Federal Courts Reports
Recueil des décisions des Cours fédérales

CUSTOMS AND EXCISE

EXCISE TAX ACT

Administration and enforcement — Judicial review of Canada Revenue Agency (CRA) decision to temporarily withdraw, as opposed to permanently renounce, two certificates that CRA filed in Federal Court for purposes of taking collection action against applicants in their capacities as directors of Artisan Homes Inc. (Artisan) for arrears of goods and services tax (GST) owing by Artisan — Applicants' primary argument was that CRA action unreasonable because it contravened National Collections Manual *(*2015-01*)* (2015 Manual) that was in effect at time they submitted their notices of objection to CRA's notice of assessment on April 20, 2016, made pursuant to *Excise Tax Act,* R.S.C., 1985, c. E-15 (*ETA*), s. 301(1.1) — CRA stating that 2015 Manual was superseded in November 2016 by InfoZone communication from Director of CRA's Collections Enforcement Division (2016 Directive); that applicants relying on out-of-date information — On February 17, 2016, pursuant to ETA, s. 323(l), CRA issued notices of assessment against applicants for arrears of goods, services tax owing by Artisan in amount of $550,000 — Thereafter, applicants sending CRA two notices of objection disputing assessments — Also filed objections under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 *(ITA)* for those assessments, appealed assessments to Tax Court of Canada— CRA collections officer emailed appeals officer concerning appeal status of applicants' accounts — Appeals officer replying that no notices of assessment existing on RT account (referring to GST/HST payments under ETA), only for RP account (referring to payroll deductions under ITA) — Minister certified under ETA, s. 316(1) that each applicant, Artisan, were indebted for taxes under notices of assessment, where debt totalled $616,502.43 including interest at time — Afterwards, collections officer notified that objections had been filed with CRA in April 2016 — Counsel for applicants requested that objections be "retroactively re-opened" — On April 6, 2018, certificates were registered as being filed, writ of search, seizure electronically issued to sheriff — Applicants' counsel later advised that certificates being withdrawn — In response, applicants' counsel indicated that since debt certified in error, CRA had to release certificates registered against applicants — Applicants' objections eventually backdated to April 20, 2016 — Certificates, writ, eventually withdrawn by CRA but not renounced or satisfied as applicants' counsel requesting — CRA notifying applicants' counsel that those procedures outdated; that withdrawal was correct course of action — Decision under review was letter dated July 2019 stating that applicants' position that CRA must "release" certificates was incorrect, based on misapprehension of applicable law, on CRA policy that was not in effect at any time relevant to matter; that CRA had withdrawn both certificates, but would not renounce them — Decision also stating that no objection or appeal was in place when writs filed on April 6, 2018 — However, writs withdrawn when subsequently allowed objections were retroactively dated to time before filing of writs — Decision indicated that under policy that replaced 2015 Manual, renunciation of certificates only provided for in certain situations, none of which aligned with applicants' circumstances; noted that 2015 Manual no longer in effect when CRA allowed applicants' objections on April 17, 2018 — Accordingly, decision concluded that CRA properly followed its policy in withdrawing certificates rather than renouncing them — Stated that Minister under no legal obligation to stay collection of debt for directors' liability assessments under ETA, s. 323(1) — Whether decision reasonable; whether decision procedurally unfair in that it failed to meet applicants' legitimate expectations — No legal impediment existing to actions of collections officer in pursuing collection by filing certificates, registering writs — Those actions were legally supported, provided for in ETA — Once certificates were lawfully registered, as long as they remained so, it was not unreasonable for CRA to have sought writs to realize collection of debt — CRA not legally required under ETA to withdraw certificates on January 29, 2019 — This voluntary

administrative action by CRA to impose collection restrictions when none were legally required was fact that occurred approximately six months after collection activities had begun — Did not support finding that decision incoherent or was otherwise unreasonable regarding filing of certificates or subsequent withdrawal, rather than renunciation of, certificates — Relevant legal provisions in ETA are empowering, not constraining — Found both in ss. 315, 316 — Together these provisions of ETA legally justify, support collection activities that were undertaken, withdrawal of certificates — CRA officers not negligent; errors, omissions not appearing on face of record — Officers reasonably relied on information on file in records system when they processed collection activities; they acted diligently, were not negligent in so doing — Applicants bearing onus of proving their arguments on balance of probabilities — Applicants not establishing that decision followed internally inconsistent chain of reasoning that could not be justified in light of relevant legal, factual constraints — To contrary, provisions of ETA, related case law fully supporting decision — CRA not required to follow 2015 Manual, renounce certificates — 2015 Manual is administrative policy, reflecting CRA policy at point in time — Eighteen months after 2016 Directive issued, CRA making decision to backdate objections — Applicants not providing any authority to support their claim that original 2015 Manual ought to govern process used to release certificates rather than process in existence at time decision was made to retroactively date objections — 2015 Manual not binding law; as originally written, part applicants wishing to rely upon has been replaced; was out-of-date — Thus, CRA reasonably determined to withdraw certificates as underlying debt not satisfied — Neither 2015 Manual nor 2016 Directive binding — Regarding applicants' legitimate expectation that certificate would be released, no evidence provided that CRA applying policies so consistently that legitimate expectation would arise — As CRA stated, internal policy that was rescinded at time that certificates were filed is not representation that is sufficiently precise to constitute binding contractual obligation — As such, legitimate expectation not arising here — Moreover, important limit on such doctrine is that it cannot give rise to substantive rights — Court may only grant appropriate procedural remedies to respond to legitimate expectation — Order of mandamus requiring that Minister file renunciation of certificate not needed in present case — Therefore, decision reasonable, not procedurally unfair — Applications dismissed.

LIBICZ V. CANADA (ATTORNEY GENERAL) (T-1367-19, T-1368-19, 2021 FC 693, Elliott J., reasons for judgment dated June 30, 2021, 30 pp.)