

Docket: 2017-1289(GST)G

BETWEEN:

NORTHBRIDGE COMMERCIAL INSURANCE CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Upon consideration of the decision of the Federal Court of Appeal
dated October 24, 2023 (Court File No.: A-2-21)

Before: The Honourable Justice David E. Graham

AMENDED JUDGMENT

The appeals of the reassessments of the Appellant's reporting periods ended between January 1, 2007 and December 31, 2016 are dismissed.

This Amended Judgment is issued in substitution of the Judgment dated January 18, 2024.

Signed at Ottawa, Canada, this 13th day of February 2024.

“David E. Graham”

Graham J.

Citation: 2024 TCC 10
Date: 20240213
Docket: 2017-1289(GST)G

BETWEEN:

NORTHBRIDGE COMMERCIAL INSURANCE CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR JUDGMENT

Graham J.

[1] The Appellant issues fleet insurance policies to trucking companies. Those companies operate their vehicles in both Canada and the United States of America. In its returns for its reporting periods ended between January 1, 2007 and December 31, 2016, the Appellant claimed input tax credits (“ITCs”) in respect of its activities. The Minister of National Revenue denied those ITCs on the basis that all of the Appellant's supplies were exempt supplies. The Appellant appealed that denial.

Zero-Rated Supplies

[2] This appeal originally came before me in 2020. The primary issue was one of statutory interpretation of paragraph 2(d) of Part IX of Schedule VI of the *Excise Tax Act*. That paragraph treats a supply made by a financial institution of a financial service that relates to an insurance policy issued by the institution as a zero-rated supply to the extent that it relates to risks that are ordinarily situated outside Canada.

[3] In my original decision on this appeal (2020 TCC 132), I conducted a textual, contextual and purposive analysis and concluded that paragraph 2(d) treats the supply of an insurance policy as zero-rated to the extent that the objects of the

insurance policy (in this case the insured's trucks) are ordinarily situated outside Canada.

[4] The Federal Court of Appeal overturned my decision (2023 FCA 211) and referred the appeal back to me.

[5] The FCA held that paragraph 2(d) treats the supply of an insurance policy as zero-rated to the extent that the policy insures against the risk of a claim arising from an accident or other insurable event that is ordinarily situated outside Canada. More specifically, the FCA concluded that “[t]o the extent that any insurance policy issued by [the Appellant] covered such risks that were ordinarily situated in the United States, the supply of such a policy would be a zero-rated supply.”¹

[6] Having determined how paragraph 2(d) should be interpreted, the FCA then instructed that “[t]he next question is to what extent were the policies issued by [the Appellant], policies that related to risks that were usually situated outside Canada. This determination would be based on the chance or likelihood of an accident occurring in the United States and the potential loss arising from such accident.”²

[7] The FCA was clear that that analysis does not involve looking at each insured vehicle individually, but rather at each insurance policy.³

Still Insufficient Evidence

[8] As I stated at paragraph 73 of my original decision, “[a]ll of the evidence presented at trial was global evidence. I do not have any specific evidence regarding the individual policies in issue... Without this evidence, it is impossible for me to determine whether the supply of any given policy was partly zero-rated. This lack of evidence is a sufficient basis for me to dismiss the appeals and I do so on that basis.”

[9] My conclusion on this point has not changed. The appeals are dismissed.

Clarification

¹ *Northbridge* (FCA), at para. 45.

² *Northbridge* (FCA), at para. 46.

³ *Northbridge* (FCA), at para 48.

[10] The FCA observed that I had noted at paragraph 81 of my reasons that “[t]here was extensive evidence regarding how the Appellant priced its insurance policies.” The FCA sent the appeal back to me on the basis that “[i]n order to determine to what extent [the Appellant’s] insurance policies covered potential claims arising from accidents that usually occur outside Canada, it would be necessary to examine the evidence that the Tax Court Judge did not consider.”⁴

[11] It appears that my statement at paragraph 81 may have left the FCA with the wrong impression. Having concluded at paragraph 73 of my reasons that I did not have sufficient evidence regarding the individual policies in issue to determine whether the supply of any given policy was zero-rated, I stated at paragraph 74 that, since “the parties went to a great deal of effort to set out the factual foundation of this appeal and to apply their understandings of the law to those facts...I feel that it is appropriate to provide some guidance as to how I would have applied section 2 had the appropriate evidence been before me.” [emphasis added]

[12] The paragraphs that followed, including paragraph 81, described factors that I would have considered.

[13] At paragraph 81, I stated that there was extensive evidence regarding how the Appellant priced its policies. It would evidently have been clearer if I had stated that there was extensive evidence of the methodology that the Appellant used to price its policies but no evidence of how any given policy was priced.

⁴ *Northbridge (FCA)*, at para. 50.

[14] Had I had evidence of how each of the Appellant's policies was priced, based on the FCA's interpretation of paragraph 2(d), I would now most likely be able to determine to what extent each policy was zero-rated. My understanding is that that pricing is based, in part, on the chance or likelihood of an accident occurring in the United States and the potential loss arising from such accident in respect of a given policy. However, without that evidence I have no choice but to, once again, dismiss the Appellant's appeal.

This Amended Reasons for Judgment is issued in substitution of the Reasons for Judgment dated January 18, 2024.

Signed at Ottawa, Canada, this 13th day of February 2024.

"David E. Graham"

Graham J.

CITATION: 2024 TCC 10

COURT FILE NO.: 2017-1289(GST)G

STYLE OF CAUSE: NORTHBRIDGE COMMERCIAL
INSURANCE CORPORATION AND HIS
MAJESTY THE KING

DATE OF HEARING: Upon consideration of the decision
of the Federal Court of Appeal
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REASONS FOR JUDGMENT BY: The Honourable Justice David E. Graham

DATE OF JUDGMENT: January 18, 2024

DATE OF AMENDED REASONS February 13, 2024
FOR JUDGMENT:

COUNSEL OF RECORD:

For the Appellant:

Name: David Douglas Robertson
Marie-Claude Marcil
Jasmine Jolin

Firm: EY Law LLP

For the Respondent:

Shalene Curtis-Micallef
Deputy Attorney General of Canada