

2008-3277(GST)G

**TAX COURT OF CANADA**

BETWEEN:

**SHEFFIELD INTERNATIONAL CORPORATION**

Appellant

and

**HER MAJESTY THE QUEEN**

Respondent

**ANSWER**

**A. STATEMENT OF FACTS**

1. With respect to paragraph 4 of the reply to the notice of appeal, the appellant denies that Peter Eickmeier controlled Sheffield International Corporation (“Sheffield”). Peter Eickmeier owned no shares in Sheffield. Halina Jawor managed Sheffield from August 1995 to April 1996. Peter Eickmeier managed Sheffield at all material times thereafter.
2. With respect to paragraph 5 of the reply to the notice of appeal, the appellant admits that Sheffield claimed input tax credits (“ITCs”) in the amount of \$5,194,127.13, but denies that the ITCs were fraudulently claimed by Sheffield, and denies that Sheffield had not engaged in *bona fide* transactions giving rise to the claimed net tax refunds.

3. With respect to paragraph 8 of the reply to the notice of appeal, the appellant admits that the Minister denied Sheffield's claimed ITCs, and admits that the Minister assessed penalties and interest, but denies that Sheffield had obtained refunds fraudulently.
4. With respect to paragraph 9 of the reply to the notice of appeal, the appellant has no knowledge of what assumptions of fact, if any, were made by the Minister in determining Sheffield's net tax. The appellant admits the allegations made in subparagraphs (a), (g), (m), and (x) of paragraph 9, and in subparagraph (n) except for the word "purported", but denies the remaining allegations of fact stated therein. Sheffield's reported sales for the 1996 to 2001 Period were in respect of export sales to Frontier of the software that Sheffield had purchased from Peter Eickmeier.
5. With respect to paragraph 10 of the reply to the notice of appeal, the appellant has no knowledge of what assumptions of fact, if any, were made by the Minister in determining Sheffield's liability for penalties. The appellant admits the allegations made in subparagraphs (c), (e), and (f) of paragraph 10, and admits that Peter Eickmeier prepared Sheffield's annual corporate income tax returns for its 1996, 1997, 1998, and 1999 taxation years, but denies the remaining allegations of fact stated therein.
6. To the extent that the reply to the notice of appeal contains additional material facts, the appellant denies them.

**B. OTHER MATERIAL FACTS**

7. Canada Revenue Agency (CRA) had charges brought against Peter Eickmeier and Halina Jawor under section 327 of the *Excise Tax Act* (“*ETA*”) for allegedly obtaining GST refunds improperly, but, despite numerous demands by Peter Eickmeier, the fact that the main issue in the case was whether Sheffield had engaged in commercial activity remained undisclosed, thereby depriving these parties of the ability to properly defend themselves at the preliminary inquiry. The committal order arising from the preliminary inquiry was challenged by an application for *certiorari*.
8. Mr. Justice Quinn, in the application for *certiorari* brought by Peter Eickmeier and Halina Jawor in the *Superior Court of Justice*, questioned prosecutor Damien Frost repeatedly to obtain rebuttals of the three grounds raised in the factums of Peter Eickmeier and Halina Jawor, and, after asking the questions three times, did not ask for any input from the self-represented defendants Peter Eickmeier and Halina Jawor, but instead said that he would deliver his decision the next morning.
9. The fact that Mr. Justice Quinn did not follow his lengthy interrogation of prosecutor Damien Frost with any questions directed to the defence left Peter Eickmeier with the impression that he, Peter Eickmeier, had won the case.

10. The next morning, Mr. Justice Quinn, instead of delivering a decision, asked prosecutor Damien Frost whether he had addressed any of the three issues raised in the factums of Peter Eickmeier and Halina Jawor, and, after getting a negative answer, went over the three issues again and asked prosecutor Damien Frost to submit a supplementary factum, emphasizing that the three issues needed to be addressed.
11. At the next hearing date, Mr. Justice Quinn asked prosecutor Damien Frost to address the three issues, and, after lengthy replies from Damien Frost, Mr. Justice Quinn said that he would deliver his decision after the lunch break.
12. Peter Eickmeier then asked whether there was anything needed from himself, and Mr. Justice Quinn said no, leaving Peter Eickmeier with the impression that he, Peter Eickmeier, had won the case.
13. The *certiorari* application was dismissed, and the central issue, whether Sheffield had been engaged in an undertaking [referred to in the definition of “business”, which is referred to in the definition of “commercial activity”, in subsection 123(1) of the *ETA*] was not mentioned in the decision.
14. At the appeal of this decision, at the *Court of Appeal for Ontario*, the Court told Peter Eickmeier that his interpretation of the *ETA* would mean

that GST refunds could be claimed for transactions that had no business purpose other than the tax benefit.

15. Peter Eickmeier replied (without suggesting that Sheffield had gotten GST refunds in respect of transactions that were not done for earning money), “That’s what happened in *Canada Trustco*” (2005 SCC 54), and the three judges expressed great anger at this, but said nothing in reply.
16. In the decision of the *Court of Appeal for Ontario*, the appeal was dismissed, and the final and central issue that had been raised by the Court and Peter Eickmeier’s response — whether the *Canada Trustco* case, where the transactions had no income-earning purpose, rebutted the suggestion that the *ETA* should not be allowed to give a tax benefit for a transaction that was not entered into for gain other than the tax benefit — was dealt with by making no mention of it at all.
17. The *Court of Appeal for Ontario* refused Peter Eickmeier’s request for a stay to allow for an application to the *Supreme Court of Canada* for leave to appeal.
18. These two court appearances left Peter Eickmeier with the impression that the judges in the criminal courts would not allow tax law to be used to get a result that they did not feel comfortable with.
19. At the trial, Ashish Patel, the auditor for *Canada Revenue Agency*, denied that Sheffield had engaged in an undertaking [referred to in the

definition of “business”, which is referred to in the definition of “commercial activity”, in subsection 123(1) of the *ETA*], and Madam Justice Walters ordered Peter Eickmeier to stop cross-examining Ashish Patel on that issue, saying, sarcastically, that Peter Eickmeier could argue that point of law in his closing argument.

20. While Peter Eickmeier was aware that his questions were partly legal in nature, rather than merely factual, he concluded from the attitude of Madam Justice Walters, and from the impressions that he had gotten from the decisions in the two previous proceedings, that she would not allow the use of a literal interpretation of the *ETA* as a defence, and that it might be advisable to settle the matter as best he could.

**C. FURTHER STATUTORY PROVISIONS RELIED ON**

21. The further statutory provision relied on is section 133 of the *Excise Tax Act*.

**D. OTHER REASONS THE APPELLANT INTENDS TO RELY ON**

22. The respondent, at paragraph 13 of its reply, says that Sheffield did not engage in any *bona fide* transactions or engage in any commercial activity, within the meaning of subsection 123(1) of the *ETA*, during the period under appeal.

23. In fact, the only transactions that the appellant need engage in to become eligible for GST refunds are sales, as defined in subsection 123(1), and this includes a transfer of ownership, or, pursuant to section 133(a) of the *ETA*, an agreement to transfer ownership, and these Sheffield did.
24. In addition, within the meaning of subsection 123(1) of the *ETA*, commercial activity includes a business, and business includes an undertaking of any kind whatever, whether engaged in for profit. And undertaking includes taking part in the application of mental or physical effort to a purpose, and this Sheffield did.

**Dated:** February 8, 2010.

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