

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170504

Docket: A-54-16

Citation: 2017 FCA 95

**CORAM: NADON J.A.
GAUTHIER J.A.
TRUDEL J.A.**

BETWEEN:

TRICOMCANADA INC.

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Hearing held at Montréal, Quebec, on May 4, 2017.

Judgment delivered from the Bench at Montréal, Quebec, on, May 4, 2017.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on May 4, 2017.)

GAUTHIER J.A.

[1] In this appeal, TRICOMCANADA INC. is challenging the decision of Justice Hogan of the Tax Court of Canada (TCC) dismissing its appeal of a notice of assessment issued pursuant to Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, for the period from April 23, 2012, to November 23, 2012.

[2] In that decision (2016 TCC 8), the TCC concluded that the appellant was not entitled to input tax credits claimed for its purchases of gold during that period because: (i) the invoices the appellant relied on to support its claim were false; and (ii) the appellant used these invoices to knowingly mask the identity of its true suppliers (reasons of the TCC at paragraphs 156 and 165).

[3] In its reasons, the TCC conducted a detailed review of the evidence adduced during the trial, which lasted 12 days. Among other things, it concluded that a number of witnesses were not credible, including the appellant's representative.

[4] In its memorandum, the appellant raised a number of arguments such as the fact that the trial was conducted as if it were an appeal initiated by its own suppliers focusing on the suppliers of its suppliers (for example see the appellant's memorandum at paragraph 31).

[5] However, before this Court, the appellant stated that its key argument in this appeal is that the TCC misapplied the burden of proof. Furthermore, the findings of fact described at paragraph 2 above resulted, in its view, from the TCC's dissatisfaction with the evidence, particularly because a number of questions were left unanswered. It adds that it was not for it to answer those questions.

[6] Despite the able presentation by counsel for the appellant, we are of the view that this appeal cannot succeed on the issue of burden of proof as it is a non-issue. In any event, the TCC had sufficient evidence to conclude as it did. It did not, therefore, commit any error justifying our

intervention. In the light of the factual findings set out above, this is a case well within the parameters established in our Court's case law, including *Amiante Spec Inc. v. Canada*, 2009 FCA 139, 186 A.C.W.S. (3d) 279, and *Canada v. Salaison Lévesque*, 2014 FCA 296, 479 N.R. 199.

[7] The appeal will therefore be dismissed with costs.

“Johanne Gauthier”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-54-16

STYLE OF CAUSE: TRICOMCANADA INC. v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 4, 2017

REASONS FOR JUDGMENT BY: NADON J.A.
GAUTHIER J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

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