Federal Court  Cour fédérale

Date: 20110113

Docket: T-407-09

Citation: 2011 FC 33

Ottawa, Ontario, January 13, 2011

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

1068827 ONTARIO INC. O/A GRACE MOTORS

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTING THE MINISTER OF NATIONAL REVENUE

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] On March 18, 2009, 1068827 Ontario Inc., carrying on business as Grace Motors (the "Plaintiff") commenced this action against the Minister of National Revenue (the "Defendant") by filing a Statement of Claim pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7 and the *Federal*

Courts Rules, SOR/98-106 (the "Rules"). The action is an appeal from a decision of the Canadian International Trade Tribunal (the "CITT") dated September 11, 2008. In its decision, the CITT dismissed the Plaintiff's appeal from the Defendant's decision disallowing the Plaintiff's claim for a refund of excise taxes.

[2] Following an unsuccessful motion by the Defendant to strike the Plaintiff's Statement of Claim or dismiss the action, the Plaintiff filed an Amended Statement of Claim on December 22, 2009.

[3] The parties submitted an Agreed Statement of Facts on June 30, 2010.

[4] The Plaintiff imports used motor vehicles from the United States of America for re-sale in Canada. The Plaintiff is neither a "manufacturer" nor a "licensed wholesaler" of motor vehicles under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "ETA").

[5] Between April 1, 2005 and April 30, 2006, the Plaintiff imported 270 used motor vehicles that contained air conditioner units. The Defendant collected excise taxes in the amount of $100 per vehicle, for a total of $27,000, pursuant to section 23 and Schedule I, section 7, of the ETA.

[6] The Plaintiff filed an excise tax refund application on April 1, 2007. On April 27, 2007, the Defendant issued a Notice of Determination, disallowing the refund claim. The Plaintiff filed a Notice of Objection on May 8, 2008 and this was disallowed on October 25, 2007.

[7] According to the Plaintiff's Amended Statement of Claim, the CITT dismissed its appeal on September 11, 2008.

[8] This action raises only one issue: Does the ETA impose an excise tax on air conditioner units that are included as permanently installed equipment in used automobiles, station wagons, vans, or trucks imported into Canada?

[9] This action is brought pursuant to section 81.24 of the ETA, which provides as follows:

Any party to an appeal to the Tribunal under section 81.19, 81.21, 81.22 or 81.23 may, within one hundred and twenty days after the day on which the decision of the Tribunal is sent to that party, appeal the decision to the Federal Court.	Toute partie à un appel entendu par le Tribunal en vertu de l'article 81.19, 81.21, 81.22 ou 81.23 peut, dans un délai de cent vingt jours suivant la date d'envoi de la décision du Tribunal, en appeler de cette décision à la Cour fédérale.

[10] This section provides that appeals from decisions of the CITT are to proceed as a trial *de novo*, subject to Part 4 of the Rules. It is not a judicial review and it is unnecessary to engage in an analysis of an applicable standard of review; see the decision in *Zale Canada Diamond Sourcing Inc. v. Canada* (2010), 363 F.T.R. 251.

Plaintiff's Submissions

[11] The Plaintiff argues that the provisions of the ETA dealing with automobiles that have air conditioning units do not apply to air conditioning units installed in used vehicles that are being imported into Canada. The Plaintiff submits that the object and intention of Parliament in enacting the ETA are clearly stated in the Parliamentary debates from January 27, 1977. The Plaintiff quotes

these debates in its Memorandum of Fact and Law, paragraphs 15, 16, and 18. They read, in part, as follows:

> The purpose of this tax is not to raise revenue but rather to encourage Canadians to demand and the automotive industry to produce lighter more energy efficient cars.
> …
> [The ETA] is a significant deterrent to the purchase and hence production of energy inefficient automobiles….
> …
> The Amendment pertaining to the special $100.00 excise tax on the air conditioners for cars, station wagons, vans and light trucks is another measure to promote energy conservation. Automobile air conditioners have a marked effect on gas consumption either directly, by using the car engine as power source or, indirectly, by adding weight to the vehicle.

[12] In other words, the Plaintiff submits that the tax is forward-thinking. It is an attempt to influence the automobile production industry, and was not intended to retrospectively punish the industry by imposing a tax on automobiles that had already been manufactured with air conditioners.

[13] As well, the Plaintiff argues that the ETA must be read in its entire context in order to infer Parliament's true intention, relying on the decision in *R. v. Sharpe*, [2001] 1 S.C.R. 45.

[14] Subsection 23(1) of the ETA focuses on identifying the goods that will attract excise tax, namely, goods that are imported, and goods that are produced in Canada and delivered to a purchaser. In relation to goods that are produced in Canada, this clearly applies to new goods and there is a clear connection between the manufacturing or production of the goods and their delivery to the purchaser.

[15] Subsection 23(2) focuses on the party, the time and the relevant statutory regime by which the tax is to be paid. When subsection 23(2) is engaged, the tax is payable by the manufacturer or the producer at the time of delivery of the goods to the purchaser. According to the Plaintiff, the language of this subsection clearly refers to newly produced goods. Neither subsection refers to subsequent sales or purchasers, so neither subsection contemplates used vehicles.

[16] The Plaintiff notes that "manufacturer or producer" is defined in paragraph 2(1)(g) of the ETA, as "any person who imports into Canada new motor vehicles designed for highway use, or chassis thereof". The Plaintiff submits that if Parliament intended to include used vehicles in this definition, it would have included the word "used" or excluded the word "new" in this definition.

[17] Further, if "import" in subsection 23(2) of the ETA applies to used cars, the Plaintiff submits that the section would tax imported used cars, but would not tax the sale of used cars within Canada. According to the Plaintiff, this yields a ridiculous result and would be contrary to the legislative intent to reduce emissions and improve fuel efficiencies.

[18] The Plaintiff further argues that the automobile provisions of the ETA do not make reference to used vehicles, but specifically refer to new vehicles. The Plaintiff relies upon the decision of the Supreme Court of Canada, in *Markevich v. Canada*, [2003] 1 S.C.R. 94, where the Court said that:

> a basic principle of statutory interpretation that the court should not accept an interpretation which requires the insertion of extra wording where there is another acceptable interpretation which does not require any additional wording.

The Plaintiff submits that in order to accept the interpretation offered by the Defendant, the word "used" must be inserted into the relevant provisions of the ETA, that is Schedule I, section 7.

[19] When a textual, contextual, and purposive analysis is used for statutory interpretation, following the decision in *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, the Plaintiff submits that it is clear that the provisions of the ETA relate to new motor vehicles that have air conditioning units, and do not apply to air conditioning units that are attached to used motor vehicles.

Defendant's Submissions

[20] The Defendant also advances arguments concerning the principles of statutory interpretation and submits that context is paramount in this exercise. He argues that subsection 23(1) makes it clear that when goods are either imported into, or manufactured in Canada, excise tax is levied in accordance with Schedule I. Section 7 of Schedule I provides that air conditioners designed for automobiles attract an excise tax, not the vehicles in which the air conditioners are installed. Subsection 23(2) indicates that the importer pays the excise tax.

[21] Further, the Defendant argues that the language chosen by Parliament is clear and precise. The $100 tax on air conditioners installed in automobiles does not just apply to new automobiles. If that were Parliament's intention, Parliament would have said so. According to the Defendant, the Plaintiff's interpretation amounts to reading down section 7 of Schedule I to exclude used vehicles in a way that is inconsistent with the plain meaning of the provision.

[22] The Defendant further notes that the excise tax measure was adopted to promote energy conservation. At the time Bill C-21 was tabled, most vehicles did not include air conditioners. The new tax was meant to deter wasting energy by taxing all vehicles manufactured with air conditioners in Canada, and all vehicles imported into Canada with air conditioners. The Defendant argues that the tax applies to vehicles already manufactured in Canada.

[23] The excise tax also applies to all vehicles with air conditioners imported into Canada, which ensures that individuals could not avoid the tax by buying vehicles manufactured in the United States and later imported into Canada.

[24] Further, the Defendant notes that the word “automobiles” is used in section 6 of Schedule I, which imposes an excise tax on vehicles of a certain weight. It is assumed that Parliament uses the term “automobiles” consistently. The Defendant submits that if the Plaintiff’s interpretation is used, section 7 of Schedule I has a narrower meaning of “automobile” than section 6, and this result is contrary to the principles of statutory interpretation.

[25] The Defendant further notes that paragraph 2(1)(g), which defines “manufacturer or producer”, includes any person that imports new motor vehicles. This provision must be read in conjunction with subsection 2(4.1) of the ETA, which deems a manufacturer or producer under paragraph 2(1)(g) to be the manufacturer of the imported new vehicles. The effect of these provisions is that the $100 excise tax is only paid once. In other words, according to the Defendant, paragraph 2(1)(g) does not indicate that only imported new vehicles with air conditioners are subject to the tax.

Discussion and Disposition

[26] This appeal turns essentially on a question of statutory interpretation. The excise tax in question was imposed pursuant to subsection 23(1) and subsection 23(2) of the ETA, which provide as follows:

23. (1) Subject to subsections (6) to (8), whenever goods mentioned in Schedule I are imported or are manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other law, an excise tax in respect of the goods at the applicable rate set out in the applicable section of that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.	23. (1) Sous réserve des paragraphes (6) à (8), lorsque les marchandises énumérées à l'annexe I sont importées au Canada, ou y sont fabriquées ou produites, puis livrées à leur acheteur, il est imposé, prélevé et perçu, outre les autres droits et taxes exigibles en vertu de la présente loi ou de toute autre loi, une taxe d'accise sur ces marchandises, calculée selon le taux applicable figurant à l'article concerné de cette annexe. Lorsqu'il est précisé que ce taux est un pourcentage, il est appliqué à la valeur à l'acquitté ou au prix de vente, selon le cas.
(2) Where goods are imported, the excise tax imposed by subsection (1) shall be paid in accordance with the provisions of the Customs Act by the importer, owner or other person liable to pay duties under that Act, and where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof.	(2) Lorsque les marchandises sont importées, la taxe d'accise prévue par le paragraphe (1) est payée conformément à la Loi sur les douanes, et lorsque les marchandises sont de fabrication ou de provenance canadienne et vendues au Canada, cette taxe d'accise est exigible du fabricant ou du producteur au moment de la livraison de ces marchandises à leur acheteur.

[27] Subsection 2(1) provides relevant definitions. Paragraph 2(1)(g) defines “manufacturer or producer” as including “any person who imports into Canada new motor vehicles designed for highway use, or chassis thereof”.

[28] Subsection 2(4.1) is also relevant and provides as follows:

For the purposes of this Act, a person who is a manufacturer or producer within the meaning of paragraph (g) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by virtue of regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, and who imports new motor vehicles designed for highway use, or chassis therefor, into Canada shall be deemed to be the manufacturer or producer in Canada thereof and not the importer thereof and the vehicles or chassis shall be deemed to be goods produced or manufactured in Canada and not imported goods.	Pour l’application de la présente loi, le fabricant ou producteur, au sens de l’alinéa g) de la définition de ce terme au paragraphe (1), à l’exception d’un membre d’une catégorie de petits fabricants ou producteurs exemptée, par règlement d’application du paragraphe 54(2), de l’obligation de demander une licence en vertu du paragraphe 54(1), qui importe au Canada des véhicules automobiles neufs conçus pour servir sur les routes, ou leur châssis, est réputé en être le fabricant ou producteur au Canada, et non leur importateur; les véhicules ou les châssis sont réputés être des marchandises fabriquées ou produites au Canada et non des marchandises importées.

[29] Finally, sections 7 and 8 of Schedule I are relevant and provide as follows:

7. Air conditioners designed for use in automobiles, station wagons, vans or trucks whether	7. Les climatiseurs conçus pour être installés dans les automobiles, les familiales, les fourgonnettes ou les camions, qu’ils soient :
(a) separate, or	a) ou bien distincts;
(b) included as permanently installed equipment in an	b) ou bien inclus à titre d’équipement installé en

automobile, station wagon, van or truck at the time of sale or importation of the vehicle by the manufacturer or importer thereof, as the case may be, one hundred dollars
and, for purposes of this section and section 8, an evaporator unit designed for use with or as part of an automotive type air conditioning system shall be deemed to be an air conditioner described in this section except where the evaporator unit is used for repair or replacement purposes.

permanence dans ces véhicules au moment de la vente ou de l'importation par le fabricant ou l'importateur, selon le cas, cent dollars.
Pour l'application du présent article et de l'article 8, une unité d'évaporation destinée à entrer dans la fabrication de climatiseurs conçus pour être installés dans les automobiles est réputée être un climatiseur décrit dans le présent article sauf lorsqu'elle est utilisée pour fins de réparations ou de remplacement.

8. Section 7 does not apply in the case of any air conditioner described therein

8. L'article 7 ne s'applique pas dans le cas d'un climatiseur visé à cet article qui, selon le cas :

(a) that is purchased or imported for permanent installation in an ambulance or hearse or is included as permanently installed equipment in such a vehicle;

a) est acheté ou importé pour être installé en permanence dans une ambulance ou un corbillard ou est compris dans l'équipement installé en permanence dans ces véhicules;

(b) that is sold under conditions that would qualify the sale as a zero-rated supply for the purposes of Part IX of the Act or that is purchased by and for the personal or official use of a person who is entitled to the tax exemptions specified in article 34 of the Convention set out in Schedule I to the Foreign Missions and International Organizations Act or in article 49 of the Convention set out in Schedule II to that Act; or

b) est vendu dans des conditions qui feraient de la vente une fourniture détaxée pour l'application de la partie IX de la loi ou est acheté, pour son usage personnel ou officiel, par une personne exempte d'impôts et de taxes visée à l'article 34 de la convention figurant à l'annexe I de la Loi sur les missions étrangères et les organisations internationales ou à l'article 49 de la convention figurant à l'annexe II de cette loi;

(c) that is included as

c) est inclus à titre

permanently installed equipment in an automobile, station wagon, van or truck, that is sold under conditions that would qualify the sale as a zero-rated supply for the purposes of Part IX of the Act or that is purchased by and for the personal or official use of a person who is entitled to the tax exemptions specified in article 34 of the Convention set out in Schedule I to the Foreign Missions and International Organizations Act or in article 49 of the Convention set out in Schedule II to that Act.	d'équipement installé en permanence dans une automobile, une familiale, une fourgonnette ou un camion, qui est vendu dans des conditions qui feraient de la vente une fourniture détaxée pour l'application de la partie IX de la loi ou est acheté, pour son usage personnel ou officiel, par une personne exempte d'impôts et de taxes visée à l'article 34 de la convention figurant à l'annexe I de la Loi sur les missions étrangères et les organisations internationales ou à l'article 49 de la convention figurant à l'annexe II de cette loi.

[30] The principles of statutory interpretation were summarized by the Supreme Court of Canada in *Canada Trustco Mortgage Co*. at paragraph 10 as follows:

> The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[31] The purpose of section 23 and of section 7 of Schedule I of the ETA is to promote energy efficient automobiles, by imposing a tax on the production and importation of vehicles that include air conditioning units.

[32] When an automobile is manufactured with an air conditioner in Canada, the tax is levied on the manufacturer at the point of sale.

[33] By operation of the definition of “manufacturer and producer” in paragraph 2(1)(g) and subsection 2(4.1), those who import new motor vehicles for highway use are deemed to have manufactured the vehicles in Canada. As a result, those importing new motor vehicles with air conditioners are liable to pay the $100 tax only once, at the time of sale in Canada.

[34] This occurs pursuant to operation of section 23 of the ETA. This $100 tax is not imposed on subsequent vendors or purchasers. In other words, neither vendors nor purchasers of used vehicles in Canada are taxed if the used vehicle has an air conditioner.

[35] If an individual imports a used vehicle that has been purchased in another country and the tax is levied pursuant to section 23 of the ETA, the result may appear to be unusual; that is, the purchase and sale of a used vehicle with air conditioning in Canada is not affected by the tax, but an importer of a like vehicle must pay the $100 tax. However, insofar as the purpose of section 23 is concerned, the importer of the used vehicle is in the same position as the Canadian manufacturer of the new vehicle. The comparison is not between the importer of the used vehicle and the vendor or purchaser of a used vehicle in Canada.

[36] The tax is a deterrent against the use of energy inefficient motor vehicles. Air conditioners are high energy using components that decrease the energy efficiency when installed in motor

vehicles. The legislative scheme operates so that this deterrent tax is levied at the point at which the vehicle will be put into use in Canada.

[37] When a used vehicle is purchased in Canada, the tax has already been paid by the Canadian manufacturer. However, the importer of a used vehicle purchased abroad is bringing into Canada an energy inefficient vehicle that has not yet been put into use in Canada. This is the behaviour that Parliament wished to deter by imposing the excise tax.

[38] It then follows that the interpretation that the excise tax applies to both new and used imported vehicles with air conditioners, is most consistent with the purpose of section 23 of the ETA.

[39] Furthermore, the interpretation advanced by the Defendant is most consistent with a textual and contextual analysis. That interpretation does not require reading in the words “used” for section 23 or section 7 of Schedule I. It is to be assumed that the use of the word “automobile” will be precise and consistent throughout the ETA. In this regard, I refer to the decision in *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, where the Supreme Court of Canada said the following at page 400:

> The word is used in other provisions of the Act. Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an act.

[40] The definition of “manufacturer or producer” in paragraph 2(1)(g) and subsection 2(4.1) of the ETA illustrates the point:

2. (1) The following definitions apply in this section, Parts I to VIII (other than section 121) and Schedules I to IV:	2. (1) Les définitions qui suivent s'appliquent au présent article, aux parties I à VIII (sauf l'article 121) et aux annexes I à IV.
…	…
"manufacturer or producer"	« fabricant ou producteur »
…	…
(g) any person who imports into Canada new motor vehicles designed for highway use, or chassis therefor,	g) toute personne qui importe au Canada des véhicules automobiles neufs conçus pour servir sur les routes, ou leur châssis;
…	…
(4.1) For the purposes of this Act, a person who is a manufacturer or producer within the meaning of paragraph (g) of the definition of that term in subsection (1), other than a member of a class of small manufacturer or producer that is exempted by virtue of regulations made under subsection 54(2) from the requirement of subsection 54(1) to apply for a licence, and who imports new motor vehicles designed for highway use, or chassis therefor, into Canada shall be deemed to be the manufacturer or producer in Canada thereof and not the importer thereof and the vehicles or chassis shall be deemed to be goods produced or manufactured in Canada and not imported goods.	(4.1) Pour l'application de la présente loi, le fabricant ou producteur, au sens de l'alinéa g) de la définition de ce terme au paragraphe (1), à l'exception d'un membre d'une catégorie de petits fabricants ou producteurs exemptée, par règlement d'application du paragraphe 54(2), de l'obligation de demander une licence en vertu du paragraphe 54(1), qui importe au Canada des véhicules automobiles neufs conçus pour servir sur les routes, ou leur châssis, est réputé en être le fabricant ou producteur au Canada, et non leur importateur; les véhicules ou les châssis sont réputés être des marchandises fabriquées ou produites au Canada et non des marchandises importées.

[41] The purpose of these provisions is to deem an importer of new vehicles to be the manufacturer of the vehicle, thereby deferring the collection of the excise tax to the point of sale,

and ensuring that the importer is only required to pay the tax once. To further this purpose, Parliament uses the language “new motor vehicles”, creating a subset of the more general term “automobile”. In its analysis, the CITT noted that section 7 of Schedule I makes the section 23 tax payable on automobiles, not new motor vehicles.

[42] The Plaintiff’s interpretation also leads to textual redundancy. Subsection 7(b) of Schedule I stipulates that the tax is paid upon the “sale or importation of the vehicle by the manufacturer or importer”. Those importing new vehicles are deemed manufacturers that manufactured the vehicle within Canada, and are deemed not to have imported the vehicles. If the tax were only to apply to new imported vehicles, the words “importation” and “importer” would be purposeless.

[43] In the result, the Defendant applied the correct statutory interpretation and the Plaintiff’s appeal will be dismissed with costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal from a decision of the Canadian International Trade Tribunal dated September 11, 2008 is dismissed with costs.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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