

Docket: 2013-3742(GST)APP

BETWEEN:

AKAL SAHAI DEVELOPMENT LTD.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application and motion heard on January 9, 2014 and March 17, 2014 at
Vancouver, British Columbia

Before: The Honourable Justice Judith Woods

Appearances:

Agent for the Applicant: Sukhpal Sran
Counsel for the Respondent: Shankar Kamath

ORDER

UPON an application filed by the applicant on September 30, 2013 (the
“Application”) in which the relief sought was not clearly set out;

WHEREAS the Registry scheduled this hearing as an application to extend
time;

AND WHEREAS the applicant informed the Court that the Application was
intended as a notice of appeal with respect to assessments made under the *Excise Tax
Act*;

AND WHEREAS the applicant informed the Court that it elects to have the appeal governed by the informal procedure;

NOW THEREFORE the Registry is requested to change the docket number to 2013-3742(GST)I;

AND UPON motion by the respondent for an Order to quash the appeal with respect to assessments for the periods from January 1, 2005 to June 30, 2009 and from August 3, 2009 to December 31, 2009;

IT IS ORDERED THAT:

- (a) the Application is deemed to be a valid notice of appeal that is governed by the Court's informal procedure with respect to the reporting period from July 1, 2009 to August 2, 2009, and the notice of appeal shall be filed on the date of this Order;
- (b) the motion by the respondent is granted, and the appeal is hereby quashed with respect to periods from January 1, 2005 to June 30, 2009 and from August 3, 2009 to December 31, 2009;
- (c) the respondent shall file a reply to the notice of appeal no later than May 30, 2014;
- (d) the applicant shall provide all documents in support of its claim to the respondent no later than April 30, 2014; and
- (e) the parties shall bear their own costs with respect to this hearing.

Signed at Ottawa, Ontario this 27th day of March 2014.

“J.M. Woods”

Woods J.

Citation: 2014 TCC 98
Date: 20140327
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Respondent.

REASONS FOR ORDER

Woods J.

[1] The applicant, Akal Sahai Development Ltd., disputes the determination of goods and services tax (GST) payable for the period from January 1, 2005 to December 31, 2009.

[2] The nature of the relief that the applicant seeks is not clear from the application, which was filed with the Court on September 30, 2013. The relevant part of the application reads: “My request is that we need accurate result.”

[3] Accordingly, the Registry scheduled this matter as an application to extend time to serve a notice of objection under the *Excise Tax Act*.

[4] At the hearing, the applicant clarified that the application was intended as a notice of appeal and that the applicant was especially interested in obtaining input tax credits for two invoices that were issued in 2008 and also a refund of GST paid on the importation of a truck.

Background

[5] Sukhpal and Manjeet Sran are the owners of the applicant and they have tried to handle the applicant's GST matters on their own. Mr. Sran described a very difficult audit process in which different officials of the Canada Revenue Agency (CRA) took conflicting positions on various issues over a number of years.

[6] I can understand that the process was difficult for the Srans. It appears that they attempted to navigate a complex tax regime without receiving professional assistance. Although some assistance was provided by the CRA, it appears that filing the proper paperwork was a continuing challenge.

[7] On the first day of the hearing, Mr. Sran was ready to argue the merits of the case. He did not realize that this matter was scheduled by the Registry as a preliminary procedural matter, an application to extend time.

[8] Unfortunately for the applicant, this Court has no authority to decide the merits of the case unless the applicant has filed a valid notice of appeal.

[9] I therefore informed the parties on the first day of the hearing that I would consider whether the application is a valid notice of appeal for the periods at issue, or whether it is appropriate to grant an extension of time. I adjourned the proceeding to March 17, 2014 so that the parties could prepare on this basis.

[10] In addition, counsel for the respondent informed the Court that it intended to bring a motion to quash the notice of appeal for most of the periods at issue. I directed that this motion be heard when the proceeding reconvened on March 17, 2014. The respondent's notice of motion was filed on February 10, 2014, and it was supported by an extensive affidavit.

Is the notice of appeal valid for any or all reporting periods?

[11] The first question to be decided is whether the application filed on September 30, 2013 is a valid notice of appeal.

[12] A right to appeal to this Court from GST assessments is provided for in section 306 of the *Act*. This provision is reproduced below:

306. Appeal - A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

(a) the Minister has confirmed the assessment or has reassessed, or

(b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,

but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

[13] In order for the application to be a valid notice of appeal, the appeal must relate to the most recent reassessment that was issued for a particular reporting period. Each of the reporting periods will be considered below.

Period from January 1, 2005 to June 30, 2005

[14] Pursuant to section 306 of the *Act*, a taxpayer may institute an appeal to this Court with respect to an assessment, but only if the taxpayer has previously served a notice of objection.

[15] The deadline for filing a notice of objection to an assessment is 90 days after the notice of reassessment is sent to the applicant. The deadline is set out in section 301(1.1) of the *Act*, which reads:

301.(1.1) Objection to assessment - Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

[16] According to the respondent's affidavit filed with the Court on February 10, 2014 (the "Affidavit"), the last reassessment for the reporting period from July 1, 2004 to June 30, 2005 ("2005 Period") was issued on March 16, 2007. The Affidavit was not challenged by the applicant, and therefore I have assumed that the reassessment was sent to the applicant on that date. In this case, the deadline for serving a notice of objection to this reassessment expired on June 14, 2007.

[17] The respondent submits that no notice of objection was filed by the deadline.

[18] Mr. Sran testified on the applicant's behalf that a notice of objection was filed. When I asked Mr. Sran whether he had documents in support, he looked through his file and handed various documents to the Court. None of the documents were probative of whether an objection to the reassessment was filed on or before June 14, 2007 and the documents were given back to Mr. Sran.

[19] I have concluded that a valid notice of objection to the reassessment issued on March 16, 2007 for the 2005 Period was not filed and therefore the notice of appeal filed with the Court should be quashed with respect to the period from January 1, 2005 to June 30, 2005.

Periods from July 1, 2005 to June 30, 2006 and from July 1, 2006 to June 30, 2007

[20] According to the Affidavit, on March 29, 2011 the applicant signed a waiver of objection and appeal rights on all issues with respect to reporting periods from July 1, 2005 to June 30, 2006 ("2006 Period") and from July 1, 2006 to June 30, 2007 ("2007 Period"). The waiver was conditional on certain reassessments being issued and these were issued on May 20, 2011.

[21] In light of the waiver, the applicant has no further right to appeal to this Court. In this regard, subsection 306.1(2) of the *Act* provides:

306.1(2) Idem [right of appeal waived] Notwithstanding sections 302 and 306, a person may not appeal to the Tax Court to have an assessment vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the person.

[22] Mr. Sran referred me to several documents relating to these reporting periods that were filed by the applicant after the last reassessments were issued on May 20, 2011. None of the documents are relevant because the applicant's right to institute an appeal to this Court for the 2006 Period and the 2007 Period was extinguished by the waiver.

[23] I have concluded that the notice of appeal with respect to the 2006 Period and the 2007 Period should be quashed.

Period from July 1, 2007 to June 30, 2008

[24] In order for an appeal to be instituted for the period from July 1, 2007 to June 30, 2008 (“2008 Period”), a valid notice of objection must be filed to the most recent assessment for this period.

[25] According to the Affidavit, the only assessment for the 2008 Period was issued on February 12, 2009. The deadline for filing a notice of objection to this assessment was 90 days from the date the assessment was sent. In this case, the deadline is May 13, 2009.

[26] Mr. Sran referred to several documents that relate to the 2008 Period. None of these documents suggest that a notice of objection to the assessment issued on February 12, 2009 was served on or before May 13, 2009.

[27] I have concluded that a valid notice of objection for the 2008 Period was not filed and therefore the notice of appeal with respect to the 2008 Period should be quashed.

Period from July 1, 2008 to June 30, 2009

[28] According to the Affidavit, there was no assessment issued for the period from July 1, 2008 to June 30, 2009 (“2009 Period”) because it was a nil return.

[29] Mr. Sran informed the Court that the applicant does not seek to appeal with respect to the 2009 Period.

[30] I have concluded that the notice of appeal with respect to this period should be quashed.

Period from July 1, 2009 to August 2, 2009

[31] According to the Affidavit, a reassessment for the period from July 1, 2009 to August 2, 2009 (“Last Period”) was issued on October 5, 2012 and a valid notice of objection was filed on November 29, 2012. The CRA has held the notice of objection in abeyance pending the outcome of this proceeding.

[32] The respondent acknowledges that the applicant has a valid notice of appeal for the Last Period.

[33] At the hearing, Mr. Sran informed the Court that the applicant wishes to elect that the appeal be heard under the Court’s informal procedure.

[34] I have concluded that the notice of appeal is valid for the Last Period, and that the application filed with the Court should be deemed to be a valid notice of appeal with respect to the assessment dated October 5, 2012 and that the appeal should be governed by the Court's informal procedure.

[35] For clarification, I would further comment that the Affidavit states that the applicant was dissolved effective August 2, 2009. Neither party made any submissions with respect to this at the hearing.

Period from August 3, 2009 to December 31, 2009

[36] The parties agree that no assessment was issued for the period from August 2, 2009 to December 31, 2009. Accordingly, the appeal should be quashed for this period.

Should an extension of time to object be granted?

[37] I now turn to whether it is appropriate to grant the applicant an extension of time to serve a notice of objection. This is only relevant for the 2005 Period and the 2008 Period for which the notice of appeal was quashed for failure to file a notice of objection.

[38] Under the relevant provisions of the *Act*, the Court may grant an extension of time to serve a notice of objection. However, the taxpayer must first apply to the Minister for an extension and this application must be made within one year and 90 days after the relevant notice of assessment is sent (paragraph 304(5)(a) and subsection 301(1.1) of the *Act*).

[39] As mentioned above, the deadline for filing a notice of objection for the 2005 Period is June 14, 2007. Accordingly, the period during which the applicant could apply for an extension of time with the Minister ends on June 14, 2008.

[40] Similarly, the deadline for filing a notice of objection for the 2008 Period is May 13, 2009. Accordingly, the period for applying for an extension of time with the Minister ends on May 13, 2010.

[41] None of the documents before me suggest that the applicant filed an application to extend time with the Minister within these periods. I would conclude

that it is not appropriate to grant an extension of time to serve a notice of objection for the 2005 Period or the 2008 Period.

Conclusion

[42] In summary, I have concluded that there is no relief that this Court can provide to the applicant except with respect to the assessment for the Last Period. I find that there is a valid notice of appeal for this period which should be filed by the Registry and which should be governed by the Court's informal procedure.

[43] Two ancillary orders will be issued. First, the respondent will be provided time to file a reply with respect to the Last Period. Second, as agreed by the parties at the hearing, the applicant will be required to provide to the respondent the relevant documents in support the appeal for the Last Period.

Signed at Ottawa, Ontario this 27th day of March 2014.

“J.M. Woods”

Woods J.

CITATION: 2014 TCC 98

COURT FILE NO.: 2013-3742(GST)APP

STYLE OF CAUSE: AKAL SAHAI DEVELOPMENT LTD.
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

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REASONS FOR ORDER BY: The Honourable Justice Judith Woods

DATE OF ORDER: March 27, 2014

APPEARANCES:

Agent for the Applicant: Sukhpal Sran
Counsel for the Respondent: Shankar Kamath

COUNSEL OF RECORD:

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