Federal Court of Appeal | Cour d'appel fédérale

Date: 20161118

Docket: A-553-15

Citation: 2016 FCA 289

[ENGLISH TRANSLATION]

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

BETWEEN:

TRANSPORT DESGAGNÉS INC.
and
PETRO-NAV INC.

Appellants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Québec, Quebec, on November 17, 2016.

Judgment delivered at Québec, Quebec, on November 18, 2016.

REASONS FOR JUDGMENT BY: THE COURT

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REASONS FOR JUDGMENT OF THE COURT

[1] Transport Desgagnés Inc. and Petro-Nav Inc. (collectively Desgagnés) are appealing from a decision rendered by Tremblay-Lamer J. of the Federal Court dismissing their application for judicial review of a decision of the Minister of Finance (the Minister). In his decision, the Minister denied the claim for remission of customs duties paid by Desgagnés on the importation of three oil tankers prior to January 1, 2010—namely on January 12, 1998, March 29, 1999, and July 11, 2001. Desgagnés submitted its application for remission to the Minister on October 5,

2012. At the time, the Governor in Council had already published the *Ferry-Boats, Tankers and Cargo Vessels Remission Order, 2010*, S.O.R./2010-202 (the Order) on October 13, 2010, implementing a new framework of remission of customs duties in respect of various types of vessels, including oil tankers. One of the conditions for being granted remission is that the vessel must have been imported on or after January 1, 2010.

[2] In its decision dated July 15, 2014, the Minister explained his refusal to grant the claim as follows:

> [TRANSLATION]
>
> As you know, in the fall of 2010, the government implemented a new framework of remission of customs duties in respect of various types of vessels, including oil tankers. In the press release and backgrounder, issued on October 1, 2010, the government clearly stipulated that it would no longer review retroactive claims for remission of customs duties (e.g. in respect of vessels imported prior to January 1, 2010) for the type of vessels included in the framework once it was implemented.

[3] The judge applied the standard of reasonableness in reviewing the merits of the Minister's decision. The parties do not challenge the choice of this standard in their memorandum. Nevertheless, Desgagnés stated before this Court that the Minister's decision was effectively a refusal to exercise its discretion because it believed that it no longer had the jurisdiction to do so. Desgagnés therefore submits that the standard of correctness should apply, as this is a matter of the decision-maker's jurisdiction. In this case, we cannot qualify the Minister's decision as a refusal to exercise his jurisdiction. We therefore agree that the judge chose the appropriate standard.

[4] Desgagnés also submits that the judge incorrectly applied that standard. According to Desgagnés, the judge would have incorrectly interpreted the Order. The judge would have allegedly completely failed to take into account the Minister's general discretion under section 115 of the *Customs Tariff* , S.C. 1997, c. 36 (the Tariff) and attributed undue weight to the Regulatory Impact Analysis Statement (RIAS) published with the Order.

[5] To determine whether the standard was properly applied, our Court's role is to put itself in the trial judge's place and focus on the Minister's decision (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at paragraph 46, [2013] 2 S.C.R. 559). This Court therefore does not need to specifically address the judge's "errors" raised by Desgagnés. As we indicate below, it is not necessary to decide these matters, including the interpretation of the Order itself, to dispose of the appeal at hand.

[6] Desgagnés insists that in the Invitation to Submit Views regarding the proposed new framework, dated October 24, 2009, it was indicated in an annotation that new claims regarding vessels imported prior to January 1, 2010, would continue to be considered on a case-by-case basis.

[7] However, even assuming that, as Desgagnés claims, despite the adoption of the Order, the Minister retained a general discretion to recommend remissions under section 115 of the Tariff for vessels not covered by the Order, this Court is not convinced that the Minister's decision is unreasonable.

[8] Indeed, the backgrounder to which the Minister refers in his decision states quite clearly that the government will no longer review retroactive claims for remission in respect of the vessel types covered by the Order and imported prior to January 1, 2010.

[9] In exercising his discretion, the Minister could rely on this general policy, which is, incidentally, reiterated just as clearly in the RIAS published on October 13, 2010.

[10] Desgagnés could not have expected any other treatment than that which the Minister had clearly and publicly announced long before Desgagnés submitted its claim on October 5, 2012. Desgagnés had no right to have the previous policy maintained, that which had allowed claims regarding tankers imported prior to January 1, 2010 to be studied on their merits, on a case-by-case basis.

[11] Lastly, the issue in this appeal is not listed among those considered by our Court in *Desgagnés Transarctik Inc. v. Canada (Attorney General)*, 2014 FCA 14, 454 N.R. 381, as, in this case, the remission claim was made prior to the entry into force of the new framework described in the Order.

[12] In our opinion, the Minister's decision is within the range of possible, acceptable outcomes. It is therefore reasonable.

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

"Johanne Gauthier"

J.A.

"Johanne Trudel"

J.A.

"A.F. Scott"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-553-15
APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED NOVEMBER 30, 2015 (2015 FC 1330).	
STYLE OF CAUSE:	TRANSPORT DESGAGNÉS INC. AND PÉTRO-NAV INC. v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	NOVEMBER 17, 2016
REASONS FOR JUDGMENT OF THE COURT BY:	GAUTHIER, TRUDEL, SCOTT JJ.A.
DATED:	NOVEMBER 18, 2016

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