

E

96-433(GST)G

TAX COURT OF CANADA

TAX COURT OF CANADA COUR CANADIENNE DE L'IMPOT	
FILED	APR 23 1996
MICHAEL TURCOTTE REGISTRY OFFICER AGENT DU GREFFE	
VANCOUVER	

PA

BETWEEN:

BOMBAY JEWELLERS LTD.

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REPLY

In reply to the Appellant's Notice of Appeal with respect to an assessment under Part IX of the *Excise Tax Act* for the period January 1, 1991 to December 31, 1992, by Notice of Assessment No. 11BU0200374 dated April 20, 1993, the Deputy Attorney General of Canada says:

A. STATEMENT OF FACTS

1. He admits the allegations of fact stated in paragraphs 1, 5, 11, and 12 of the Notice of Appeal.
2. He has no knowledge of and therefore does not admits the facts alleged in paragraph 2, 3 and 4 of the Notice of Appeal.
3. He denies the facts alleged in paragraph 6 of the Notice of Appeal.

4. With respect to paragraphs 7 and 8 of the Notice of Appeal, he admits that the Appellant cut the gold bars into 1 and 2 ounce pieces for sale to its customers by weight, and that the Appellant also melted down the 1 kilogram gold bars into pieces of various weights for sale to its customers. He denies that those cut or melted pieces (together, the "Gold Pieces") were wafers or ingots.
5. He admits all of the facts alleged in paragraph 9 of the Notice of Appeal, except he denies that the gold pieces sold by the Appellant to its customers were ingots and wafers.
6. He admits all of paragraph 10 of the Notice of Appeal, except he denies that the gold pieces sold by the Appellant were wafers and ingots.
7. The Minister of National Revenue (the "Minister") assessed the Appellant by Notice of Assessment No. 11BU0200374, dated April 20, 1993, in the amounts of \$141,363.22 tax, \$10,194.73 interest, and \$8,926.52 penalty in respect of Goods and Services Tax ("GST") returns for the period of January 1, 1991 to December 31, 1992 (the "Assessment").
8. The Appellant objected to the Assessment. The Appellant's original objection, dated May 10, 1993, was filed on an improper form. The Appellant subsequently filed another, and identical, Notice of Objection on the proper form dated May 25, 1993.
9. By Notice of Decision No. PAC 7998 dated January 24, 1996, the Minister confirmed the Assessment.
10. In so assessing the Appellant, the Minister relied on, *inter alia*, the following assumptions:
 - a) the facts stated and admitted above;
 - b) the Appellant is a GST registrant with GST Registration No. 127403335;

- c) the Appellant operates a retail jewellery store located at 6566 Main Street, Vancouver, B.C.;
- d) the Appellant was neither the refiner of the Gold Pieces, nor the person on whose behalf the Gold Pieces were refined;
- e) the Gold Pieces did not meet international standards in weight and form, were not marked with the required fineness, nor stamped by an acceptable assayer;
- f) the Gold Pieces were not of the required purity level; and
- g) the Gold Pieces were not precious metals within the meaning of that term as defined in subsection 123(1) of the *Excise Tax Act* (the "*Act*").

B. ISSUES TO BE DECIDED

- 11. The first issue is whether the gold pieces sold by the Appellant constitute a "precious metal" as defined in s.123(1) of the *Act*.
- 12. The second issue is whether the Gold Pieces sold by the Appellant still retain their character as part of a financial instrument as defined in subsection 123(1) of the *Act*.

C. STATUTORY PROVISIONS RELIED ON

- 13. He relies on sections 123(1), 165, 213, 217, and 286 , Part VII of Schedule V, Part IX of Schedule VI, and Schedule VII of the *Act*.

D. GROUNDS RELIED ON AND RELIEF SOUGHT

- 14. He respectfully submits that the Minister properly assessed the Appellant on the basis that:

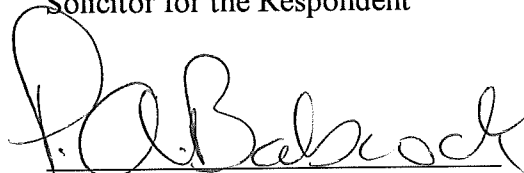
- a) the Gold Pieces were not "precious metal" as defined in s.123(1) of the *Act* and are therefore not an exempt supply under section 1 of Part VII of Schedule V to the *Act*; and
- b) once the gold bars were cut or melted into the Gold Pieces they no longer retained their character as a financial instrument.

He requests that the appeal be dismissed with costs.

DATED at the City of Vancouver, British Columbia, this 23^d day of April, 1996.

George Thomson
Deputy Attorney General of Canada
Solicitor for the Respondent

Per:



Patricia A. Babcock
Counsel for the Respondent

Department of Justice
Vancouver Regional Office
900 - 840 Howe Street
Vancouver, B.C.
V6Z 2S9

Telephone: (604) 666-0324
Facsimile: (604) 666-2214

TO: The Registrar
Tax Court of Canada
200 Kent Street
Ottawa, Ontario
K1A 0M1

TO: Werner H.G. Heinrich
Koffman Birnie & Kalef
Business Lawyers
19th Floor, 885 West Georgia Street
Vancouver, BC
V6C 3H4

96-433(GST)G

TAX COURT OF CANADA

BETWEEN:

BOMBAY JEWELLERS LTD.

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REPLY

Department of Justice
Vancouver Regional Office
900 - 840 Howe Street
Vancouver, B.C.
V6Z 2S9

Patricia A. Babcock
Counsel for the Respondent

Telephone: (604) 666-0324
Facsimile: (604) 666-2214

16502.doc

