

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110221

Docket: A-68-10

Citation: 2011 FCA 65

**CORAM: NOËL J.A.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

LES PÉTROLES DUPONT INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on February 21, 2011.

Judgment delivered from the Bench at Montréal, Quebec, on February 21, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

MAINVILLE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on February 21, 2011)

MAINVILLE J.A.

[1] This is an appeal from the judgment of Lemieux J. cited as 2010 FC 72 which dismissed the appellant's action pursuant to section 81.28 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 challenging the decision of the Minister of National Revenue to deny it a refund in the amount of \$544,777.41 representing the excise tax which it collected and remitted on the sale and delivery to its customers of diesel fuel for the 2003 year. The dismissal also extended to the joined actions which Lemieux J. listed in appendix A to his judgement.

[2] We are all of the view that the appeal should be dismissed, principally for the reasons ably set out by Beaudry J. in *W.O. Stinson & Son Ltd. v. Canada (Minister of National Revenue)*, 2005 FC 1427, 281 F.T.R. 307 and which were fully adopted by Lemieux J. in his reasons for judgment.

[3] Counsel for the appellant however made additional arguments which were not before Beaudry J., namely that the excise tax in issue is a single incidence tax and that diversion of heating oil into diesel oil for excise tax purposes cannot be effected by the appellant.

[4] On the single incidence argument, we agree with Lemieux J. at paragraph 29 of his reasons that the evidence in this case is that the tax was only charged once. Concerning the diversion argument, we are all of the view that subsection 23(9.1) of the *Excise Tax Act* contemplates the situation where a distributor has acquired heating oil exempt from tax and changes the status of the product from tax exempt to taxable in order to sell to an end purchaser who wishes to acquire diesel fuel.

[5] We therefore see no reason to interfere with the judgment of Lemieux J.

[6] The appeal will consequently be dismissed with costs against the appellant.

“Robert M. Mainville”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-68-10

STYLE OF CAUSE: LES PÉTROLES DUPONT INC.
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 21, 2011

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DELIVERED FROM THE BENCH BY: MAINVILLE J.A.

APPEARANCES:

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