

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200120**

**Docket: A-96-19**

**Citation: 2020 FCA 12**

**CORAM: DAWSON J.A.  
STRATAS J.A.  
WOODS J.A.**

**BETWEEN:**

**MONTECRISTO JEWELLERS INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on January 20, 2020.

Judgment delivered at Toronto, Ontario, on January 20, 2020.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200120**

**Docket: A-96-19**

**Citation: 2020 FCA 12**

**CORAM: DAWSON J.A.  
STRATAS J.A.  
WOODS J.A.**

**BETWEEN:**

**MONTECRISTO JEWELLERS INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on January 20, 2020).**

**DAWSON J.A.**

[1] This is an appeal from the judgment of the Tax Court of Canada that for the purpose of this appeal dismissed the appellant's appeal from reassessments made under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (Act). For reasons cited 2019 TCC 31, the Tax Court rejected the appellant's contention that jewellery sold pursuant to what the appellant called its

Export Sales Procedure was jewellery delivered or made available outside Canada within the meaning of paragraph 142(2)(a) of the Act, so that the appellant was not required to withhold and remit tax under the Act. The Court also rejected the appellant's submission that the supply of jewellery was a zero-rated supply within the meaning of paragraph 12(a) of Part V of Schedule VI of the Act.

[2] The facts are fully set out in the reasons of the Tax Court.

[3] We are all of the view that this appeal should be dismissed.

[4] The Tax Court made no error in failing to find an implied term of the contract between the appellant and its customer that jewellery sold under the Export Sales Procedure was to be delivered outside of Canada. Under that procedure, once an officer of the Canada Border Services Agency certified the jewellery for export at the Vancouver airport, the customer acquired in Canada before boarding a flight full use and possession of the jewellery and assumed all risk associated with the jewellery. This is wholly inconsistent with the asserted implied term.

[5] Similarly, the Tax Court made no error in finding that the jewellery was delivered in Canada to the recipient of the supply within the meaning of paragraph 142(1)(a) of the Act. The concept of delivery under the Act is to be interpreted in the same manner as the concept of delivery in the applicable sales of goods legislation (*Jayco, Inc. v. The Queen*, 2018 TCC 34, [2018] T.C.J. No. 22, at paragraph 80). The British Columbia *Sale of Goods Act*, R.S.B.C. 1996, c. 410 defines "delivery" to mean the "voluntary transfer of possession from one person to

another” (section 1). As the Tax Court found, the appellant’s customer obtained full and unrestricted possession of the jewellery in Canada and assumed all risk. Delivery, or the “voluntary transfer of possession”, of the jewellery occurred when the customer received the jewellery at the airport in Vancouver.

[6] Finally, the Tax Court did not err in concluding that the supply of jewellery was not a zero-rated supply pursuant to paragraph 12(a) of Part V of Schedule VI of the Act. To be zero-rated under this provision, the supplier of tangible personal property must ship “the property to a destination outside Canada that is specified in the contract for carriage of the property”. Even on a broad interpretation of paragraph 12(a), the appellant did not ship the jewellery to a destination outside of Canada that was specified in a contract of carriage. The appellant simply provided the jewellery to its customer in Canada at the Vancouver airport. It is therefore not necessary to consider whether in every case subsection 12(a) requires the use of a third party carrier.

[7] For these reasons, the appeal will be dismissed with costs.

“Eleanor R. Dawson”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

<b>DOCKET:</b>	A-96-19
<b>STYLE OF CAUSE:</b>	MONTECRISTO JEWELLERS INC. v. HER MAJESTY THE QUEEN
<b>PLACE OF HEARING:</b>	TORONTO, ONTARIO
<b>DATE OF HEARING:</b>	JANUARY 20, 2020
<b>REASONS FOR JUDGMENT OF THE COURT BY:</b>	DAWSON J.A. STRATAS J.A. WOODS J.A.
<b>DELIVERED FROM THE BENCH BY:</b>	DAWSON J.A.

**APPEARANCES:**

Neil E. Bass Angelo Gentile	FOR THE APPELLANT
Frédéric Morand Cédric Renaud-Lafrance	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Aird & Berlis LLP Toronto, Ontario	FOR THE APPELLANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT