

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190617

Docket: A-277-17

Citation: 2019 FCA 183

**CORAM: WEBB J.A.
RENNIE J.A.
LASKIN J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

THE MARK ANTHONY GROUP INC.

Respondent

Heard at Vancouver, British Columbia, on December 12, 2018.

Judgment delivered at Ottawa, Ontario, on June 17, 2019.

PUBLIC REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**RENNIE J.A.
LASKIN J.A.**

Federal Court of Appeal



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PUBLIC REASONS FOR JUDGMENT

WEBB J.A.

[1] This appeal arises under the *Excise Act, 2001*, S.C. 2002, c. 22 (the “Act”). The issue is whether The Mark Anthony Group Inc. (Mark Anthony) was required to pay duties of approximately \$2 million under the Act when its Okanagan Premium Cider and Extra Hard Cider were packaged. Justice Graham of the Tax Court of Canada determined that these products qualified for the exemption in paragraph 135(2)(a) of the Act (2017 TCC 141). The exemption in issue applies to wine “produced in Canada and composed wholly of agricultural or plant product

grown in Canada”. Since “wine”, as defined in section 2 of the Act, includes an alcoholic beverage produced by the fermentation of an agricultural or plant product (other than grain) and blended with distilled spirits, the cider in issue in this appeal is wine.

[2] For the reasons that follow, I would dismiss this appeal.

I. Background

[3] The facts are not in dispute. Apples that were grown in Canada were fermented in Canada. While this produced an alcoholic beverage, Mark Anthony fortified the product by adding certain spirits which increased the amount of alcohol. A small portion of the products in issue were fortified with foreign-sourced spirits.

[4] Mark Anthony also added certain other ingredients before the products were packaged. In particular, Mark Anthony added apple juice concentrate which was not made from Canadian apples. It was the addition of this apple juice concentrate which the Crown submits resulted in the exemption not being available for these products.

II. Relevant Provisions of the Act

[5] The Act imposes duties on tobacco, alcohol and cannabis and a tax on cigarettes. Subsection 135(1) of the Act imposes a duty on wine (as defined in section 2 of the Act) that is packaged in Canada. The definition of “packaged” is also set out in section 2 of the Act. The

rates of duty, as set out in Schedule 6 to the Act, are determined based on the amount of alcohol by volume and the quantity of wine.

[6] Paragraph 135(2)(a) of the Act provides an exemption from this duty if the wine is “produced in Canada and composed wholly of agricultural or plant product grown in Canada”.

It is the interpretation of this exemption that is in issue in this appeal. The full text of the relevant provisions of the Act is set out in the Annex attached to these reasons.

III. Decision of the Tax Court

[7] The Tax Court Judge focused on the second part of the exemption (composed wholly of agricultural or plant product grown in Canada) and examined four possible interpretations which could be applied in relation to the ingredients either at fermentation or packaging. He described these tests in paragraph 15 of his reasons:

- a) All Ingredients Test: This test would examine all ingredients that went into the wine. It could be applied either at fermentation or at packaging.
- b) Fermented Ingredients Test: This test would examine all ingredients that were fermented. Logically, it would only be applied at fermentation.
- c) Alcoholic Ingredients Test: This test would examine all ingredients that were changed into alcohol. The test would therefore catch ingredients used to make any spirits that were added to fortify the wine. Logically, this test would only be applied at packaging since the spirits would be added after fermentation.
- d) Agricultural / Plant Ingredients Test: This test would examine any agricultural or plant products in the wine. It could be applied either at fermentation or at packaging.

[8] After a thorough review of the text, context and purpose, the Tax Court Judge concluded that the appropriate test to be applied is an “all ingredients test”. He noted in paragraph 101 of his reasons that:

[101] In summary, while there is textual ambiguity as to when the Ingredients Test is to be applied, there is absolutely no textual ambiguity as to what ingredients it is to cover. The words “composed wholly of” allow for no other meaning than that every ingredient in the wine must meet the test. ...

(emphasis in original)

[9] In paragraph 103, he also noted that:

[103] If the purposive analysis had demonstrated that it was impossible to make wine using only agricultural or plant products, a patent textual ambiguity would have been revealed. The phrase “composed wholly of” would have to have been given a meaning other than its normal grammatical meaning. ... The problem with the exemption in question is that there is no evidence that it is either impossible or even difficult to make wine using only agricultural or plant products. The Appellant fermented cider using nothing but apples. Yes, there are products like the Appellant’s that use other ingredients, but there is no requirement to use such ingredients to create “wine”. Thus, while the purposive analysis has revealed situations where ingredients that are added will prevent a beverage from qualifying for the exemption, it has not revealed a patent ambiguity in the text. The text, as written, can still apply.

[10] In paragraph 107 he concluded that the ingredients test is to be applied at fermentation and not packaging.

[11] At paragraph 110 he noted that:

[110] There is no dispute that the only ingredients that were added to the Appellant’s cider during fermentation were agricultural or plant products grown in Canada. ...

[12] Since the apple juice concentrate that was made from foreign apples was added after the fermentation stage, he concluded that the products were exempt from the imposition of duties under section 135 of the Act.

[13] The Tax Court Judge recognized that applying the test at the time of fermentation would result in the exemption also being available for the products of Mark Anthony that included imported spirits because such spirits would be added after fermentation. Because these imported spirits were used to fortify wine, there was no duty on these spirits (subsection 130(2) of the Act) and if the exemption applied, there would be no duty on the wine that included these imported spirits. The Tax Court Judge acknowledged that this did not appear to be consistent with the objective of the Act nor with the position of Mark Anthony.

[14] Mark Anthony conceded that duty was payable on the beverages that included imported spirits and the amount of this duty was \$39,970.28. Even though, based on the interpretation adopted by the Tax Court Judge, this duty would not have been payable by Mark Anthony, because Mark Anthony conceded that this duty was payable the judgment that was issued in this case reduced the amount of the duty imposed under the Act by \$1,967,652.27 (which reflected the amount that Mark Anthony conceded was payable). If the Tax Court Judge would have applied his interpretation, the amount by which the duties would have been reduced would have been the full amount assessed – \$2,007,622.55.

IV. Issue and Standard of Review

[15] The issue is the interpretation of the exemption contained in paragraph 135(2)(a) of the Act and, therefore, is a question of law. The standard of review is correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

V. Analysis

[16] At the hearing of this appeal, neither Mark Anthony nor the Crown supported the interpretation adopted by the Tax Court Judge. The Crown submitted that the test to determine if the exemption should apply is to be determined as of the time of packaging. The duty is imposed at the time of packaging and therefore the question of whether the exemption applies should also be answered as of this time. Since, at the time of packaging, the product included apple juice concentrate that was not made from Canadian apples, none of these products, in the submission of the Crown, qualified for the exemption.

[17] Mark Anthony submitted that its only dispute with respect to the result reached by the Tax Court Judge is in relation to the wine that included the imported spirits. Mark Anthony submitted that those beverages did not qualify for the exemption, but that all of the other wine packaged by Mark Anthony did qualify for the exemption.

[18] The interpretation of the exemption as set out in paragraph 135(2)(a) of the Act is, as noted by the Tax Court Judge, to be based on a textual, contextual and purposive analysis (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10).

[19] Paragraph 135(2)(a) of the Act provides that subsection 135(1) (which imposes a duty on wine) does not apply to wine “produced in Canada and composed wholly of agricultural or plant product grown in Canada”.

[20] As part of his analysis related to the requirement that the wine be “composed wholly of agricultural or plant product grown in Canada”, the Tax Court Judge considered all of the other ingredients there were added to create the final product that was packaged. By volume, the largest component of the packaged product was water that was added after the fermentation process. Since water is not an agricultural or plant product grown in Canada, the addition of water would result in a product not qualifying for the exemption if the test is applied at the time of packaging and if the test is based on all of the ingredients that are in the packaged product.

[21] The Crown objected to the Tax Court Judge looking at the various other items that were added to the product in this case and that are not in dispute. The Crown submitted that the only item that is in dispute is the apple juice concentrate that was not produced from Canadian apples. However, as noted by this Court in *Williams v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252:

[52] A frequently used tool in the interpretive process is to assess the likely effects or results of rival interpretations to see which accords most harmoniously with text, context and purpose. This is appropriate. The judge is assessing effects or results not to identify an outcome that accords with personal policies or political preferences. Rather the judge is assessing them against the standard, accepted markers of text, context and purpose in order to discern the authentic meaning of the legislation. For example, if the effect of one interpretation offends the legislative purpose but the effect of another interpretation does not, the latter may be preferable to the former.

[25] As noted by the Tax Court Judge, if all of the ingredients that were included in the packaged product had to be an “agricultural or plant product grown in Canada”, then the exemption may never apply and this would defeat the purpose of the exemption. The purpose of the exemption, as the Tax Court Judge noted in paragraph 68 of his reasons, “was to support Canadian vintners and farmers”. If no product could satisfy the exemption, it would not support Canadian vintners and farmers.

[26] The Canada Revenue Agency (CRA) also appears to recognize that an interpretation of the exemption that would require every ingredient in the packaged product to be an “agricultural or plant product grown in Canada” would be problematic. In its “Excise Duty Memorandum Producers and Packagers of Wine” (EDM 4.1.1), the CRA states that:

37. Pursuant to paragraph 135(2)(a), wine that is produced in Canada and composed wholly from Canadian-grown agricultural or plant products and that is packaged on or after July 1, 2006, qualifies for an excise duty exemption.

38. This means that to qualify for this excise duty exemption:

- all of the primary raw materials that are fermented (including grapes, berries, other fruits, honey and dandelions) must have been grown in Canada;
- if the wine is produced from juice, the raw material used to make that juice (e.g., grapes, berries) must have been grown in Canada;
- all juices, juice concentrates, fruits or plant products, added in the winemaking process must be made wholly from Canadian-grown agricultural or plant product; and
- any wine, beer or spirits added, including brandy or fruit spirits, must have been made in Canada wholly from grains, fruits and other agricultural product that have been grown in Canada.

39. Incidental agricultural or plant product-based ingredients that are added in the winemaking process, such as sugar and yeast will not be required to be made wholly from Canadian-grown agricultural or plant product. Such food ingredients and food additives are considered incidental ingredients in the wine and the origin

of these ingredients will not otherwise disqualify the wine from the excise duty exemption.

[27] The distinction between primary and incidental ingredients is not present in paragraph 135(2)(a) of the Act. However, this memorandum does indicate that the focus of the CRA, at the fermentation stage, is on the agricultural or plant products that are fermented. By providing that certain ingredients such as sugar and yeast will not disqualify the product from the exemption, CRA appears to recognize that it may not be possible for any product to qualify for the exemption if, even at the fermentation stage, all of the ingredients must be Canadian-grown agricultural or plant products.

[28] In this appeal, the Crown insisted that the only ingredient in issue is the foreign sourced apple juice concentrate. The Crown was not objecting to the inclusion of any other ingredient (except the foreign based spirits in a small portion of the product under review). Therefore, the presence of added water, high fructose corn syrup, and “other ingredients” should be ignored. There is no evidence with respect to the origin of the high fructose corn syrup or the “other ingredients”. The Crown’s interpretation of the exemption would therefore be that all ingredients that are included in the packaged product must be agricultural or plant products grown in Canada, except those that are permitted to be added by the CRA, on the basis that they are “incidental”. This would result in a delegation of authority to the CRA to decide what wine will qualify for the exemption. There is nothing to indicate that this authority has been delegated to the CRA and, in my view, it would not have been the intent of Parliament to implicitly delegate this authority to the CRA.

[29] I do not accept the interpretation, as proposed by the Crown, that the exemption will only apply if all of the contents of the packaged product are agricultural or plant products grown in Canada (except such ingredients as CRA may allow). The focus of the Act is on alcohol and duty is only imposed if the product contains alcohol. The exemption only applies if the wine is produced in Canada.

[30] Paragraph (a) of the definition of “wine” in section 2 of the Act provides, in part, that wine means “a beverage, containing more than 0.5% absolute ethyl alcohol by volume, that is produced ... by the alcoholic fermentation of (i) an agricultural product other than grain, [or] (ii) a plant or plant product, other than grain, that is not an agricultural product”. “Produce” is defined in section 2 of the Act, for wine, as “to bring into existence by fermentation”. As a result of these two definitions, wine, as defined in paragraph (a) of the definition of wine, is the beverage that is brought into existence by the fermentation of an agricultural or plant product.

[31] It would be logical to link or connect the references to agricultural or plant products in subsection 135(2) of the Act to those agricultural or plant products that are referred to in the definition of wine that are fermented. Wine is produced when it is brought into existence by fermentation. Adding other ingredients later does not cause the modified product to come into existence by fermentation. Hence, because the exemption refers to wine being produced, the determination of whether the final product (when packaged) will be exempt is to be made when it comes into existence. Therefore, in my view, the test, for wine that comes into existence by fermentation, is to be applied at the time that the agricultural or plant products are fermented.

[32] The Tax Court Judge determined that, for the wine in issue, the only time that the test for the exemption is to be applied is at fermentation, even though the wine in issue is a blended product. The application of the exemption to a blended product will be discussed below. It is, however, important to address his interpretation that “every ingredient in the wine must meet the test” of being an agricultural or plant product grown in Canada, at the time of fermentation. It is not possible, based on the evidence in this case, to determine whether this test, applied at fermentation, could lead to a hollow exemption that may never be available. As noted above, the Tax Court Judge made a finding, at paragraph 110 of his reasons, that “[t]here is no dispute that the only ingredients that were added to the Appellant’s cider during fermentation were agricultural or plant products grown in Canada”. Neither party challenged this finding by the Tax Court Judge.

[33] The parties submitted an agreed statement of facts. The parties agreed that the fermentation process was conducted by the View Winery, an arm’s length party. The very brief description of the ingredients used in this process is as follows:

12. The View Winery sourced fresh apples from its Okanagan orchards and from other orchards in the Okanagan for use in the production of the Apple Wine.

13. The View Winery crushed the fresh 100% Canadian grown apples and fermented the crushed apples to produce Apple Wine of 12% alcohol by volume. A copy of the Raw Material Specification Sheet for Apple Wine is attached as Appendix “B”.

14. The View Winery did not use any AJC [apple juice concentrate] in the production of the Apple Wine.

[34] The Raw Material Specification Sheet does not identify any ingredients – it only lists various characteristics of the product such as appearance, colour, density, etc.

[35] There is no indication that anything was added to the crushed apples to cause the fermentation to occur and, in particular, there is no indication of whether yeast was added. However, Stephen Goodridge, one of the witnesses for Mark Anthony, testified in relation to various ingredients that were added after the fermentation process. When he was asked about potassium sorbate he indicated that:

It's a preservative. It's sorbic acid. It's naturally found on fruit. Tends to keep your fruit from spoiling for a few days if it's not refrigerated. There will still be a little bit of yeast in the apple wine, and so when you sweeten an apple wine and you introduce sugar, there's a potential for the yeast to wake up again and start to ferment the sugar and we don't want that to happen in the bottle. So, a preservative is added, an actual preservative, potassium sorbate in this case, and it will inhibit any growth of things like the yeast that might still be in the wine.

[36] This suggests that yeast ferments sugar to make alcohol. This would lead to the question of whether yeast is added at the fermentation stage and if so whether yeast is an agricultural or plant product grown in Canada. No evidence was submitted in relation to what may have been added at fermentation nor was there any discussion of this question since the focus of the hearing before the Tax Court was on the addition of the apple juice concentrate after the fermentation process was completed. If yeast is required to ferment sugar to produce alcohol, then, based on the interpretation adopted by the Tax Court Judge, yeast will have to be an agricultural or plant product grown in Canada in order for the exemption to be available.

[37] In *Foley v. The Queen*, 2013 TCC 276, Justice Pizzitelli found that this exemption was available if the agricultural or plant products that were fermented were grown in Canada. The addition of other ingredients during the fermentation process did not result in a loss of the exemption. As Justice Pizzitelli noted in paragraph 24 of his reasons:

[24] Finally, it must be said that based on the testimony of the Respondent's expert witness, sugar is commonly added to the liquid from the grapes or other fruit together with yeast to ferment it. If, as she testified, Canadian sugar refineries use only about 10% Canadian sugar beet sugar mixed with sugar cane sugar in their product, it would be almost impossible to buy 100% sugar on the market in Canada for use in fermenting wine. There was no evidence proffered by the Respondent suggesting a pure form of Canadian beet sugar is separately refined and sold, only that the refineries blend it with non-Canadian product. It would make no sense to assume Parliament intended to create an exception not readily obtainable or even possibly so without using more specific language.

[38] The expert evidence in that case was that “sugar is commonly added to the liquid from the grapes or other fruit together with yeast to ferment it”. The finding of Justice Pizzitelli was also that “it would be almost impossible to buy 100% sugar on the market in Canada for use in fermenting wine”.

[39] It is not necessary in this case to determine whether the addition of yeast or sugar at the fermentation stage would result in the loss of the exemption, unless both satisfy the test of being agricultural or plant products grown in Canada. Neither party challenged the factual findings made by Tax Court Judge that Mark Anthony “fermented cider using nothing but apples” (para. 103) and “the only ingredients that were added to [Mark Anthony’s] cider during fermentation were agricultural or plant products grown in Canada” (para. 110). In any event, there is only a reference to yeast being present in the wine and no evidence that sugar was added during the fermentation process.

[40] However, the wording of the exemption is that the wine must be “produced in Canada and composed wholly of agricultural or plant product grown in Canada” (emphasis added). The Tax Court Judge found that every ingredient in the wine at the fermentation stage must be an

agricultural or plant product grown in Canada. If this interpretation is correct and if yeast is always an ingredient and sugar is commonly added, then the exemption would not be available unless the yeast and any added sugar each satisfy the requirement that they be an agricultural or plant product grown in Canada. It may be appropriate for Parliament to review the wording of this exemption to ensure that it will actually work and provide the intended exemption.

[41] With respect to the interpretation of the Tax Court Judge that the test only applies at the fermentation stage, I am unable to agree with this conclusion in relation to the product at issue in this appeal. There is no dispute that Mark Anthony's product qualified as "wine" as a result of paragraph (c) of the definition of wine in the Act. The definition of "wine" is set out in section 2 of the Act:

wine means

(a) a beverage, containing more than 0.5% absolute ethyl alcohol by volume, that is produced without distillation, other than distillation to reduce the absolute ethyl alcohol content, by the alcoholic fermentation of

(i) an agricultural product other than grain,

(ii) a plant or plant product, other than grain, that is not an agricultural product, or

(iii) a product wholly or partially derived from an agricultural product or plant or plant product other than grain;

vin

a) Boisson contenant plus de 0,5 % d'alcool éthylique absolu par volume qui est produite sans procédé de distillation, exception faite de celui ayant pour but de réduire le contenu d'alcool éthylique absolu, par la fermentation alcoolique d'un des produits suivants :

(i) un produit agricole, à l'exclusion du grain,

(ii) une plante ou un produit provenant d'une plante, à l'exclusion du grain, qui n'est pas un produit agricole,

(iii) un produit provenant en totalité ou en partie d'un produit agricole, d'une plante ou d'un produit provenant d'une plante, à l'exclusion du grain;

(and possibly *(b)*) of the definition of wine. Fortified wine (which would be wine under paragraph *(c)* of the definition of wine) would not qualify for the exemption as it does not come into existence by the fermentation of an agricultural or plant product. It comes into existence by the blending of a fermented product with a distilled product.

[45] Parliament could have drafted subsection 135(2) of the Act to provide that only wine as defined in paragraph *(a)* (and possibly *(b)*) of the definition of wine qualified for the exemption but it did not do so. Nor did the Crown argue that fortified wine could never qualify for the exemption. CRA, in its Memorandum referred to above, acknowledged that the exemption would be available for qualifying fortified wine products.

[46] The exemption should be applied in a contextual and purposive way to allow a fortified wine product to qualify for the exemption. This would mean that each requirement of the exemption would be applied to each alcoholic component of the blended product. In relation to the component of the wine that comes into existence as a result of a fermentation process, only Canadian-grown agricultural or plant products must be fermented in Canada to make that component of the wine. In relation to the bulk spirits that are added to fortify the wine, only Canadian-grown agricultural or plant products must be distilled in Canada to produce those spirits. As a result, I do not agree that the fortified wine loophole that is discussed in paragraphs 74 to 81 of the reasons of the Tax Court Judge exists.

[47] This would mean that, as conceded by Mark Anthony, the product which comes into existence as a result of the blending of the Canadian fermented apples with the foreign based

spirits would not qualify for the exemption. However, any product that arises as a result of the blending of the Canadian fermented apples with Canadian distilled spirits would still qualify for the exemption.

[48] This interpretation also supports Canadian farmers and vintners because it would encourage the use of Canadian agricultural and plant products in both the fermentation and distillation processes. It would also be consistent with the context of the exemption since, by definition, wine can come into existence not just by fermentation but also by blending of a fermented product with a distilled product.

[49] The Tax Court Judge reduced the reassessment by an amount that reflected Mark Anthony's agreement that duty would be imposed on the product that included foreign based spirits. Therefore, the judgment is correct. Since an appeal is from the judgment and not the reasons, I would dismiss this appeal, with costs.

"Wyman W. Webb"

J.A.

"I agree
Donald J. Rennie J.A."

"I agree
J.B. Laskin J.A."

ANNEX

Relevant Provisions of the *Excise Act, 2001, S.C. 2002, c. 22*

2 The definitions in this section apply in this Act.

2 Les définitions qui suivent s'appliquent à la présente loi.

packaged means

emballé

(a) in respect of raw leaf tobacco, a tobacco product or a cannabis product, packaged in a prescribed package; or

a) Se dit du tabac en feuilles, des produits du tabac ou des produits du cannabis qui sont présentés dans un emballage réglementaire;

(b) in respect of alcohol, packaged

b) se dit de l'alcool qui est présenté :

(i) in a container of a capacity of not more than 100 L that is ordinarily sold to consumers without the alcohol being repackaged, or

(i) soit dans un contenant d'une capacité maximale de 100 L qui est habituellement vendu aux consommateurs sans que l'alcool n'ait à être emballé de nouveau,

(ii) in a marked special container.

(ii) soit dans un contenant spécial marqué.

...

[...]

produce means

production

(a) in respect of spirits, to bring into existence by distillation or other process or to recover;

a) En ce qui concerne les spiritueux, le fait de les obtenir par la distillation ou un autre procédé ou de les récupérer;

(b) in respect of wine, to bring into existence by fermentation

b) en ce qui concerne le vin, le fait de l'obtenir par la fermentation;

...

[...]

wine means

vin

(a) a beverage, containing more than

a) Boisson contenant plus de 0,5 %

0.5% absolute ethyl alcohol by volume, that is produced without distillation, other than distillation to reduce the absolute ethyl alcohol content, by the alcoholic fermentation of

- (i) an agricultural product other than grain,
- (ii) a plant or plant product, other than grain, that is not an agricultural product, or
- (iii) a product wholly or partially derived from an agricultural product or plant or plant product other than grain;

(b) sake; and

(c) a beverage described by paragraph (a) or (b) that is fortified not in excess of 22.9% absolute ethyl alcohol by volume.

...

Fortifying wine

130 (1) A licensed user who is also a wine licensee may use bulk spirits to fortify wine to an alcoholic strength not in excess of 22.9% absolute ethyl alcohol by volume.

Duty relieved on spirits

(2) The duty imposed under section 122 or levied under section 21.1 of the *Customs Tariff* on the spirits that were

d'alcool éthylique absolu par volume qui est produite sans procédé de distillation, exception faite de celui ayant pour but de réduire le contenu d'alcool éthylique absolu, par la fermentation alcoolique d'un des produits suivants :

- (i) un produit agricole, à l'exclusion du grain,
- (ii) une plante ou un produit provenant d'une plante, à l'exclusion du grain, qui n'est pas un produit agricole,
- (iii) un produit provenant en totalité ou en partie d'un produit agricole, d'une plante ou d'un produit provenant d'une plante, à l'exclusion du grain;

b) le saké;

c) boisson visée aux alinéas a) ou b) qui est fortifiée jusqu'à concurrence de 22,9 % d'alcool éthylique absolu par volume.

[...]

Fortification

130 (1) L'utilisateur agréé qui est également titulaire de licence de vin peut utiliser des spiritueux en vrac pour fortifier le vin jusqu'à un titre alcoométrique n'excédant pas 22,9 % d'alcool éthylique absolu par volume.

Exonération

(2) Les spiritueux ayant servi à fortifier le vin sont exonérés du droit imposé en vertu de l'article 122 ou

used to fortify the wine is relieved.

perçu en vertu de l'article 21.1 du
Tarif des douanes.

...

[...]

**Imposition — wine packaged in
Canada**

135 (1) Duty is imposed on wine that is packaged in Canada at the rates set out in Schedule 6.

**Wine produced for personal use
and by small producers**

(2) Subsection (1) does not apply to wine that is

(a) produced in Canada and composed wholly of agricultural or plant product grown in Canada;

(a.1) produced and packaged by an individual for their personal use; or

(b) produced by a wine licensee and packaged by or on behalf of the licensee during a fiscal month in a particular fiscal year of the licensee if

(i) the total sales by the licensee of products that are subject to duty under subsection (1), or that would have been so subject to duty in the absence of this subsection, in the fiscal year ending immediately before the particular fiscal year did not exceed \$50,000, and

(ii) the total sales by the licensee of those products during the particular fiscal year before the fiscal month did not exceed \$50,000.

**Imposition — vin emballé au
Canada**

135 (1) Un droit est imposé sur le vin emballé au Canada, aux taux figurant à l'annexe 6.

**Vin produit pour usage personnel
ou par de petits producteurs**

(2) Le paragraphe (1) ne s'applique pas :

a) au vin produit au Canada qui est composé entièrement de produits agricoles ou végétaux cultivés au Canada;

a.1) au vin produit et emballé par un particulier pour son usage personnel;

b) au vin produit par un titulaire de licence de vin et emballé par ou pour lui au cours d'un mois d'exercice si :

(i) d'une part, ses ventes totales de produits qui ont été assujettis au droit prévu au paragraphe (1), ou qui l'auraient été en l'absence du présent paragraphe, au cours de l'exercice terminé avant le mois en cause n'ont pas dépassé 50 000 \$,

(ii) d'autre part, ses ventes totales des mêmes produits pour la partie de l'exercice comprenant le mois en cause qui est antérieure à ce mois n'ont pas dépassé 50 000 \$.

Time of imposition

(3) The duty is imposed at the time the wine is packaged. It is also payable at that time unless the wine is entered into an excise warehouse immediately after packaging.

Payable by responsible person

(4) The duty is payable by the person who is responsible for the wine immediately before it is packaged.

...

Moment de l'imposition

(3) Le droit est imposé au moment où le vin est emballé. Il est également exigible à ce moment, sauf si le vin est déposé dans un entrepôt d'accise aussitôt emballé.

Droit exigible de la personne responsable

(4) Le droit est exigible de la personne qui est responsable du vin immédiatement avant son emballage.

[...]

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
JULY 26, 2017, CITATION NO. 2017 TCC 141 (DOCKET NO. 2014-4008(EA)G)**

DOCKET: A-277-17

STYLE OF CAUSE: HER MAJESTY THE QUEEN v.
THE MARK ANTHONY GROUP
INC.

PLACE OF HEARING: VANCOUVER,
BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 12, 2018

PUBLIC REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: RENNIE J.A.
LASKIN J.A.

DATED: JUNE 17, 2019

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