

e-document-6	A-259-23-ID 1
F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE September 29, 2023 29 septembre 2023 Agata Klich TOR 1

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

HIS MAJESTY THE KING

Appellant

and

LBL HOLDINGS LIMITED

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules*, and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules*, instead of serving and filing a notice of appeal.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (613-992-4283) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: _____ *Issued by:* _____
(Registry Officer)

Address of Local office:

TO: The Registrar
Federal Court of Appeal

AND TO: David Douglas Robertson
EY Law LLP
2250-215 2nd Street SW
Calgary, AB T2P 1M4

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of Justice Visser dated August 29, 2023 by which the respondent's appeal to the Minister of National Revenue's reassessment of the respondent's January 1, 1999 to February 29, 2000 monthly GST reporting periods was allowed and the reassessment vacated.

THE APPELLANT ASKS that:

- A. The appeal be allowed with costs in this Court and the Tax Court of Canada, and any Order of the Tax Court of Canada with respect to costs be set aside;
- B. The Judgment of the Tax Court of Canada be set aside;
- C. The matters under appeal be referred back to the Minister for reconsideration and reassessment on the basis that the Minister's reassessment be restored, with the exception of the assessment of \$1,876.37 in GST collectible, along with attributable interest and penalties as conceded by the appellant during the Tax Court hearing;
- D. In the alternative, the matter be remitted back to the Tax Court for a new trial with a different trial judge; and
- E. Such further and other relief as counsel may advise and this Honourable Court permits.

THE GROUNDS OF APPEAL are as follows:

1. The Trial Judge erred in law in failing to consider plead issues and arguments raised by the appellant including, but not limited to, the following:
 - a. That the alleged sales of cigarettes to a status Indian were merely a sham, designed to conceal the true identity of the recipients of the respondent's supplies and that the respondent knowingly participated in a scheme, the purpose of which was to falsely create the appearance to the Minister that the respondent was making tax relieved sales to status Indians, when in fact this was not the case at all;
 - b. That the status Indian was providing services as a conduit or flow through person or otherwise providing services to the respondent and the buyers of the cigarettes and tobacco products, rather than buying and reselling the cigarettes and tobacco products;
 - c. The application of relevant Ontario legislation in determining what was the contract of sale in the present case and that the buyers of the goods were persons other than the status Indian and that these buyers were the recipient of the cigarette and tobacco products; and
 - d. That, contrary to the respondent's pleadings, the respondent did not seek and receive fully informed legal and tax accounting advice when entering into the scheme. Rather, the respondent made no genuine efforts to ensure compliance with the *Excise Tax Act*, nor was it interested in making any such attempts to ensure compliance.

2. The Trial Judge erred in law by failing to provide reasons on issues plead and argued by the appellant that were sufficiently intelligible to permit appellate review of the correctness of the decision.
3. The Trial Judge erred in law and made palpable and overriding errors of fact by identifying the “Oral Agreement” as being the agreement that made the consideration payable for the cigarettes and tobacco products. The Oral Agreement did not make any consideration payable by the status Indian or anyone for the supply of cigarettes and tobacco products.
4. The Trial Judge erred in law and / or mixed fact and law and made palpable and overriding errors of fact by failing to conclude that, in this cash before delivery scheme, it was persons other than that the status Indian who were liable to pay for the cigarette and tobacco products.
5. The Trial Judge erred in law and / or mixed fact and law and made palpable and overriding errors of fact when concluding that the status Indian was the “recipient”, as defined in subsection 123(1) of the *Excise Tax Act*, of the supply of cigarettes and tobacco products.
6. The Trial Judge erred in law and / or mixed fact and law and made palpable and overriding errors of fact when concluding that, the issue of whether the sale of the tobacco and cigarettes was not “normal” was irrelevant in the circumstances of this case and due to the issues raised and plead by the parties.
7. The Trial Judge erred in law and / or mixed fact and law and made palpable and overriding errors of fact in concluding, despite the facts of this scheme, that there was an integrated legal supply chain that went from the respondent to the status Indian to various convenience stores to the end consumer.

8. The Trial Judge made further palpable and overriding errors of fact including, but not limited to:
- a. Concluding that the facts of the scheme were within normal business operations or activities for the respondent or the respondent's corporate group and that the use of the alphanumeric codes was similarly used by the respondent or within the respondent's corporate group; and
 - b. Finding that the compensation received by the status Indian from the buyers of the cigarettes and tobacco products was a "mark up" of the products. Rather was a weekly \$500 flat fee she charged for her services regardless of the amount of cigarettes sold.
9. Such further and other grounds as counsel may advise and this Honourable Court permits.

September 29, 2023



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Ontario Regional Office
National Litigation Sector
120 Adelaide Street, West Suite #400
Toronto, ON M5H 1T1
Fax number: 416-973-0810

Per: Craig Maw

Telephone number: 416-659-4391
E-mail address: Craig.Maw@justice.gc.ca/
Tony.Cheung@justice.gc.ca

Counsel for the Appellant