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## CUSTOMS AND EXCISE

### EXCISE TAX ACT

Appeal from Tax Court of Canada (T.C.C.) decision (2020 TCC 132) dismissing appellant's appeal from denial by Minister of National Revenue of appellant's claim for input tax credits (ITCs) in relation to portion of GST/HST (GST) appellant paying respecting some office expenses — Appellant making claim for ITCs on basis it was making zero-rated supplies in relation to insurance policies it issued to trucking companies — Appellant issued insurance policies to trucking companies that operated in Canada, United States — Policies provided insurance coverage for accidents, other insurable events — Licensed to provide various types of insurance policies; those relevant in present appeal were those issued to commercial trucking companies — Policies provided coverage for company's fleet of trucks, trailers in event of accident, for other insurable events; provided coverage for insurable events that occurred while vehicle was travelling in any Canadian province or lower 48 states of United States — Premiums appellant charging for insurance policies calculated annually, based on appellant's "actuarial best estimate of potential of loss applicable to each policy — For insurance policies in issue in present appeal, *Excise Tax Act*, R.S.C., 1985, c. E-15 (Act), Schedule VI, Part IX, s. 2 prescribing that supply made by financial institution of financial service related to any particular policy will be zero-rated supply to extent that such policy relates to "risks that are ordinarily situated outside Canada" (s. 2(d)) — If insurance policies issued by appellant related to risks that are ordinarily situated outside Canada, supply of insurance policies would be zero-rated supplies to extent that such policies related to such risks — Appellant would be entitled to claim ITCs in relation to GST it paid to acquire property or service for consumption, use or supply in course of making that zero-rated supply — T.C.C. dismissing appellant's appeal on basis that "risks" for purposes of s. 2(d) meaning objects of insurance policy (trucks in this case); that there was insufficient evidence to determine if trucks were ordinarily situated outside Canada — Sole issue in appeal was interpretation of Act, Schedule VI, Part IX, s. 2(d) — Insurance policy is financial instrument, issuance of which constitutes financial service — Supply of financial service is exempt supply for purposes of Act unless it is included in Act, Schedule VI, Part IX — No GST is collectible in relation to exempt supplies; no ITCs can be claimed for any GST paid on any goods or services acquired in connection with making of exempt supplies — Schedule VI, Part IX providing that certain supplies of financial services will be zero-rated supplies — No GST is payable by recipient of zero-rated supply but since zero-rated supply is not exempt supply, to extent person is carrying on business that involves making of zero-rated supplies, ITCs may be claimed by that person in relation to GST paid to acquire goods, services used in making zero-rated supplies — To extent that any insurance policy that appellant issued related to risks that are ordinarily situated outside Canada, appellant would have made zero-rated supplies — Thus, appellant would be entitled to claim ITCs — Since T.C.C. found, however, that appellant was only making exempt supplies, there was no entitlement to claim any ITCs. — T.C.C.'s rejection that word "risks" in Act, Schedule VI, Part IX, s. 2(d) could mean perils covered by insurance policy was wrong — Act is highly detailed statute; Part IX setting out detailed tax regime — Schedule V, Part IX, s. 2 only applying to financial institutions that issue insurance policies, not applying to person who acquires insurance policy — Since this section is limited to financial institutions that issue insurance policies, word "risks" should be interpreted from perspective of insurance companies — Critical element of insurance policy issued by insurance

company is indemnification against risk of loss, damage or liability — Use of “risks” within phrase “risks that are ordinarily situated outside Canada” when viewed from perspective of insurance companies not altering interpretation of risks as perils or events which would give rise to a claim — Risk of claim arising from accident (or other insurable event) is linked to geographic location — Insurance coverage is provided for accidents occurring within certain geographic area — In this case, area was large but limited — Since policies issued by appellant in part related to accidents, other insurable events that are usually situated outside Canada, supply of portion of policies qualified as zero-rated supply — Schedule VI, Part IX, ss. 2(a),(b),(c) all reflecting exported service covering non-residents, real property situated outside Canada; reflecting payment of claim outside Canada — In general, exported goods, services to be relieved of GST — In context of insurance policies, purpose of Schedule VI, Part IX, s. 2 is to make supply of insurance policy a zero-rated supply to extent that policy relating to risks that are ordinarily situated outside Canada — Therefore, for appellant, to extent that insurance policies that it issues cover claims arising from accidents or other insurable events that generally occur in United States, such policies should be viewed as exported supplies of insurance — As result, “risks” means risk of claim arising from accident or other insurable event — Since “risks” means perils covered by insurance policy, relevant question was to what extent did policy relate to accidents, other insurable events, that are usually situated or occur outside Canada — Insurance policy in present matter is for fleet of trucks — Analysis is not vehicle-by-vehicle analysis as proposed by T.C.C. but rather analysis of policies issued by appellant — In order to determine to what extent appellant’s insurance policies covered potential claims arising from accidents that usually occur outside Canada, would be necessary to examine evidence that T.C.C. did not consider — This evidence, potential application of Act, s. 141.02 should be addressed by T.C.C. — Thus, T.C.C. decision set aside, matter referred back to T.C.C. to determine amount of ITCs that appellant entitled to claim for each reporting period that was under appeal — Appeal allowed.

NORTHBRIDGE COMMERCIAL INSURANCE CORPORATION V. CANADA (A-2-21, 2023 FCA 211, Webb J.A., reasons for judgment dated October 24, 2023, 17 pp.)