

Federal Court



Cour fédérale

Date: 20090520

Docket: T-878-08

Citation: 2009 FC 516

BETWEEN:

LOCATION ROBERT LTÉE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-879-08

BETWEEN:

TRANSPORT ROBERT (1973) LTÉE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER

(Reasons delivered from the bench at Montréal on May 14, 2009)

HUGESSEN D.J.

[1] Even assuming that the plaintiffs, at trial, would be able to prove the allegations at the basis of their claim for a refund of taxes, I am satisfied that these claims must fail.

[2] The claims are based on an alleged submission made by a public servant, a representative of the Ministère du Revenu, to the effect that the plaintiffs should not file other claims for a refund of the excise taxes paid on the fuel contained in the tanks of the trucks that they exported from Canada for the years subsequent to 1993.

[3] In 2003, Parliament adopted the *Budget Implementation Act, 2003*, S.C., 2003, c. 15 and, in this Act, it completely eliminated the right of taxpayers to claim excise taxes paid in the circumstances alleged by the plaintiffs, starting from the date of the budget in February 2003.

[4] This is not a case of a limitation period or a time limit. This is simply the elimination of a right previously held by taxpayers.

[5] That Parliament has this right is not in question and, moreover, this right is formally expressed in section 42 of the *Interpretation Act*, R.S.C., 1985, c. I-21:

42. (1) Every Act shall be so construed as to reserve to Parliament the power of

42. (1) Il est entendu que le Parlement peut toujours abroger ou modifier toute loi et

repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

annuler ou modifier tous pouvoirs, droits ou avantages attribués par cette loi.

(2) An Act may be amended or repealed by an Act passed in the same session of Parliament.

(2) Une loi peut être modifiée ou abrogée par une autre loi adoptée au cours de la même session du Parlement.

(3) An amending enactment, as far as consistent with the tenor thereof, shall be construed as part of the enactment that it amends.

(3) Le texte modificatif, dans la mesure compatible avec sa teneur, fait partie du texte modifié.

[6] Therefore, once royal assent was given to the Act in question, the plaintiffs no longer had any right to claim the tax payments that are the subject of their claim and, as I said in the beginning, their actions must fail.

[7] I will accept the defendant's motion for summary judgment in the two actions. I will allow such motions and dismiss the actions.

[8] I will mitigate the plaintiffs' costs in the circumstances of the case and I will award the costs of the action totalling \$500 in fees plus disbursements in one of the files and no fees in the other file.

“James K. Hugessen”

Deputy Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-878-08 and T-879-08

STYLES OF CAUSE: LOCATION ROBERT LTÉE v. HER
MAJESTY THE QUEEN

AND

TRANSPORT ROBERT (1973) LTÉE v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 14, 2009

REASONS FOR ORDER: HUGESSEN D.J.

DATED: May 20, 2009

APPEARANCES:

Serge Fournier FOR THE PLAINTIFFS

Stéphane Dion FOR THE DEFENDANT
Jean-Robert Noiseux

SOLICITORS OF RECORD:

BCF s.e.n.c.r.l. FOR THE PLAINTIFFS
Montréal, Quebec

John H. Sims, Q.C. FOR THE DEFENDANT
Deputy Attorney General of Canada