Supreme Court of New Zealand

6 December 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

TERMINALS (NZ) LIMITED V COMPTROLLER OF CUSTOMS (SC 6/2013) [2013] NZSC 139

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Terminals (NZ) Ltd owns and operates a facility at Mt Maunganui, where it stores motor spirit, diesel and other fuel products for its sister company, Gull New Zealand Ltd. It also stores motor spirit and fuel products for BP New Zealand Ltd. As and when requested by Gull or BP, it dispatches stored fuel products for transportation to fuel retailers in the North Island.

Since 2003, as part of its operations, Terminals has blended butane with motor spirit (petrol). This increases the total volume of motor spirit by approximately the amount of butane added. The motor spirit that is blended with butane by Terminals is imported into New Zealand and excise duty is paid on it at approximately a 48 cent rate. The butane is manufactured in New Zealand and duty is paid on it at approximately a 10 cent rate.

The question in this appeal is whether this blending of motor spirit with butane constitutes "manufacture" for the purposes of the Customs and Excise Act 1996. The Comptroller of

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Customs contends that it does, with the consequence that Terminals ought to have been paying excise duty at a higher rate on the full volume of motor spirit resulting from the process. Terminals' position is that its blending operations do not constitute manufacture and that no further duty is payable.

In the High Court, Mallon J made a declaration that Terminals' blending operation was not "manufacturing" under the Customs and Excise Act. That decision was reversed by the Court of Appeal. That Court held that Terminals' blending process was the manufacture of motor spirit.

The Supreme Court has unanimously dismissed the appeal against the decision of the Court of Appeal.

Manufacture is defined in the Act as "any operation, or process, involved in the production of the [motor spirit]". It was common ground between the parties that the blending of motor spirit and butane was an "operation" or "process". Accordingly, the sole question to be determined in the appeal was whether the blending process resulted in the "production" of motor spirit. The Court has held that it does.

Expert evidence was given that the blended motor spirit is not chemically identical to the pre-blended motor spirit. As the blended motor spirit is a different "good" to the pre-blended motor spirit, it follows that the process carried out to turn the pre-blended motor spirit into the blended motor spirit must be a process or operation "involved in the production of" the blended motor spirit.

That the blending of butane with motor spirit comes within the definition of manufacture is contextually supported by the fact that excise duty is imposed on motor spirit (whether imported or locally manufactured) on the basis of volume. Excise duty is an indirect tax on consumption. While it is imposed on the importer or the manufacturer, the consumer ultimately bears the economic burden of the duty as it will be passed onto the consumer in the form of a higher price. Further, the duty is "earmarked" for use in roading projects. These factors are powerful indications that the total volume of motor spirit that results from Terminals' operations should be subject to duty at the motor spirit rate.

The process of blending butane with motor spirit conducted by Terminals leads to the production of the motor spirit produced by that blending process. It therefore falls within the definition of manufacture in the Act.

Accordingly, the appeal is dismissed.

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