IN THE SUPREME COURT OF NEW ZEALAND

SC 18/2005
[2005] NZSC 30

BETWEEN	MOTORCORP HOLDINGS LIMITED First Applicant
AND	BMW NEW ZEALAND LIMITED Second Applicant
AND	CONTINENTAL VEHICLE DISTRIBUTORS LIMITED Third Applicant
AND	GERMAN MOTOR DISTRIBUTORS LIMITED Fourth Applicant
AND	DAIMLER CHRYSLER NEW ZEALAND LIMITED Fifth Applicant
AND	EUROPEAN MOTOR DISTRIBUTORS NEW ZEALAND LIMITED Sixth Applicant
AND	SCHOFIELD AND CO LIMITED Seventh Applicant
AND	HYUNDAI AUTOMOTIVE NEW ZEALAND LIMITED Eighth Applicant
AND	THE COMMISSIONER OF INLAND REVENUE Respondent

Court: Gault J and Blanchard J

Counsel: P A Morten for Applicants
J H Coleman for Commissioner

Judgment: 1 June 2005

JUDGMENT OF THE COURT

Leave to appeal is refused.

REASONS

[1] The applicants all are importers and distributors in New Zealand of new motor vehicles. Their contractual arrangements provide for reimbursement by the overseas manufacturers of the vehicles for all or part of the costs of labour and replacement parts incurred in meeting warranty obligations in respect of the vehicles. They seek leave to appeal against a decision of the Court of Appeal determining that GST is payable in respect of the manufacturers' reimbursement payments as being in consideration for the supply of services.

[2] The same issue was before the Court of Appeal on an earlier occasion. In *Suzuki New Zealand Ltd v CIR* (2001) 20 NZTC 17, 096 that Court decided that payments of the kind involved were subject to tax. Following that decision, the Goods and Services Tax Act 1985 was amended with the effect that from 1 August 2002 services provided under warranty for consideration given by a warrantor outside New Zealand and not GST registered are zero-rated. That would seem to constitute legislative adoption of the reasoning in the *Suzuki* decision in that under s 11 of the Act zero-rating means that the supply is charged with tax, but at the rate of 0%.

[3] The applicants seek leave to advance an argument not considered in the *Suzuki* case – that the reimbursement payments are payments under contracts of insurance as defined in the Act and so are exempt from tax. They were successful in persuading Venning J in the High Court on the point but that decision was reversed by a majority in the Court of Appeal. The Commissioner supports the decision of the Court of Appeal but, in addition, also supported by the Court of Appeal, says that even if the payments were made under contracts of insurance, that would not dispose of the matter. If they were in respect of the supply of services they still attract GST.

[4] The applicants wish to argue, in any event, that the *Suzuki* case was wrongly decided and should be over-ruled. They have further arguments they wish to present which were put to the Court of Appeal by way of cross-appeal but rejected on the basis of the *Suzuki* decision. These arguments involve characterising the payments differently in light of the contractual arrangements.

[5] The issues involved are clear and we do not consider further argument beyond that presented in the written submissions is needed.

[6] The criteria for leave to appeal are not met in this case. The issues cannot be said to be of general public or commercial importance. Having regard to the change in the law, the proposed appeal could only affect transactions before 1 August 2002. Any decision would have no precedent effect and, in any event, the legislature may be said to have affirmed the legal position. The issue involves the tax implications for particular contractual structures which cannot be assumed to have been adopted beyond the parties.

[7] Having regard to the extensive review of the issues by a Full Court in the *Suzuki* case and in the Court of Appeal in this case, we are not persuaded that there has been any miscarriage of justice warranting a second appeal.

[8] Accordingly the application for leave to appeal must be dismissed.

Solicitors:
Lee Salmon Long, Auckland, for Applicants
Crown Law Office, Wellington