

2008-3277(GST)G

TAX COURT OF CANADA

BETWEEN:

SHEFFIELD INTERNATIONAL CORPORATION

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REPLY

In reply to the Appellant's Notice of Appeal with respect to the assessment made under Part IX of the *Excise Tax Act*, R.S.C. 1985, c.E-15 (the "ETA") for the period September 1, 1995 to May 31, 2001, notice of which was made by Notice of Assessment number 05B11055 dated July 13, 2004, the Deputy Attorney General of Canada says:

A. STATEMENT OF FACTS

1. He admits the allegations of fact stated in paragraphs 1 and 3 of the Notice of Appeal.
2. He denies the allegations of fact stated in paragraphs 5, 6, 7, 8 and 11 of the Notice of Appeal.
3. With respect to paragraph 2 of the Notice of Appeal, he admits the address of Halina Jawor, but denies that she is a party to this litigation.

4. With respect to paragraph 4, he admits that, at the time of Sheffield International Corporation ("Sheffield") incorporation on August 8, 1995, Halina Jawor was listed as its sole shareholder and first officer. He states that Peter Eickmeier controlled Sheffield at all material times. He has no knowledge of the remaining facts stated therein and puts them at issue.

5. With respect to paragraph 9, he admits that, for the period in issue, Sheffield claimed input tax credits (the "ITCs") in the amount of \$5,194,127.13 and received a refund of net tax in the amount of \$3,288,292.91, plus interest in the amount of \$819.96. However, he states that the ITCs were fraudulently claimed by Sheffield as it had not engaged in *bona fide* transactions giving rise to the claimed net tax refunds. He denies the remaining allegations of fact stated therein.

6. With respect to paragraph 10, he admits that Sheffield used the money it received from net tax refunds to benefit Mr. Eickmeier, but denies that Sheffield invested in corporations controlled by Mr. Eickmeier. He denies the remaining allegations of fact stated therein.

7. To the extent that Sheffield's notice of appeal contains additional material facts, he denies them.

8. The Minister of National Revenue (the "Minister") assessed Sheffield's net tax pursuant to the *ETA* for the period September 1, 1995 to May 31, 2001 and:

- (a) denied Sheffield's claimed ITCs of \$5,194,127.13 for the period;

- (b) assessed \$1,298,532.00 of penalties pursuant 285 of the *ETA*;
- (c) assessed \$1,537,728.97 of penalties pursuant to section 280 of the *ETA*; and
- (d) assessed \$959,732.37 of interest charges in respect of Sheffield's failure to return \$3,288,292.91 of refunds of net tax that it had fraudulently obtained as and when required.

9. In determining Sheffield's net tax for the period described in paragraph 8 above, the Minister made the following assumptions of fact:

Sheffield

- (a) Sheffield filed 69 GST returns for the period September 1, 1995 to May 31, 2001 claiming a combined total of net refunds in the amount of \$5,194,127.13 (the "GST Returns");
- (b) Sheffield did not engage in any commercial activity for the period August 8, 1995 to May 31, 2001;
- (c) Sheffield did not engage in *bona fide* transactions giving rise to ITCs for the period September 1, 1995 to May 31, 2001;
- (d) any activities Sheffield engaged in during the period August 8, 1995 to May 31, 2001 were solely in respect of schemes to defraud Canada through claiming false net tax refunds;

- (e) no GST was paid by Sheffield in respect of any commercial activity for the period September 1, 1995 to May 31, 2001;
- (f) no GST became payable by Sheffield in respect of any commercial activity for the period September 1, 1995, to May 31, 2001;
- (g) Sheffield was, at all material times, a monthly filer of GST/HST returns;

Peter Eickmeier

- (h) Mr. Eickmeier controlled Sheffield at all material times;
- (i) Mr. Eickmeier, at all material times, operated Heavy Metal Software TM ("HVM") as an sole proprietorship;
- (j) Sheffield was the only purported customer of HVM;
- (k) Mr. Eickmeier, at all material times, controlled and was the sole officer, director and shareholder of the following corporations, each of which was incorporated in the United States of America:
 - (i) Frontier Metals Inc. ("Frontier");
 - (ii) Rockwell Design Corp.; and
 - (iii) Rockwell Shelters Inc.;
- (l) Mr. Eickmeier pleaded guilty to an offense under section 327 of the *ETA* and was sentenced to three years in prison in respect of his

involvement in Sheffield's filing of false or deceptive returns for the period September 1, 1995 to May 31, 2001;

The purported sales of metal materials in 1995 and 1996 was a sham

- (m) in its GST/HST returns for the period September 1, 1995 to October 31, 1995, (the "1995 Period") Sheffield claimed nil GST Collected/Collectible and total ITCs of \$13,337.20;
- (n) \$12,762.50 of the ITCs claimed during the 1995 Period related to the purported purchase of \$182,325.00 worth of metal materials (the "Metal Materials") by Sheffield from Patriot Forge Inc. ("Patriot");
- (o) Sheffield purportedly purchased the Metal Materials to sell and export them to Frontier;
- (p) the purported purchase of the Metal Materials by Sheffield from Patriot and the purported sale of the Metal Materials to Frontier during 1995 Period was a sham designed to give the appearance that Sheffield was entitled to claim ITCs for that period;
- (q) Frontier is Sheffield's only purported customer;
- (r) no GST became payable in respect of the purported purchase of the Metal Materials by Sheffield;

- (s) Sheffield did not, in respect of its purported purchase of the Metal Materials from Patriot:
 - (i) pay \$12,762.75 of GST;
 - (ii) pay for the Metal Materials; or
 - (iii) sell the Metal Materials to Frontier;
- (t) in January, 1996 Sheffield returned the Metal Materials to Patriot;
- (u) as a condition of the return of the Metal Materials, Sheffield required Patriot to participate in the following exchange of bank drafts and cheques between Patriot, Sheffield and Frontier:
 - (i) a bank draft in the amount of \$195,087.75 payable to Frontier was purchased by Patriot and deposited into the bank account of Frontier;
 - (ii) Frontier then provided a cheque in the amount of \$195,087.75 to Sheffield, and Sheffield deposited that cheque into its bank account; and
 - (iii) Sheffield used the funds provided by Frontier to purchase a bank draft in the amount of \$195,087.75 payable to Patriot and provided said draft to Patriot;
- (v) the bank drafts and cheques noted above were each in the amount of \$195,078.75 as that amount, when Sheffield returned the money

Patriot, gave the appearance that Sheffield had paid \$182,325.00 in respect of the purchase price of the Metal Materials and paid \$12,762.75 in respect of GST purportedly payable on the alleged supply;

- (w) the purpose of the exchange of bank drafts and cheques between Patriot, Sheffield and Frontier was to give the appearance that a *bona fide* transaction had occurred;

The purported sales of software during the period May 1, 1996 to May 30, 2001 were shams

- (x) in its GST/HST returns for the period May 1, 1996 to May 30, 2001 (the "1996 to 2001 Period") Sheffield claimed ITCs in the amount of \$5,179,573.08 and reported sales of \$74,810,856.00;
- (y) Sheffield's reported sales for the 1996 to 2001 Period were in respect of alleged export sales to Frontier of the software that Sheffield had allegedly purchased from HVM;
- (z) the software that Sheffield claimed to have purchased from HVM and sold to Frontier during the 1996 to 2001 Period did not exist;
- (aa) the purported purchases from HVM and purported sales to Frontier of software during the 1996 to 2001 Period were shams designed to give the appearance that Sheffield was entitled to claim ITCs for that period;

- (bb) Sheffield did not purchase any software from HVM during the 1996 to 2001 Period;
- (cc) Sheffield did not sell or export any software to Frontier during the 1996 to 2001 Period;
- (dd) no GST was paid, or became payable, by Sheffield with respect to its purported purchase of software from HVM;
- (ee) no payments were made by Frontier to Sheffield in respect of the purported sales;

10. In determining Sheffield's liability for penalties under section 285 of the *ETA*, the Minister relied on the following facts:

- (a) the facts listed above in paragraph 9;
- (b) Mr. Eickmeier and Ms. Jawor, being officers, directors or agents of Sheffield, prepared Sheffield's annual corporate income tax returns for its 1996, 1997, 1998 and 1999 taxation years (the "Corporate Income Tax Returns");
- (c) Ms. Jawor signed the Corporate Income Tax Returns;
- (d) the Corporate Income Tax Returns were false and were a deliberate part of Sheffield's scheme to defraud Canada by filing false GST returns;

- (e) Ms. Jawor signed Sheffield's nine GST/HST returns for the period August 8, 1995 to April 30, 1996;
- (f) Mr. Eickmeier signed Sheffield's 61 GST/HST returns for the period May 1, 1996 to May 31, 2001; and
- (g) the amount of the net tax refunds was material.

B. ISSUES TO BE DECIDED

11. The issues to be decided are:

- (a) whether Sheffield was engaged in commercial activities during the period at issue;
- (b) whether GST became payable or was paid by Sheffield during the period at issue;
- (c) if GST became payable or was paid by Sheffield, was it in respect of property or services acquired or imported for the consumption, use or supply in the course of Sheffield's commercial activities;
- (d) did the Minister properly assess penalties pursuant to section 285 of the *ETA* in respect of the relevant period;

C. STATUTORY PROVISIONS

12. He relies, *inter alia*, on sections 165, 228, 230.1, 285, 280, 286 and 299 and subsections 123(1), 169(1), 225(1), 280(1) and 296(1) of the *ETA*.

D. GROUNDS RELIED ON AND RELIEF SOUGHT

13. 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. The only activities Sheffield engaged in were schemes designed to defraud Canada by claiming fraudulent net tax refunds.

14. Sheffield never paid GST and no GST became payable by Sheffield during the period in issue; all of the transactions it purported to engage in were shams designed to give the appearance that it was entitled to claim ITCs for which it was not eligible. As such, pursuant to subsection 169(1) of the *ETA*, it could not claim any ITCs for that period.

15. Sheffield did not repay the improperly paid net tax refunds as and when required by the *ETA*. As such, Sheffield was liable for interest and penalty pursuant to subsection 280(1) of the *ETA*, as it read at the time.

16. Sheffield knowingly, or under circumstances amounting to gross negligence, made or participated in the filing of false returns for the period in question. As such, it is liable for penalty pursuant to section 285 of the *ETA*.

He requests that the appeal be dismissed with costs.

DATED at the City of Toronto, Ontario, this January 8, 2010.

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