

Ottawa, Tuesday, January 20, 1998

Appeal No. AP-96-066

IN THE MATTER OF a preliminary issue of jurisdiction in an appeal filed on behalf of Jarnail Singh Purewall, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated January 19, 1995, with respect to a notice of objection served under the *Excise Tax Act*.

DECISION OF THE TRIBUNAL

The Canadian International Trade Tribunal hereby concludes that it does not have jurisdiction to hear this appeal, as it involves an assessment of Goods and Services Tax made under section 296 of the *Excise Tax Act*. Consequently, the appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Raynald Guay
Raynald Guay
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

Ottawa, Tuesday, January 20, 1998

Appeal No. AP-96-066

IN THE MATTER OF a preliminary issue of jurisdiction in an appeal filed on behalf of Jarnail Singh Purewall, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated January 19, 1995, with respect to a notice of objection served under the *Excise Tax Act*.

REASONS FOR DECISION

On August 1, 1996, the appellant filed an appeal with the Tribunal from an assessment dated April 12, 1994, by the Minister of National Revenue under section 296 of the *Excise Tax Act*¹ (the Act). The respondent rejected the appellant's attempt to offset Goods and Services Tax (GST) owed to the government by deducting a federal sales tax (FST) new housing rebate as an input tax credit (ITC). In her brief, which was filed with the Tribunal on November 20, 1996, counsel for the respondent raised the issue of the Tribunal's jurisdiction to hear the appeal. By letter dated January 9, 1997, the Tribunal asked counsel for the appellant to file written submissions addressing this issue and gave counsel for the respondent an opportunity to reply.

The appellant obtained a building permit for a property located at 14209 91 Avenue in Surrey, British Columbia, in January 1991. The appellant sold the property to Satnam S. Shoker and Jasbir K. Shoker (the purchasers) for \$120,500 in May 1991. In November 1992, the purchasers filed an application for an FST new housing rebate in relation to the property in the amount of \$5,270. By notice of determination dated December 18, 1992, the respondent rejected the application. No notice was served objecting to this determination. On March 22, 1993, the appellant filed an application for an FST new housing rebate for the same property. The purchasers had apparently assigned their rights to the appellant. By notice of determination dated May 21, 1993, the respondent rejected the application because there was insufficient evidence to support the claim and the purchasers had not signed the form. No notice was served objecting to this determination.

In early 1994, a GST audit of the appellant's operations was conducted for the period from January 1, 1991, to June 30, 1993. The respondent's assessment dated April 12, 1994, determined that the appellant owed \$19,236.06, which included an amount for penalty and interest. It also included an adjustment in the amount of \$5,270.00 for an FST new housing rebate, which the respondent determined the appellant had incorrectly deducted as an ITC on his GST return in relation to the property. The appellant objected to the assessment. On January 19, 1995, the respondent issued a decision disallowing the objection and confirming the assessment. On January 27, 1995, the appellant appealed the assessment to the Tax Court of Canada (Tax Court) pursuant to section 306 of the Act. On October 10, 1995, the Tax Court issued an order quashing the appellant's appeal in respect of his claim for an FST new housing rebate.² The Tax

1. R.S.C. 1985, c. E-15.

2. *Jarnail Singh Purewall v. Her Majesty the Queen*, Court File No. 95-228(GST)I, October 10, 1995.

Court allowed the appellant's appeal in respect of his claim for a GST new housing rebate. The appellant then filed the present appeal with the Tribunal pursuant to section 81.19 of the Act.

Counsel for the respondent argued that the Tribunal has no jurisdiction to hear this appeal, as it involves a GST audit assessment made under section 296 of the Act that denied the appellant's attempt to offset GST owed to the government by deducting an FST new housing rebate as an ITC. She argued that, pursuant to sections 296, 300, 301, 302 and 306 of the Act and subsection 12(1) of the *Tax Court of Canada Act*,³ the Tax Court has exclusive jurisdiction to hear appeals of matters arising under Part IX of the Act. As such, an assessment made under section 296 of the Act must be appealed to the Tax Court. According to counsel, section 16 of the *Canadian International Trade Tribunal Act*⁴ (the CITT Act) does not give the Tribunal jurisdiction to hear this appeal.

Counsel for the appellant argued that the Tribunal does, in fact, have jurisdiction to hear this appeal. He argued that there is nothing in the CITT Act which bars the Tribunal from hearing this appeal. He submitted that section 16 of the CITT Act gives the Tribunal extremely broad authority. Furthermore, the fact that this appeal involves a GST audit assessment is irrelevant to the issue of whether or not the Tribunal has jurisdiction. Counsel argued that the fact that the respondent, in his notice of decision, dealt with the substance of the appellant's objection in respect of the FST new housing rebate shows that he considered the objection to have been served pursuant to both section 296 and section 81.15 of the Act.

In support of the appellant's position, counsel for the appellant referred to the Tribunal's decision in *Brandon Forest Products Ltd. v. The Minister of National Revenue*,⁵ where the Tribunal stated that it must be very wary of refusing to exercise its jurisdiction and, by doing so, of depriving an appellant of the right of appeal under the Act. Counsel submitted that, given the Tribunal's broad mandate, it should find that it has jurisdiction to hear this appeal, so as to ensure that the appellant has a fair opportunity to be heard.

Section 16 of the CITT Act sets out the powers, duties and functions of the Tribunal. Paragraph 16(c) of the CITT Act provides as follows:

16. The duties and functions of the Tribunal are to

(c) hear, determine and deal with all appeals that, pursuant to any other Act of Parliament or regulations thereunder, may be made to the Tribunal, and all matters related thereto.

Section 81.19 of the Act provides the Tribunal with its jurisdiction to hear appeals under that act. It provides that any person who serves an objection to an assessment under section 81.15 or to a determination under section 81.17 may, within 90 days after the day on which the notice of decision on the objection is sent to him, appeal the assessment or determination to the Tribunal. The assessment that is appealed to the Tribunal is made by the respondent pursuant to section 81.1 of the Act, under Part VI which deals with FST.

The respondent may also make assessments under section 296 of the Act. This section deals with GST and is under Part IX of the Act. Section 302 of the Act provides that a person who has served an objection to an assessment made by the respondent may, within 90 days after the day the notice of reassessment or additional assessment is sent to him by the respondent, appeal therefrom to the Tax Court.

3. R.S.C. 1985, c. T-2.

4. R.S.C. 1985, c. 47 (4th Supp.), as amended.

5. Appeal No. AP-91-256, December 1, 1992.

Subsection 12(1) of the *Tax Court of Canada Act* provides that the Tax Court has exclusive jurisdiction to hear and determine appeals of matters arising under Part IX of the Act.

The assessment dated April 12, 1994, from which the appellant has appealed to the Tribunal, was clearly an assessment of GST. It, therefore, was made by the respondent under section 296 of the Act under Part IX. Section 302 of the Act and subsection 12(1) of the *Tax Court of Canada Act* clearly provide that an appeal from such an assessment must be made to the Tax Court. The Tribunal, therefore, does not have jurisdiction to hear the present appeal. The Tribunal comes to this conclusion despite the fact that the issue raised in this appeal relates to an FST new housing rebate, which normally falls within the Tribunal's jurisdiction. The Tribunal notes, however, that two applications for an FST new housing rebate on the same property were filed with the respondent. Both applications were disallowed by the respondent. An appeal from the determinations could have been filed with the Tribunal.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Raynald Guay

Raynald Guay
Member

Charles A. Gracey

Charles A. Gracey
Member