

CUSTOMS AND EXCISE

EXCISE TAX ACT

Appeal from Tax Court of Canada (T.C.C.) decision confirming validity of assessments issued by Minister of National Revenue (Minister) denying input tax credits (ITCs) claimed by appellant with respect to 2008–2013 reporting periods on basis that supplies with respect to which they were claimed were exempt financial services— Appellant investment dealer, wholly-owned subsidiary of CIBC, Canadian chartered bank— During each reporting period, appellant claimed ITCs for goods and services tax (GST) paid on costs incurred in supplying administrative services to CIBC’s foreign branches — *Excise Tax Act*, R.S.C., 1985, c. E-15 (Act), s. 150(1) election in place between CIBC, appellant whereby “every supply” between them deemed exempt supply of financial service — Relying on this election, Minister denying claimed ITCs — Notices of objection filed on basis that joint election under s. 150(1) can only be made by Canadian resident persons with respect to supplies made between them — T.C.C. finding that s. 150(1) deeming supplies made to non-resident branch to be exempt financial services for which no ITCs can be claimed; that appellant not entitled to claimed ITCs on basis that exported financial services exempt supplies under Act, Schedule V, Part VII, s. 2 — Observing that deeming rules in Act, ss. 132(2), 150(1) conflicting with one another — Resolving this conflict by holding that deeming rule in s. 132(3) having limited application — T.C.C. of view fact no express exclusion in s. 150(1) indicating that exported supplies to be included — Whether joint election made by appellant, CIBC pursuant to s. 150(1) extending to all supplies made by appellant to CIBC, including those made in connection with activities carried on by CIBC through its foreign permanent establishments — Ambiguity arising from broader examination of ETA as to how ss. 132(3), 150(1) interact — Act, ss. 132(2),(3),(4) part of scheme to recognize, through use of deeming rules, cross-border supplies made to, from permanent establishments, thus allowing GST to be levied on imported supplies, ITCs to be recovered on exported supplies — Deeming rules in ss. 132(2),(3),(4) applying to all supplies of goods, services — S. 150(1) only applying to supplies within closely related group — S. 150(1) eliminating classification difficulties by treating all supplies provided within closely related group as exempt, regardless of their true nature — By expressly excluding imported supplies from scope of s. 150(1) without doing same for exported supplies, Parliament not signaling that exported services coming within this provision — Parliament intent on preventing s. 150(1) from being used to avoid tax on imported supplies — No reason why Parliament wanting distinct advantages conferred by ss. 132(3), 150(1) to be mutually exclusive — S. 150(1) election restricted to Canadian resident persons, only domestic supplies flowing between such persons — Difficult therefore to see how Parliament could have had in mind allocation issues arising when supplies exported — Ss. 132(2),(3),(4) providing for tax neutral application of GST — Applying s. 150(1) to deemed exported supplies under s. 132(3) defeating tax neutrality by imposing less favourable, more onerous tax treatment on financial institutions operating abroad through foreign branches rather than foreign subsidiaries — Because CIBC deemed to be separate non-resident person with respect to activities conducted through its foreign permanent establishments, services provided to those establishments in course of those activities falling outside the scope of s. 150(1), therefore not deemed to be financial services under that provision — Those services to be treated as zero-rated exported supplies by combined operation of Act, s. 132(3) and Act, Schedule VI, Part V, ss. 7, 23 — Assessments referred back to Minister for reconsideration, reassessment on basis that appellant entitled to claimed ITCs — Appeal allowed.

CIBC WORLD MARKETS INC. v. CANADA (A-170-18, 2019 FCA 147, Noël C.J., reasons for judgment dated May 15, 2019, 25 pp.)