

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100322

Docket: A-143-09

Citation: 2010 FCA 82

**CORAM: BLAIS C.J.
NADON J.A.
TRUDEL J.A.**

BETWEEN:

VILLE DE GATINEAU

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on March 22, 2010.

Judgment delivered from the Bench at Montréal, Quebec, on March 22, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on March 22, 2010)

TRUDEL J.A.

[1] This is an appeal from an Amended Judgment by Paris J. of the Tax Court of Canada [2009 TCC 130] regarding input tax credits (ITCs) claimed by the appellant under subsection 169(1) of the *Excise Tax Act*, R.S.C. 1985, c. E-15. The business activities are related to the appellant's waste water treatment plan.

[2] The ITC is the mechanism used to ensure that the costs of doing business include no GST. The appellant converts the solid waste that is produced from the waste water into fertilizer pellets that are sold to third parties. This being a commercial activity, the Minister of National Revenue has allowed the appellant full ITCs for the GST paid on supplies used to operate that part of the waste treatment plant.

[3] As stated by the Tax Court Judge, the Minister has also allowed the appellant a public service body rebate under section 259 of the Act amounting to 57.14% of the total GST in operating the remaining part of the plant.

[4] The debate relates to the additional ITCs claimed by the appellant representing the difference between the ITCs already allowed by the Minister and 100% of the GST paid by the City on expenditures incurred to run the entire plant and on all the inherent capital expenditures.

[5] The Tax Court Judge found that the appellant was not entitled to these additional ITCs because the water treatment operations (except for the production of the fertilizer pellets) were a supply of an exempt municipal comprehensive service entailing both collection and treatment. To reach his conclusion, the Tax Court Judge relied upon section 21 of Part VI of Schedule V to the Act.

[6] The appellant argues that section 21 is not triggered because there is no close nexus between the municipal service at issue, that is the water treatment plant, and the real property of the

landowners and occupants. The treatment of the waste water is performed as part of its commercial activity of manufacturing fertilizer pellets.

[7] The appellant is of the view that its residents abandon and relinquish all of their interest in and control over waste water. The waste water which is treated by the City belongs to it. The owners and occupants do not care what happens to the waste water once it leaves their homes. They get none of this clean water back.

[8] These arguments were all in front of the Tax Court Judge. We have not been persuaded that he committed errors of law or any other errors when he concluded as he did.

[9] Therefore, this appeal will be dismissed with costs.

“Johanne Trudel”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-143-09

**(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
MARCH 4, 2009, DOCKET NO. 2007-2623(GST)G.**

STYLE OF CAUSE: VILLE DE GATINEAU v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 22, 2010

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS, C.J.
NADON J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

APPEARANCES:

Michael Kaylor FOR THE APPELLANT

Benoît Denis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lapointe Rosenstein FOR THE APPELLANT
Montréal, Quebec

Larivière Meunier FOR THE RESPONDENT
Montréal, Quebec