, Marc Dupré. Another potential buyer was only interested in half the equipment. Finally, Mr. Lupien accepted a $57,500 offer for all the equipment from the owners of Boston Pizza in Lévis. The sale was finalized based on a verbal agreement about eight months after the restaurant closed. The purchase price of the equipment was deposited in the Stikeman Elliott law firm's trust account.

[14] Mr. Lupien explained that the appellant's existence in law was maintained in order to settle the proceedings resulting from the closure of the restaurant and that the application to cancel the company's tax numbers had been filed in error by the company's accountant. The cancellation of the tax numbers came into effect on April 1, 2011. An application to re-register for taxes was filed and a new registration certificate was issued by the Agence du Revenu du Québec for the Quebec Sales Tax on June 19, 2013, with a May 25, 2008, effective date, the registration date initially provided. With respect to the Goods and Services Tax / Harmonized Sales Tax (GST/HST), the GST/HST registry search results on various dates between May 25, 2008, and August 1, 2016, showed that the appellant always kept its original registration number without any references to the application to cancel its registration number or the re-registration.

Jonathan Delarosbil's testimony

[15] Jonathan Delarosbil testified as a representative of the purchaser of the appellant's equipment. He explained that the owners of the Boston Pizza in Lévis already owned six businesses in the Québec area, three resto-bars and three Boston Pizzas. André Savard, a former National Hockey League player, and an acquaintance of Mr. Lupien, was a member of the group that owned the Boston Pizza in Lévis. Mr. Savard was the individual who negotiated with Mr. Lupien the $57,500 sale price for the appellant's equipment.

[16] Mr. Delarosbil explained that the Boston Pizza in Lévis had gone bankrupt a few years before and had been converted to a "Fish Bowl" restaurant, which also went bankrupt a little later. The group that he represents repurchased the business from the bankruptcy trustee in order to convert it to a Boston Pizza, hence the interest in the appellant's equipment.

[17] Mr. Delarosbil contacted the AMJ Campbell moving company to transport the appellant's equipment to Lévis. The transportation cost $12,900 plus taxes. In the fall of 2011, AMJ Campbell delivered the equipment to Lévis with three secure 53-foot tractor trailers, the same tractor trailers that were used when the restaurant was dismantled. These tractor trailers contained the component parts of an entire restaurant. An inventory was completed on site in Lévis when the trailers were unloaded. The equipment was properly packed and was not damaged.

[18] Mr. Delarosbil explained that not all of the appellant's equipment could be installed in the Boston Pizza in Lévis because the dimensions of this restaurant were not the same as the appellant's restaurant. Consequently, some of the equipment was installed in the Boston Pizza in Lévis while some of the other equipment was kept because it could potentially be used in the other Boston Pizzas in the Québec area. The unused equipment was simply discarded. Mr. Delarosbil confirmed that he had informed the appellant of the equipment that had not been used by the owners of the Boston Pizza in Lévis and that it was the appellant who should have sent the information to the Agence du Revenu du Québec.

[19] Finally, Mr. Delarosbil said that the cost of renovating the Boston Pizza in Lévis was about $300,000 and that fire destroyed the restaurant after it had been in operation for one year.

Noël Ki's testimony

[20] Noël Ki is the Agence du Revenu du Québec auditor who performed the audit of the appellant's business. The audit was completed on August 7, 2013, and was conducted with his manager, whose name he did not mention. He never personally spoke to Mr. Delarosbil, but his manager allegedly had several telephone conversations with Mr. Delarosbil.

[21] During his testimony, Mr. Ki confirmed that he knew that the appellant's tax numbers had been cancelled on April 1, 2011, but he did not know that the tax numbers had been re-registered. In addition, he did not know that all the equipment from the appellant's restaurant had been delivered to the buyer in Lévis.

[22] Mr. Ki said he had made the assessment at issue based on the annotated list of the equipment sent by the appellant. Based on this list, he divided the equipment into two groups, those taken by the buyer (the equipment sold) and the equipment not taken by the buyer (the equipment not sold).

[23] The auditor found that the value of the property sold to the Boston Pizza in Lévis was $57,500 and that the value of the property not sold to the Boston Pizza in Lévis was $222,934.06, 50% of the purchase cost of the property paid by the appellant. Although the appellant's Boston Pizza franchise operated for only 27 months, from November 28, 2008, to February 27, 2011, the auditor considered that 50% of the purchase cost of the property had been amortized by the appellant, which was clearly to the appellant's benefit. The taxes were calculated based on the value of each category of property.

Positions of the parties

A. A. Position of the respondent

[24] The position of the respondent is essentially based on subsection 171(3) of the ETA, which stipulates that following the cancellation of its GST number, a registrant is deemed to have disposed of its equipment immediately before the effective date of this cancellation, in this case March 31, 2011.

[25] Consequently, the respondent maintains that on March 31, 2011, the appellant is deemed to have disposed of its equipment for an amount equivalent to its fair market value.

[26] The respondent argues that the appellant had, on that date, assets totalling $533,166 on its accounting ledgers and that the fair market value of the property sold was $57,500 and the fair market value of the property not sold was $222,934.06.

[27] According to the method used by the Minister to calculate the GST, the appellant failed to pay $14,009.26 of GST, plus interest and applicable penalties.

[28] The respondent maintains that on February 27, 2011, the date when the appellant stopped operating its restaurant, it was no longer engaged in any commercial activities and that its registration was no longer necessary for purposes of the ETA. The respondent maintains that the deemed disposition of subsection 171(3) had to be applied, hence the notice of reassessment.

[29] In addition, the respondent maintains that the re-registration did not reverse the legal effects of the transactions performed in 2011 after its tax number was cancelled and that the appellant was nevertheless required to remit the amounts of GST to the Receiver General for Canada.

A. B. Position of the appellant

[30] The appellant suggests that throughout the Period, it was registered under the ETA and consequently there was never a deemed disposition of the appellant's property, as alleged by the respondent.

[31] The position of the appellant is that the Minister never had the power to cancel its GST number because it had never stopped conducting its business activities. This legal principle applies even in the case where the taxpayer has filed the cancellation application in error or prematurely.

[32] The appellant also maintains that the re-registration for purposes of the ETA reverses all deemed supply of the equipment at issue, thereby eliminating the rationale for the reassessment made by the Minister.

[33] Subsidiarily, the appellant maintains that if the Court were to find that a deemed disposition had actually occurred, the fair market value used by the Minister in the case of the lot of property "not taken" is grossly overvalued and should be revised downward to take into consideration the actual market in which the appellant was attempting to resell the equipment, most of which bore Boston Pizza's BP logo.

Issues

[34] The three issues are as follows:

(i) Does the cancellation of the appellant's registration number engage section 171 of the ETA, and therefore, the deemed disposition of the capital property held by it immediately before the cancellation date of the registration?
(ii) If so, did the appellant's re-registration reverse all deemed supply of the appellant's equipment?
(iii) If the Court were to apply the deemed disposition rule, what should the fair market value of the equipment be for purpose of calculating the GST?

Analysis

A. Effects of cancelling the GST registration number

[35] The rule underpinning the dispute is in subsection 171(3) of the ETA, which reads as follows:

> […]
>
> **(3) Properties on ceasing to be registrant** − For the purposes of this Part, where a person ceases at any time to be a registrant,
>
> (a) the person shall be deemed
>
> (i) to have made, immediately before that time, a supply of each property of the person (other than capital property) that immediately before that time was held by the person for consumption, use or supply in the course of commercial activities of the person and to have collected, immediately before that time, tax in respect of the supply, calculated on the fair market value of the property at that time, and
>
> (ii) to have received, at that time, a supply of the property by way of sale and to have paid, at that time, tax in respect of the supply equal to the amount determined under subparagraph (i); and
>
> (b) where the person was, immediately before that time, using capital property of the person in commercial activities of the person, the person shall be deemed to have, immediately before that time, ceased using the property in commercial activities.

[36] Cancellation of the registration has two important consequences. First, property, other than capital property held by the registrant for consumption, use or supply in the course of its commercial activities is deemed to have been supplied immediately before the registration was cancelled and the tax in respect of that supply is deemed to have been collected immediately before that time, calculated on the fair market value of each property of the person at that time. The person must then remit the GST that the person is deemed to have collected. In addition, the person is deemed to have received, at that time, a supply of each property of the person by way of sale and to have paid, at that time, GST in respect of the supply under subparagraph 171(3)(a)(i). Since, at that time, the person is no longer

a registrant, the person is not entitled to the input tax credit in respect of the GST deemed to have been paid in respect of this deemed supply.

[37] Paragraph 171(3)(a) does not apply to capital property held by the registrant immediately before the registration is cancelled. Paragraph 171(3)(b) stipulates that where the person was using capital property of the person in commercial activities of the person, the person shall be deemed to have ceased using the property in commercial activities. This deemed disposition engages the rules concerning changes in use under sections 195 to 211 of the ETA. Under these rules, the person is deemed to have sold its capital property immediately prior to the cancellation of the registration and to have collected the amount of GST equal to the amount of tax paid to acquire the capital property. Generally, the input tax credit amounts claimed in respect of this capital property must be reimbursed.

[38] Section 171 of the ETA sets out the following applicable deemed dispositions: "For the purposes of this Part, where a person ceases at any time to be a registrant, the person shall be deemed:"

[39] The term "registrant" is defined in subsection 123(1) of the ETA:

> **"registrant"** means a person who is registered, or who is required to be registered, under Subdivision d of Division V.
>
> [My emphasis]

[40] This broader definition of the term "registrant" means that a person can be registered for the purposes of the ETA without necessarily having been registered with the tax authorities. This is a point that the appellant raises in its arguments.

[41] In this case, can we conclude that the appellant was required to be registered when its equipment was sold in the fall of 2011?

[42] The terms and conditions of registration are set out in sections 240 *et seq*. of the ETA. The following criteria apply to mandatory registration:

> 240(1) **Registration required** − Every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be registered for the purposes of this Part, except where
>
> a) the person is a small supplier;
> b) the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or

> c) the person is a non-resident person who does not carry on any business in Canada.
>
> [My emphasis.]

[43] The deemed disposition of the equipment is not contested, but the Court needs to determine whether the sale of the equipment by the appellant constituted a taxable supply in the course of a commercial activity engaged in by the appellant in Canada. The parties' submissions diverge in this regard. The respondent argues that the appellant had ceased to engage in a commercial activity at the same time as the restaurant ceased operations, but the appellant counters that the sale of the equipment was one of the final stages of the real cessation of the restaurant's operations.

[44] For purposes of the ETA, the term "commercial activity" is defined as follows under subsection 123(1):

> "***commercial activity***" of a person means
>
> a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,
> b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and
> c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply.

[45] In March 2011, when the appellant applied to have its tax number cancelled, the appellant implied that its commercial activities had ceased.

[46] The application for cancellation of its GST number cannot be interpreted as an admission by the appellant that its commercial activities had ceased since the application for cancellation was filed prematurely by an inexperienced representative.

[47] In support of its submissions, the appellant maintains that the sale of the equipment following the closure of the restaurant was in fact an act done on the

occasion of the cessation of its regular daily commercial activities and is therefore deemed to have been completed in the course of its commercial activities.

[48] In this regard, it is appropriate to refer to subsection 141.1(3) of the ETA, which reads as follows:

> **Acquisition, etc., of activities** − For the purposes of this Part,
>
> (a) to the extent that a person does anything (other than make a supply) in connection with the acquisition, establishment, disposition or determination of a commercial activity of the person, the person shall be deemed to have done that thing in the course of commercial activities of the person; and
>
> (b) to the extent that a person does anything (other than make a supply) in connection with the acquisition, establishment, disposition or termination of an activity of the person that is not a commercial activity, the person shall be deemed to have done that thing otherwise than in the course of commercial activities.
>
> [My emphasis.]

[49] In *Perfection Dairy Group Ltd. v. Canada*, [2008] T.C.J. No. 252, Justice Webb applied this deemed disposition of the ETA:

> "42 […] As a result, to the extent that PFL does anything in relation to the termination of its business, it is deemed to have done that thing in the course of commercial activities. Therefore the claim under the Legal Action (which was acquired in connection with the termination of the business) will be deemed to have been acquired in the course of commercial activities of PFL.
>
> 43 As a result all of the assets of PFL in 1998 would have been assets last acquired by PFL for consumption or use by PFL exclusively in the course of its commercial activities and the conditions of paragraph 186(1)(b) of the Act are satisfied.
>
> 44 The Appellant is therefore deemed to have acquired the professional fees for use in the course of commercial activities of the Appellant to the extent that the Appellant can reasonably be regarded as having so acquired the professional services for consumption or use in relation to the shares or indebtedness of PFL."
>
> [My emphasis]

[50] Two years later, Webb J. rendered a second decision referring to the deemed disposition of section 141.1 of the ETA. In *614730 Ontario Inc. v. Canada*, [2010] T.C.J. No 55, Webb J. made the following comments:

> 21 Since the Appellant was assessed on the basis that it did not "acquire a property or service for consumption, use or supply in the course of commercial activities of the appellant", in order to qualify for the ITCs the Appellant simply needs to show that the property or service was acquired for consumption, use or supply in the course of a commercial activity of the Appellant. If section 141.01 of the Act would have formed the basis for the assessment, then the Appellant would have to show how the property or services were acquired for the purpose of making taxable supplies and not just that they were acquired for consumption, use or supply in the course of commercial activities of the Appellant. Subsection 141.1(3) of the Act broadens the scope of what is considered to be in the course of commercial activities to anything done in connection with the acquisition, establishment, disposition or termination of a commercial activity.
>
> […]
>
> 36 The making of a supply (which would include a lease or sale) of real property (provided that it is not an exempt supply) will be a commercial activity regardless of whether that supply was part of an activity that could qualify as a business. As well activities that relate to the termination of a commercial activity will be included as part of commercial activities.
>
> [My emphasis.]

[51] The respondent counters that the appellant was no longer engaged in commercial activities at the time of the sale of its equipment because there was a change in use of the property as provided in subsection 200(2) of the ETA:

> **Ceasing use of personal property** − For the purposes of this Part, where a registrant last acquired or imported personal property for use as capital property primarily in commercial activities of the registrant and the registrant begins, at a particular time, to use the property primarily for other purposes, the registrant shall be deemed:
>
> a) to have made, immediately before the particular time, a supply of the property by way of sale and to have collected, at the particular time, tax in respect of the supply equal to the basic tax content of the property at the particular time; and
> b) to have received, at the particular time, a supply of the property by way of sale and to have paid, at the particular time, tax in respect of the supply equal to the basic tax content of the property at the particular time.

[52] Although the intended use of the equipment was for the operation of the restaurant, the respondent argues that this reality nevertheless changed when this use was no longer possible. Consequently, subsection 200(2) of the ETA must apply.

[53] According to the respondent, the fact that the appellant requested to have its GST number cancelled confirms the view that there was a change in use.

[54] In support of its position, the respondent referred to *Wiley v. The Queen*, [2005] T.C.J. No. 492, in which Justice Miller made the following comment at paragraph 33 of his decision:

> […] The Respondent did not raise subsection 200(2) and I simply raise it to illustrate to Mr. Wiley that it is still necessary to consider his actual use, not simply intended use. In so doing, I reach the same result.
>
> [My emphasis.]

[55] In this decision, Miller J. dismissed Mr. and Mrs. Wiley's appeal in respect of a motorhome they had purchased and used in their business. Mr. Wiley argued that he had acquired the property exclusively for use in his business, however, the evidence at trial demonstrated a completely different reality, a significant personal use. Miller J. therefore denied the input tax credits claimed in connection with this sale, as well as several expenses relating to this property, such as gasoline and maintenance expenses.

[56] Although the principle that the Minister cannot assess taxpayers on what they had planned but never actually happened is valid, this principle cannot be applied in this appeal. There is nothing in the evidence to indicate that by storing and attempting to sell its equipment, the appellant used the property for purposes other than the operation of its restaurant. The sale of a company's equipment is certainly not a normal daily activity, but the fact remains that the sale was carried out in the course of operating a company.

[57] The sale of equipment following the cessation of normal daily activities is also part of what the ETA calls a "commercial activity."

[58] The appellant was therefore still engaged in a commercial activity when it sold its equipment to the representative of *Boston Pizza* in Lévis and there was never a change in use of the property at issue.

[59] Also, because the appellant was a person who made a taxable supply in the course of a commercial activity when it sold its equipment, it was required to be registered under the ETA, as stipulated in section 240 of the ETA.

[60] Since under section 123 of the ETA, the appellant was required to be registered under the ETA, it was still a registrant for the purposes of the ETA during the Period, and therefore never lost its status as a registrant for the purposes of the ETA. Subsection 171(3) of the ETA cannot apply to the appellant, and there was no change in use of the appellant's capital property.

Effects of the cancellation application filed by the applicant

[61] The appellant's submission is that the Minister did not have the legal capacity to cancel the appellant's registration, even though the appellant itself filed the application.

[62] To support its argument, the appellant referred to *Harris v. Canada*, [2000] F.C.J. No. 729 of the Federal Court of Appeal regarding the discretionary authority of government officials.

[63] With respect, I cannot agree with the appellant's argument because this does not involve a discretionary decision of the Minister. Subsection 242(1) of the ETA expressly grants the Minister the power to cancel the registration of a person who is registered:

> **Cancellation** – The Minister may, after giving a person who is registered under this Subdivision reasonable written notice, cancel the registration of the person if the Minister is satisfied that the registration is not required for the purposes of this Part. […]
>
> [My emphasis.]

[64] The cancellation of the registrant's number by the Minister is not a matter of discretion but rather of a power conferred on the Minister by the Act. As such, the Minister was entitled to issue a notice of cancellation because he had every reason to believe that the appellant's registration was no longer necessary since the restaurant was no longer in operation.

[65] The Minister was therefore right in cancelling the appellant's GST number pursuant to the power vested in him by subsection 242(1) of the ETA.

[66] On the date the cancellation came into force, the appellant was no longer formally registered for the purposes of the ETA but was nevertheless required to be registered because it was still engaged in a commercial activity. The appellant therefore remained a registrant within the meaning of section 123 of the ETA even though it no longer had a GST number pursuant to the cancellation set out in section 242 of the ETA.

[67] The consequences normally resulting from the cancellation of this GST registration did not occur in the appellant's case because it continued to engage in commercial activity after the cancellation.

Effects of re-registration

[68] Although the foregoing conclusions are that the appellant has never ceased to be a registrant under the ETA, I think it is nevertheless important to analyze the effects of the appellant's re-registration.

[69] Prior to 2013, the Canada Revenue Agency (the "CRA") routinely denied retroactive registrations for purposes of the ETA. This administrative policy has been changed and the CRA now automatically approves a retroactive registration for a maximum period of 30 days, with proof that the business was engaged in a commercial activity, in the course of which it collected applicable taxes.

[70] The following comments of author David Sherman's analysis of section 241 clearly illustrate the CRA's position:

> 48. – **GST/HST Retroactive Registration**
>
> **Facts / Background**
>
> We understand that the Canada Revenue Agency ("CRA") has recently changed its administrative policy around the timelines for GST/HST registrations. Generally, practitioners have relied on a long-standing, informal CRA administrative policy to permit retroactive registrations back 30 days with no questions asked.
>
> We further understand that the new practice makes a voluntary registration effective on the date the CRA receives the application via telephone, fax or letter. We understand that if a prior effective date is requested and is within 30 days, the CRA enquires whether the entity has collected tax, but will not request further documentation to support a positive response. If the response is negative, the retroactive registration is denied. If an effective date is requested beyond 30 days,

> the CRA will require evidence showing that the entity collected tax as early as the requested date.
>
> ...
>
> If a person who is registering voluntarily requests that a registration be backdated beyond a 30-day period, documentation must be presented to support the date requested. The person must provide evidence that GST/HST had been collected from the date requested on a regular and consistent basis. Copies of the sales journal or the earliest three to five invoices are generally sufficient for this purpose.

[My emphasis.]

[71] Despite the CRA's policy that a retroactive application backdated beyond a 30-day period is approved in special cases, it appears that on February 19, 2013, the Minister agreed to re-register the appellant as of May 25, 2008, for the purposes of the *Act Respecting the Québec Sales Tax*.

[72] For the purposes of the ETA, various GST/QST registry searches conducted on dates between May 24, 2008, and August 1, 2016, confirmed that the appellant retained its GST/HST number throughout the Period. The searches showed a November 27, 2014, amendment date, but did not provide any indication as to the exact nature of the amendment.

[73] The issue at this stage is whether this re-registration can remedy the legal effects that resulted from the cancellation of the appellant's registration.

[74] The respondent argues that despite the retroactive re-registration, the effects of the cancellation of the appellant's registration cannot be remedied.

[75] In support of its position, the respondent submitted a number of decisions denying certain tax consequences based on the non-retroactivity of subsequent events.

[76] These decisions include:

- *Côté (Estate of) v. Canada*, [1995] T.C.J. No. 25, [1996] 1 C.T.C. 2862, 96 D.T.C. 20157 (TCC);
- *Bronfman Trust v. The Queen*, [1987] 1 S.C.R. 32 (Supreme Court of Canada), [1987] S.C.J. No. 1; and

- *Beverly Dorcas v. The Minister of National Revenue, 91 D.T.C. 350,* [1991] 1 C.T.C. 2312 (Tax Court of Canada).

[77] There is no need for a thorough review of these decisions because none of them really support the respondent's position. In this case, it is not a matter of rewriting history advantageously, but rather of correcting the defects in the appellant's record so that its registration accurately represents reality.

[78] The fact that the appellant applied to be re-registered and that its application was approved by the Minister indicates that the appellant did "what could have been done" to remedy the problem with its record. We should bear in mind that this is a purely theoretical problem since the appellant never ceased to be a registrant for purposes of the ETA.

[79] The appellant used a provision of the ETA to ensure that the existing legislation at the time of the sale of the equipment was properly applied.

[80] For its part, the appellant submitted the decision in *Westborough Place Inc. v. The Queen*, 2007 TCC 155, in which Justice Paris ruled in favour of the appellant regarding its claim for input tax credits, because, in his view, the claim met the regulatory requirements of section 169 of the ETA.

[81] In *Westborough Place Inc.*, supra, the main issue was that on December 23, 2005, the Minister had closed the GST account of one of the appellant's suppliers retroactive to June 30, 2001. As a result, the input tax credits claimed by the appellant in respect of this company were denied on the pretext that the supplier's registration number was invalid.

[82] Paris J. found that the Minister did not show, on the balance of probabilities, that the supplier's registration number was invalid. He said the appellant did not have anything to do with this supplier's registration and did not have the knowledge required to verify the accuracy of the supplier's registration number beyond the online tools posted by the tax authorities.

[83] Since the supplier's GST number was valid throughout the Period, Paris J. agreed to allow the appellant's input tax credits, even though the supplier's tax number had been cancelled retroactively.

[84] This decision essentially confirmed that it is possible to remain a registrant without necessarily being formally registered, as previously found. Moreover, Paris J. was able to rule in the appellant's favour based on this principle.

[85] In *Westborough*, supra, Paris J. stated that if the respondent argues that the tax numbers were invalid, the respondent bears the onus of proof, and it is the same in this case.

[86] Based on the analysis of the decisions submitted by the parties and the evidence on the record, I am of the opinion that the respondent was unable to prove that the retroactivity of the registration did not cover the defects in the appellant's GST file. Therefore, the registration number was actually valid throughout the Period.

[87] Given that the appellant demonstrated that it never ceased to be a registrant for purposes of the ETA, sections 171 and 200 of the ETS are not applicable in this case. It is therefore not necessary to analyze the fair market value of the equipment sold (taken and not taken) by the appellant to Boston Pizza in Lévis.

Conclusion

[88] For these reasons, the appeal from the reassessment dated August 27, 2013, is allowed and said assessment is referred back to Quebec's Minister of Revenue for redetermination and a reassessment based on the concession made by the appellant that the GST is payable in respect of the $57,500 sale price of the assets sold to Boston Pizza in Lévis, in the amount of $2,875.00.

Signed at Ottawa, Canada, this 25th day of November, 2016.

"Réal Favreau"

Favreau J.

CITATION:	2016 TCC 260
COURT FILE NO.:	2015-4762(GST)I
STYLE OF CAUSE:	Restaurant Loupy's inc. and Her Majesty the Queen
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	August 29, 2016
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATE OF JUDGMENT:	November 25, 2016

APPEARANCES:

Counsel for the appellant:	Marc-Antoine Deschamps
Counsel for the respondent:	Edith-Geneviève Giasson

COUNSEL OF RECORD:

For the appellant:

Name:	Marc-Antoine Deschamps
Firm:	Morency Société d'avocats Montréal, Quebec

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