

Date: 20090914

Docket: A-501-08

Citation: 2009 FCA 264

**CORAM: SEXTON J.A.
BLAIS J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

PRICE CHOPPER CANADA INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on September 14, 2009.

Judgment delivered from the Bench at Toronto, Ontario, September 14, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 14, 2009)

LAYDEN-STEVENSON J.A.

[1] We are of the view that, with the exception of Associate Chief Justice Rossiter's award of costs to the respondent in the Court below, this appeal must be dismissed.

[2] The issue before the Tax Court and before us is whether the appellant was eligible to claim input tax credits for GST paid on purchases of domestic and imported supplies. The Tax Court Judge determined that it was not.

[3] The appellant does not allege any error with respect to the Tax Court Judge's identification or appreciation of the appropriate legal tests to be applied. Rather, it submits that he erred in his application of the facts to the law, specifically, in concluding:

- (1) the appellant was not the recipient of the domestic supplies; and
- (2) the appellant was not the importer of the supplies.

Both constitute findings of mixed fact and law and consequently attract a high degree of deference.

[4] The appellant's quarrel is with the weighing of the evidence by the Tax Court Judge and with his determinations on credibility. Absent palpable and overriding error, these are matters within his exclusive purview. Our examination of the record, including the transcript, leads us to conclude that there was ample evidence before Associate Chief Justice Rossiter to enable him to arrive at his conclusion that Price Chopper USA, rather than the appellant, was the recipient of the supplies. It was similarly open to him, on the same evidence, to conclude that, although the appellant was the importer of record, it was not the true importer because it was Price Chopper USA which ordered and paid for the supplies. Consequently, the appeal in this respect must fail.

[5] Regarding the award of costs, the respondent concedes that the Tax Court Judge lacked jurisdiction to award costs to the Crown.

[6] Accordingly, the appeal will be allowed in part, but only to amend the Tax Court's order to provide that Price Chopper Canada's appeal is dismissed without costs. The respondent will be entitled to costs in this proceeding.

"Carolyn Layden-Stevenson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-501-08

APPEAL FROM A JUDGMENT OR ORDER OF THE HONOURABLE E.P. ROSSITER, DATED AUGUST 14, 2008, IN DOCKET NO. 2007-3982 (GST) I.

STYLE OF CAUSE: PRICE CHOPPER CANADA INC. v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 14, 2009

**REASONS FOR JUDGMENT
OF THE COURT BY:** (SEXTON, BLAIS &
LAYDEN-STEVENSON JJ.A.)

DELIVERED FROM THE BENCH BY: SEXTON J.A.

APPEARANCES:

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