

Docket: 2003-233(GST)I

BETWEEN:

ROBERT GOYETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 5, 2004 at Sherbrooke, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Paul Faribault

Counsel for the Respondent: Louis Cliche

JUDGMENT

The appeal from the assessment made under the *Income Tax Act*, notice of which is dated July 12, 2002 and bears number 22212, is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 28th day of June 2004.

"Paul Bédard"

Bédard, J.

Citation: 2004TCC289
Date: 20040628
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BETWEEN:

ROBERT GOYETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard, J.

[1] Mr. Robert Goyette appeals the assessment against him dated July 12, 2002 related to the goods and services tax (GST) for the period from November 1, 1997 to December 31, 2000 (relevant period). The assessment made by the Deputy Minister of Revenu Québec on behalf of the Canada Customs and Revenue Agency against Mr. Goyette included net tax in the amount of \$3,527.58, interest in the amount of \$428.65 and a penalty of \$498.92.

[2] In assessing Mr. Goyette, the Deputy Minister made the following assumptions of fact:

- a) The Appellant sells used vehicles.
- b) The Appellant's sales established for the quarters from October 1, 1996 to September 30, 1997 are in excess of \$30,000.
- c) In light of the Appellant's income, he should be registered under the *Excise Tax Act*.
- d) On February 1, 1998, the Respondent registered the Appellant for GST purposes.
- e) The Appellant is thus registered for GST purposes.

- f) During the period from November 1, 1997 to December 31, 2000, the Appellant was an agent of the Deputy Minister for the purposes of the collection and remittance of the GST.
- g) During the aforementioned period, the Appellant neglected to remit to the Deputy Minister net taxes in the amount of \$3,527.28.
- h) The net taxes generated \$428.65 in interest and penalties of \$498.92.
- i) The Appellant's failure to remit the tax to the Deputy Minister is due to his negligence and carelessness, particularly in that:
 - i) the Appellant admits to selling used motor vehicles;
 - ii) the sale of used vehicles requires that the Appellant collect and remit the tax on each sale made;
 - iii) during the period in question, the Appellant made sales totalling:

1998:	\$28,551
1999:	\$15,972
2000:	\$ 9,052
 - iv) the Appellant was required to collect the taxes on the aforementioned sales and remit them to the Deputy Minister;
 - v) used motor vehicles are a taxable supply;
 - vi) the sale of used motor vehicles constitutes a commercial activity and is the Appellant's main commercial activity;
 - vii) for the purposes of his commercial activity, the Appellant was required to collect taxes on all used motor vehicle sales.

Preliminary Comments

[3] Counsel for the Respondent admitted at the hearing that the amount of net tax due from Mr. Goyette was \$2,898.49.

[4] During the relevant period, the Société de l'assurance automobile du Québec (SAAQ), for licensing and tax calculation purposes, accepted the vehicle value reported by the parties to the transaction rather than applying the value indicated in the Canadian Red Book (now the Guide d'évaluation Hebdo – automobiles et camions légers). In the case at bar, the Deputy Minister was unaware of the actual value of the vehicles purchased and sold by Mr. Goyette. The Deputy Minister thus based the value of the vehicles in this appeal on the information found in the Canadian Older Car/Truck Red Book ("Red Book"). During his testimony, Mr. Martin, a research officer for the Deputy Minister, explained the method used in the case at bar to determine the purchase and sale prices of the vehicles sold by Mr. Goyette. Mr. Martin explained that the purchase and sale price of a vehicle more than 10 years old was based on the Red Book. Thus, the purchase price of a vehicle purchased for cash by Mr. Goyette was determined by multiplying the lower average sale price for such a vehicle as listed in the Red Book by 0.79 per cent (correction factor). Moreover, the sale price of a vehicle sold for cash by Mr. Goyette was determined by multiplying the higher average sale price for such a vehicle as indicated in the Red Book by 1.036 per cent (correction factor). According to Mr. Martin, the correction factors retained were determined based on studies conducted by the Minister of Revenue and validated by an expert retained by the Minister. Those studies are the result of research conducted among Quebec auctioneers and insurers to best reflect the value of vehicles on the Quebec market.

Objections by Mr. Goyette

[5] Mr. Goyette claimed that:

- i) He did not engage in the business of buying and selling used vehicles during the relevant period. He stated that it was simply a "hobby" and that he made very little profit from it.
- ii) The vehicles in question were in very poor condition and had a lot of mileage. He claimed that the vehicles could thus not have been purchased and sold at the prices calculated by the Deputy Minister based on the method described above. In his opinion, the prices determined by the Deputy Minister were simply unrealistic.
- iii) During the relevant period, he was a small supplier within the meaning of subsection 148(1) of the *Excise Tax Act* (the "Act"). He was thus not required to register for the purposes of the Act and not required to collect or remit GST as an agent of the Deputy Minister. He claims that his sales for

the quarters from October 1, 1996 to September 30, 1997 were less than \$30,000.

"Hobby"

[6] During the relevant period, Mr. Goyette was unemployed and receiving social assistance. During the period from 1993 to 2000, he purchased 129 used vehicles and resold 114. He owned 77 vehicles for less than one month, which represents 67.54% of the vehicles purchased during that period. Of that number, 45 vehicles were owned by him for less than 10 days, 9 of which were sold on the same day they were acquired. It is apparent from Exhibit A-3, filed by mutual agreement, that Mr. Goyette sold 42 vehicles during the period from February 1, 1998 to December 31, 2000, most of which were in inventory for less than one month, sometimes only one day. The theory of a "hobby" is simply not credible.

Determination of the purchase and sale price by the Deputy Minister

[7] To prove the actual purchase and sale price of the vehicles for the period in question, Mr. Goyette submitted a handwritten list (Exhibit A-1) that he prepared to the best of his knowledge in the fall of 2003. This list indicated the date of purchase and sale of the vehicles, the names of the buyers and sellers and the amounts paid or received for such, as applicable. He had no documents demonstrating or contesting the purchase and sale of the vehicles, nor any documents indicating the related terms. He kept no books or records. He testified, however, that he had had certain documents, but that his spouse had disposed of them. All transactions were carried out in cash.

[8] The presumed validity of an assessment can be overturned by any legal evidence, including testimony. However, the witness must be credible and the testimony must carry weight. In the case at bar, I accord no weight to Mr. Goyette's testimony. It was not corroborated by any witnesses or any documentary evidence contesting the assessment. He kept no records or documents to support the sales that he made. All transactions were carried out in cash. The verbal explanations given by Mr. Goyette to determine the purchase and sale prices for the vehicles were simply not convincing.

[9] Mr. Goyette questioned the reliable, reasonable and realistic character of the information used by the Deputy Minister in calculating the purchase and sale values for the vehicles in question. I feel that, in the absence of any tangible and

credible evidence, the method used by the Deputy Minister in determining the value of the transactions is satisfactory and provides figures that do not seem excessive. Furthermore, the assessment made based on leads, like all other assessments, is presumed valid.

Was Mr. Goyette a small supplier?

[10] It is apparent from Exhibit A-3 that the vehicle sales made by Mr. Goyette during the quarters from October 1, 1996 to September 30, 1997 totalled less than \$30,000, but that the sales (determined based on the method used by the Deputy Minister) for the quarters from January 1, 1997 to December 31, 1997 were greater than \$30,000. Consequently, Mr. Goyette was no longer a small supplier within the meaning of subsection 148(1) of the *Act*. He was thus required to register under the *Act* and, as an agent of the Deputy Minister, was thus required to collect and remit the GST on the sales of used vehicles from February 1, 1998 to December 31, 2000.

[11] Finally, with all due respect for the contrary opinion, Mr. Goyette's testimony, which was not supported by any documentary evidence or independent and credible testimony, could not be considered as credible and plausible under the circumstances and did not overturn the presumed validity of the assessment. The appeal is thus dismissed. However, in light of the admission by the Deputy Minister, the amount of net tax is \$2,898.49 and the amount of interest and penalties must thus be modified accordingly.

Signed at Ottawa, Canada, this 28th day of June 2004.

"Paul Bédard"

Bédard, J.

CITATION: 2004TCC289

COURT FILE NO.: 2003-233(GST)I

STYLE OF CAUSE: Robert Goyette and H.M.Q.

PLACE OF HEARING: Sherbrooke (Quebec)

DATE OF HEARING: April 5, 2004

REASONS FOR JUDGMENT BY: the Honourable Justice Paul Bédard

DATE OF JUDGMENT: June 28, 2004

APPEARANCES:

 Counsel for the Appellant: Paul Faribault

 Counsel for the Respondent: Louis Cliche

COUNSEL OF RECORD:

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