

IN THE TAX COURT OF CANADA

In Re: The Excise Tax Act

Vancouver, B.C.
June 10, 2003

2003-963(GST)I

BETWEEN:

HARLEEN BRAR BALWINDER BRAR

Appellant

AND:

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE
HONOURABLE JUDGE D. CAMPBELL

APPEARANCES:

H.B.B. Balwinder

On his own behalf

J. Russell

On behalf of the Respondent

Registrar: L. Giles

Per: J. Piper

VERBATIM WORDS WEST LTD.

#2026 - 7495 - 132nd Street, Surrey, B.C. V3W 1J8

Phone (604) 591-6677 Fax (604) 591-1567

1
Reasons for Judgment

1 REASONS FOR JUDGMENT

2 (Delivered orally from the Bench at Vancouver,
3 B.C., on Tuesday, June 10, 2003)

4 HER HONOUR: I am delivering oral judgment, then, in the
5 matter that was heard this morning of Harleen Balwinder Brar.

6 This motion was brought by the respondent for an order to quash
7 the appellant's appeal. A notice of assessment for the period January 1, 1997 through to
8 December 31st, 1998 was forwarded to the appellant on December 15th, 2000. The
9 appellant filed a notice of objection on March the 14th, 2001.

10 As a result of efforts to resolve the matter, on November the 8th,
11 2002 the appellant signed a waiver of right of objection or appeal. This document
12 specifically quoted the relevant provision here, that is, s. 306.1(2) of the *Excise Tax Act*,
13 and it further stated that the appellant was aware that he would be precluded from filing an
14 objection or an appeal with respect to the issue. The waiver also specifically refers to it
15 being in respect to GST remittances and input tax credits for the 1997 and 1998 taxation
16 years.

17 Subsequently, on December 9th, 2002 a notice of reassessment
18 issued in accordance with this agreement and waiver, and covering the period January 1,
19 1997 to December 31st, 1998.

20 The appellant's position is that he did not know the consequences
21 of signing the waiver. He understood that he would still have the right to object and
22 appeal the matter even though he had executed a waiver. He did state that he realized that
23 he and the auditor had reached a settlement on figures.

Reasons for Judgment

1 Exhibit R-1 was correspondence from the appellant's general
2 accountant to a John Asher of the department's Appeals Division. The Appeals Officer
3 gave evidence that the amounts contained in this correspondence, and provided by the
4 appellant, were used as a basis of the reassessment. She further indicated that up to the
5 time the waiver was executed there was nothing to indicate that the appellant's position
6 had changed.

7 Sections 302 and 306 specifically set forth the statutory time
8 frames for appealing to this Court under the Act. Subsection 306.1(2) states:

9 Notwithstanding sections 302 and 306, a person may not appeal to
10 the Tax Court to have an assessment vacated or varied in respect of
11 an issue for which the right of objection or appeal has been waived
12 in writing by the person.

13 This section applies directly to the circumstances of this case.
14 Respondent counsel advised that she was unable to locate any specific case law directly on
15 point. Although I was limited to a brief noon recess before delivering judgment, my
16 research did not disclose any relevant case law on point either.

17 Counsel referred me to the case of *Rainville v. R.*, 2001 DTC 155,
18 which did deal with the identical s. 169 in the *Income Tax Act*. That decision found that
19 the assessment was not in keeping with the agreement that the parties had reached, and
20 that certain issues had not been contemplated by the parties, and, therefore, the appeal was
21 allowed.

22 Clearly, here I must, on the evidence presented, decide if the
23 appellant, in executing the waiver, meant to waive the matters which he is attempting to
24 appeal.

Reasons for Judgment

1 The appellant's Notice of Appeal identifies and refers to GST
2 issues respecting one of his properties being the Richmond property. The notice clearly
3 refers to this property. In the appellant's Notice of Objection of March 14th, 2001, he
4 clearly identifies this Richmond property as being at issue for the GST remittances. This
5 issue was, therefore, clearly raised and identified at this stage. In the waiver form the
6 appellant clearly and expressly waives his rights to object or appeal. In fact, the form goes
7 one step farther in not only referring to subsection 306.1(2) of the Act, but the form goes
8 on to reproduce the section and highlight it within block lines. The form also clearly
9 refers to the taxation years 1997 and 1998.

10 The case of *Rainville* is distinguishable from the facts of the
11 present one, in that I have not been shown that a specific issue or matter was not
12 contemplated and dealt with at the various stages prior to the waiver being signed. In fact,
13 it was the evidence of the Appeals Officer that the reassessment was issued on the basis of
14 the figures and amounts contained in Exhibit R-1 provided to the Department by the
15 appellant's accountant.

16 As a result, the respondent's motion to quash the appellant's appeal
17 is granted on the basis that the appeal does not conform with the statutory requirements of
18 the *Excise Tax Act* or more specifically, I conclude that the appellant has no right to appeal
19 to this Court in light of the waiver document which he executed pursuant to s. 306.1(2) of
20 the Act.

21
22 I HEREBY CERTIFY THAT THE FOREGOING
23 is a true and accurate transcript of the proceedings herein to the
24 best of my skill and ability.
25

26
27 _____
B. Kettleson, Transcriber

Reasons for Judgment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

CITATION: 2003TCC460

COURT FILE NO.: 2003-963(GST)I

STYLE OF CAUSE: Harleen K. Brar & Balwinder S. Brar
and Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: June 10, 2003

REASONS FOR JUDGMENT BY: The Honourable Justice
Diane Campbell

DATE OF ORAL JUDGMENT: June 10, 2003

APPEARANCES:

Agent for the Appellant: Balwinder Brar

Counsel for the Respondent: Johanna Russell

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada