

Docket: 2011-3631(GST)I

BETWEEN:

JOSHUA SCOTT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 20, 2012, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Maureen Bell
Counsel for the Respondent: Cherylyn Dickson

JUDGMENT

The Appellant's appeal from the denial of the rebate claimed by the Appellant under the *Excise Tax Act* for GST paid by the Appellant to Ken Shaw Lexus Toyota in relation to the purchase of an automobile on May 21, 2010 is dismissed, without costs.

Signed at Ottawa, Canada, this 25th day of July, 2012.

“Wyman W. Webb”

Webb J.

Citation: 2012TCC274
Date: 20120725
Docket: 2011-3631(GST)I

BETWEEN:

JOSHUA SCOTT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The issue in this appeal is whether the Appellant is entitled to a rebate of any portion of the GST paid by the Appellant on the purchase of an automobile in 2010.

[2] On May 21, 2010 the Appellant purchased a used Toyota Corolla from Ken Shaw Lexus Toyota. Prior to purchasing the vehicle the Appellant identified a problem with the air-conditioning system. The Appellant was assured that there was nothing wrong with the vehicle.

[3] After the Appellant took delivery of the vehicle he noticed that the problem persisted. He took the vehicle to the dealership to have it inspected and they discovered that the air-conditioning system was leaking. The dealership told the Appellant that he could exchange the car for another comparable vehicle, if one could be found. The dealership attempted to locate a similar vehicle to the one purchased by the Appellant but was unable to do so. Since a similar vehicle could not be located, the Appellant and the dealership entered into an agreement in August under which the dealership purchased the vehicle from the Appellant.

[4] When the vehicle was sold to the Appellant on May 21, 2010, the purchase price (excluding taxes) was \$11,061.94. The Appellant paid provincial sales tax of

\$884.96 and GST of \$553.10. Because the vehicle had been driven for approximately 4,000 km during the time that the Appellant had the vehicle, the dealership paid the Appellant \$9,700 for the vehicle on August 3, 2010. No GST was charged or collected on the sale of the vehicle by the Appellant to Ken Shaw Lexus Toyota on August 3, 2010.

[5] The Appellant applied to both the provincial government for a rebate of the provincial sales tax paid by him on the purchase of the vehicle on May 21, 2010 and to the Canada Revenue Agency for a rebate of the GST paid by him on the purchase of the vehicle on May 21, 2010. While the Appellant has received a rebate of a portion of the provincial sales tax paid by him on the purchase of the vehicle, no rebate of the GST was paid to the Appellant.

[6] There were two sections of the *Excise Tax Act* that were referred to during argument - sections 261 and 232. Section 261 of the *Excise Tax Act* provides as follows:

261. (1) Where a person has paid an amount

(a) as or on account of, or

(b) that was taken into account as,

tax, net tax, penalty, interest or other obligation under this Part in circumstances where the amount was not payable or remittable by the person, whether the amount was paid by mistake or otherwise, the Minister shall, subject to subsections (2) and (3), pay a rebate of that amount to the person.

[7] In this case there were two bills of sale. The first bill of sale shows the purchase, on May 21, 2010, of the used Toyota Corolla by the Appellant from Ken Shaw Lexus Toyota. The second document is a wholesale bill of sale dated August 3, 2010 which shows a sale of the vehicle from the Appellant to Ken Shaw Lexus Toyota.

[8] In this case there is no basis upon which section 261 of the *Excise Tax Act* could apply in relation to the tax paid by the Appellant to Ken Shaw Lexus Toyota on May 21, 2010. Clearly the sale of the vehicle to the Appellant on that date was a taxable supply of a vehicle to the Appellant and tax was payable under the *Excise Tax Act* in relation to this transaction¹.

¹ Subsection 165(1) of the *Excise Tax Act* and the definitions of taxable supply and commercial activity in subsection 123(1) of the *Excise Tax Act*.

[9] The other section that was discussed was section 232 of the *Excise Tax Act*. This section provides as follows:

232. (1) Where a particular person has charged to, or collected from, another person an amount as or on account of tax under Division II in excess of the tax under that Division that was collectible by the particular person from the other person, the particular person may, within two years after the day the amount was so charged or collected,

(a) where the excess amount was charged but not collected, adjust the amount of tax charged; and

(b) where the excess amount was collected, refund or credit the excess amount to that other person.

(2) Where a particular person has charged to, or collected from, another person tax under Division II calculated on the consideration or a part thereof for a supply and, for any reason, the consideration or part is subsequently reduced, the particular person may, in or within four years after the end of the reporting period of the particular person in which the consideration was so reduced,

(a) where tax calculated on the consideration or part was charged but not collected, adjust the amount of tax charged by subtracting the portion of the tax that was calculated on the amount by which the consideration or part was so reduced; and

(b) where the tax calculated on the consideration or part was collected, refund or credit to that other person the portion of the tax that was calculated on the amount by which the consideration or part was so reduced.

[10] In *Elguindy v. The Queen*, [2006] TCC 107, [2006] G.S.T.C. 18, Justice Bowie described section 232 of the *Excise Tax Act* as follows:

8 Section 232* of the *Act* makes provision for a vendor to refund tax paid to a customer in circumstances where the sales contract is later mutually rescinded, or is adjusted to reduce the price. That section has no application in the present case, however, as the contract has been neither rescinded nor amended.

(* denotes a footnote reference that has not been included)

[11] In this case the original contract between Ken Shaw Lexus Toyota and the Appellant was not rescinded nor was there any adjustment made to the purchase price of the vehicle under this transaction. The parties treated the transactions as two

separate sales – one on May 21, 2010 and the second on August 3, 2010. Therefore section 232 of the *Excise Tax Act* does not apply in this situation. In any event even if this section were to apply, the tax would be refunded by Ken Shaw Lexus Toyota to the Appellant and not rebated by the Respondent to the Appellant.

[12] There is no basis upon which the Appellant can claim a rebate from the Respondent for any portion of the GST paid by the Appellant to Ken Shaw Lexus Toyota on the purchase of the vehicle on May 21, 2010.

[13] As a result the appeal of the Appellant from the denial of the rebate claimed by the Appellant under the *Excise Tax Act* for GST paid by the Appellant to Ken Shaw Lexus Toyota in relation to the purchase of an automobile on May 21, 2010 is dismissed, without costs.

Signed at Ottawa, Canada, this 25th day of July, 2012.

“Wyman W. Webb”

Webb J.

CITATION: 2012TCC274

COURT FILE NO.: 2011-3631(GST)I

STYLE OF CAUSE: JOSHUA SCOTT AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 20, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: July 25, 2012

APPEARANCES:

Agent for the Appellant: Maureen Bell
Counsel for the Respondent: Cherylyn Dickson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada