

2008-3277(GST)G

**TAX COURT OF CANADA**

BETWEEN:

**SHEFFIELD INTERNATIONAL CORPORATION**

Appellant

and

**HER MAJESTY THE QUEEN**

Respondent

**NOTICE OF APPEAL**

**(a) Address:**

1. The address of the principal place of business of the appellant Sheffield International Corporation is 20 Red Haven Drive, Unit 11, Grimsby, Ontario L3M 5K1.
2. The home address of Halina Jawor, an appellant, is 17 Maple Avenue, Grimsby, Ontario L3M 3B7, and she has acquired an ownership interest in this action.

**(b) The assessment under appeal:**

3. The assessment under appeal is dated July 13, 2004. The Notice of Confirmation from the *Toronto East Tax Services Office* is dated

July 23, 2008, and its decision refers to a reassessment dated August 9, 2007. The appeal is under Part IX of the *Excise Tax Act* for the Period September 1, 1995 to May 31, 2001 [GST Account Number 89873 9354 RT0001].

(c) **The material facts relied on:**

4. In August 1995, Sheffield International Corporation (Sheffield) was incorporated, with Halina Jawor as sole incorporator, sole director, sole officer, and sole shareholder, and its head office and principal place of business was located in Toronto.
5. Halina Jawor managed Sheffield from August 1995 until April 1996, and during that time Sheffield's business activity was metal sales. And until March 1996, Halina Jawor was also working in Buffalo, New York, at a full-time job.
6. In October 1995, Sheffield purchased two billets of steel from Patriot Forge Inc. (Patriot Forge) for \$182,325 plus GST. Sheffield subsequently resold it to Frontier Metals, Inc. (Frontier), a New York corporation in Buffalo, and obtained a refund for the said GST.
7. There was no further business for Sheffield until June 1996, by which time Halina Jawor had stopped being actively engaged in Sheffield due to commitments in Buffalo. Then Sheffield, with Peter Eickmeier

as manager, started to buy and sell computer software. Halina Jawor had no involvement in these software sales, or any activities of Sheffield after April 1996.

8. Sheffield, with Peter Eickmeier as manager, bought software from Peter Eickmeier and resold it to Frontier, located in Buffalo, where a Mr. Singh was operating a division of Frontier that licensed the software to customers.
9. Sheffield claimed and received refunds in the amount of \$3,288,292.91 and interest of \$819.96 for the GST that it owed for the software it purchased up to February 2000 (and that it paid for steel). Sheffield claimed, in GST returns, but did not receive, refunds in the amount of \$1,905,834.22 for the GST that it owed for the software it purchased thereafter.
10. Most of the money from the GST refunds was used by Sheffield, under the direction of Peter Eickmeier, to invest in businesses owned by Peter Eickmeier, and some of it was used to pay the living expenses of Peter Eickmeier and to pay cash to Peter Eickmeier.
11. Peter Eickmeier, in his business of selling software, had no business expenses other than the cost of the software, and he sold the software to Sheffield at a higher price than he paid for it.

(d) **The issues to be decided:**

12. (i) whether Sheffield was engaged in a “commercial activity” with respect to the transactions under review;
- (ii) whether Peter Eickmeier made “taxable supplies” to Sheffield, so that Sheffield had Input Tax Credits on which to base its claim for GST refunds; and
- (iii) whether the appellant Sheffield was entitled to the GST refunds that it claimed.

**All references to subsections refer to subsections of the *Excise Tax Act*.**

(e) **The statutory provisions relied on:**

13. The statutory provisions relied on are subsections 123(1), 133(a), 141.1(2), 169(1), 169(4), 225(1), 228(3), and 229(1) of the *Excise Tax Act*.

(f) **The reasons the appellant intends to rely on:**

14. Sheffield and Peter Eickmeier were each engaged in a “commercial activity” as defined in subsection 123(1) and were engaged in making “sales” as defined in subsection 123(1) that gave rise to GST refunds pursuant to the provisions of subsection 229(1), and all GST refunds

claimed by Sheffield were claimed lawfully and pursuant to the provisions of subsection 229(1), and all GST refunds received by Sheffield were obtained lawfully and pursuant to the provisions of subsection 229(1).

15. The provisions of the *Excise Tax Act* prove the following allegations:
- (a) Sheffield was engaged in a “commercial activity”;
  - (b) Peter Eickmeier made “taxable supplies” to Sheffield, so Sheffield had Input Tax Credits on which to base its GST refunds; and
  - (c) Sheffield was entitled to the GST refunds that it claimed.

Each of these three allegations will now be considered:

**Allegation (a): Sheffield was engaged in a “commercial activity”.**

16. Using the definitions in subsection 123(1), with the terms so defined in quotation marks, subsection 141.1(2) gives us the following:
- Sheffield is a “person” that made “supplies” by way of “sale” of “personal property” that was acquired by Sheffield exclusively for the purpose of making “supplies” of that property by way of “sale” in the course of a “business” of Sheffield. And since Sheffield is a corporation, not an individual, thus preventing the application of subsection 141.1(2)(a)(iii), therefore Sheffield is deemed to have made the supplies in the course of “commercial activities” of Sheffield.

[Subsections 141.1(2) and 123(1)]

17. This is so for the following reasons:
- (i) As defined in subsection 123(1), “business” includes an undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit. And the *Oxford English Reference Dictionary* (Second Edition, 1996) gives the following definition of “undertaking”: “work etc. undertaken”. And it gives the following definition of “undertake”: “engage in”. And it gives the following definition of “engage”: “take part”. And it gives the following definitions of “work”: “the application of mental or physical effort to a purpose”. So, whether the application of mental or physical effort to a purpose that Sheffield did was engaged in for profit, it was work taken part in, and therefore work engaged in, and therefore work undertaken, and therefore an undertaking of some kind. It does not have to be an undertaking of every kind, but merely an undertaking of any kind whatever, whether for profit. So, Sheffield was engaged in a “business” within the meaning of subsection 141.1(2).
- (ii) As defined in subsection 123(1), “sale”, in respect of property, includes any transfer of the ownership of the property. And Sheffield transferred the ownership of property to Frontier. So, Sheffield was engaged in making “sales” within the meaning of subsection 141.1(2).

18. So, Sheffield is deemed by the provisions of subsection 141.1(2) to have made supplies in the course of commercial activities of Sheffield, and therefore to have been engaged in a “commercial activity”.
19. In addition, Sheffield is defined to be engaged in a “commercial activity”, since, for corporations, any undertaking is a “business” [see paragraph 17(i) above], and any business carried on is a “commercial activity” within the meaning of subsection 123(1), so, any undertaking carried on is a “commercial activity” within the meaning of subsection 123(1). [Subsection 123(1)]
20. Therefore, Sheffield’s activity is within the definition of “commercial activity”. And even if its activity were not within the definition of “commercial activity”, its activity would still be deemed to be a “commercial activity” by virtue of subsection 141.1(2). So, Sheffield was both engaged in a “commercial activity” and deemed to be engaged in a “commercial activity”.

**Allegation (b): Peter Eickmeier made “taxable supplies” to Sheffield, so Sheffield had Input Tax Credits on which to base its GST refunds.**

21. “Taxable supply” means a supply that is made in the course of a “commercial activity”. [Subsection 123(1)] And a “commercial activity”

of an individual (Peter Eickmeier) includes a business carried on by the individual with a reasonable expectation of profit.

[Subsection 123(1)]

22. Since “profit” is not defined in the *Excise Tax Act*, the dictionary definition must be used. In the expression “without a reasonable expectation of profit”, an expectation of any profit would negate this phrase. So, if there is a reasonable expectation of profit as defined by any dictionary definition of “profit”, then the expression “without a reasonable expectation of profit” is negated. So, an individual carrying on a “business”, as defined in subsection 123(1), would be engaged in a “commercial activity”, as defined in subsection 123(1), if he had a reasonable expectation of profit. And the *Oxford English Reference Dictionary* (Second Edition, 1996) gives the following definitions of “profit”: “an advantage or benefit”; “financial gain”; “excess of returns over outlay”. *Webster’s Ninth New Collegiate Dictionary* (1986) includes the following definitions of “profit”: “the excess of returns over expenditure in a transaction or series of transactions”; especially: “the excess of the selling price of goods over their cost”. So, “profit” includes “advantage” and “benefit”.
23. And, advantages and benefits to Peter Eickmeier arising from his business included enabling Sheffield (which was managed by Peter



Eickmeier) to invest money (from GST refunds) in businesses owned by Peter Eickmeier, and actually investing money in these businesses.

24. In addition, some of the money derived from Sheffield's GST refunds was used to pay personal living expenses of Peter Eickmeier and to pay cash to Peter Eickmeier. So, this is an advantage and a benefit to Peter Eickmeier arising from his business, and a financial gain arising from his business since his business enabled Sheffield to get the money to make such payments, and it was his business that earned those payments.
25. Since Peter Eickmeier was managing Sheffield, he could have had Sheffield pay him any amounts that he chose. And he did have Sheffield pay him at least one cent at some time. And both the enabling of Peter Eickmeier to have Sheffield pay Peter Eickmeier money, and the actual payment of the money earned by his business are advantages and benefits to Peter Eickmeier arising from his business, and are therefore profit.
26. In addition, the sales by Peter Eickmeier to Sheffield had a higher selling price than the cost price.
27. Since there were no costs or expenses in the business of Peter Eickmeier to offset the advantages or benefits, there was a net profit.

28. So, the sales by Peter Eickmeier to Sheffield gave rise to profit to Peter Eickmeier in at least four ways:
- (i) Peter Eickmeier received the advantages and benefits arising from Sheffield receiving money (GST refunds) and thereby being able to invest that money in his businesses, and the actual investing in his businesses;
  - (ii) Peter Eickmeier received the advantages and benefits arising from Sheffield receiving money (GST refunds) and thereby being able to pay money to Peter Eickmeier and pay his personal living expenses, and actually paying that money;
  - (iii) Peter Eickmeier, being the manager of Sheffield, received an advantage and benefit from his business insofar as it enabled Sheffield to receive money (GST refunds) and thereby enable Peter Eickmeier to have Sheffield pay Peter Eickmeier money if Peter Eickmeier so chose, and the actual payment of that money; and
  - (iv) Peter Eickmeier sold software to Sheffield for a price that exceeded his cost price.
29. Therefore, the sales by Peter Eickmeier to Sheffield gave rise to a reasonable expectation of profit to Peter Eickmeier.

30. In addition, using the definitions in subsection 123(1), with the terms so defined in quotation marks, subsection 141.1(2) gives us the following: Peter Eickmeier is a “person” that made “supplies” by way of “sale” of “personal property” that was acquired by Peter Eickmeier exclusively for the purpose of making “supplies” of that property by way of “sale” in the course of a “business” of Peter Eickmeier. And for the reasons set out above, Peter Eickmeier had a reasonable expectation of profit. Therefore Peter Eickmeier is deemed to have made the supplies in the course of “commercial activities” of Peter Eickmeier. [Subsections 123(1) and 141.1(2), including the provisions of subsection 141.1(2)(a)(iii)]
31. So, Peter Eickmeier is deemed by the provisions of subsection 141.1(2) to have made supplies in the course of commercial activities of Peter Eickmeier, and therefore to have been engaged in a “commercial activity”. [See paragraphs 17 and 18 above]
32. In addition, Peter Eickmeier is defined to be engaged in a “commercial activity”, since, for an individual, any undertaking is a “business” [see paragraph 17(i) above], and any business carried on is a “commercial activity” within the meaning of subsection 123(1) if it is carried on with a reasonable expectation of profit, so, any undertaking

carried on with a reasonable expectation of profit is a “commercial activity” within the meaning of subsection 123(1). [Subsection 123(1)]

33. So, Peter Eickmeier was both engaged in a “commercial activity” and deemed to be engaged in a “commercial activity”.
34. Consequently, the “sales” by Peter Eickmeier to Sheffield were “supplies” that were made in the course of a “commercial activity”, and so were “taxable supplies”. And the acquisition of “taxable supplies” by Sheffield gives rise to Input Tax Credits. [Subsections 123(1) and 169(1)]
35. So, in accordance with subsection 169(1), Sheffield acquires software and, during a reporting period of Sheffield during which Sheffield is a registrant, tax in respect of the supply becomes payable by Sheffield, and the amount determined by the following formula becomes an input tax credit:  $A \times B$  where A is the tax in respect of the supply that becomes payable by Sheffield during the reporting period; and B is the extent (expressed as a percentage) to which Sheffield acquired the software for supply in the course of commercial activities of Sheffield.

**Allegation (c): Sheffield was entitled to the GST refunds that it claimed.**

36. Thus, Sheffield acquired Input Tax Credits for 100% of the tax that became payable when it acquired software from Peter Eickmeier for resale to Frontier. And, accordingly, Sheffield is entitled to GST refunds for the full amount of these Input Tax Credits pursuant to subsection 229(1). [“Net Tax” is defined in subsection 225(1), and “Net Tax Refund” is defined in subsection 228(3).]
37. Similarly, the Patriot Forge transaction also gave rise to Input Tax Credits, because Patriot Forge made a “taxable supply” to Sheffield that was acquired by Sheffield exclusively for the purpose of making a “supply” of that property by way of “sale” in the course of a “business”, so that Sheffield had Input Tax Credits on which to base its GST refunds. Since Patriot Forge is a corporation, there need be no evidence of its business having a reasonable expectation of profit; i.e., since Patriot Forge is a corporation, not an individual, thus preventing the application of subsection 141.1(2)(a)(iii), therefore Patriot Forge is deemed to have made the supplies in the course of “commercial activities” of Patriot Forge. [Subsections 141.1(2) and 123(1)]. Accordingly, Sheffield was entitled to GST refunds for the full amount of these Input Tax Credits.

(g) **The relief sought:**

38. The appellant requests:

(i) that the aforementioned assessment, reassessment, and decision be set aside; and

(ii) such further and other relief as this Honourable Court may deem just.

The appellant proposes that this action be tried at Hamilton, Ontario.

(h) **Dated:** October 19, 2009.

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