



CUSTOMS AND EXCISE

EXCISE TAX ACT

Appeal from Federal Court order (2020 FC 532) dismissing appellant's motion for interim mandatory injunction — Motion sought to compel payment of portion of total GST/HST refunds that respondent Minister withheld pending completion of audit of appellant underway pursuant to *Excise Tax Act*, R.S.C., 1985, c. E-15 — Cross-appeal by Minister relating to dismissal of motion by respondent to strike appellant's motion for interim relief, underlying judicial review application on basis of mootness — Appellant providing long distance telecommunications services — Canada Revenue Agency auditing appellant's GST/HST returns — CRA of opinion that, although audit still in progress, appellant's business operations suggesting participation in carousel scheme whereby business collecting net tax refunds but GST/HST never remitted at other end of chain — Appellant seeking *mandamus* to compel assessment, release of GST/HST refunds — Later filing motion seeking interim relief — Minister stating appellant's motion, underlying application purely academic as amounts owing under Act exceeding amounts of refunds claimed by appellant — Motions Judge rejecting Minister's mootness argument — Turning to merits of motion, motions Judge not satisfied appellant having made out strong *prima facie* case in light of language of Act, s. 229(1), holding appellant's motion premature — Whether Federal Court erring in dismissing Minister's mootness motion, appellant's motion for interim relief — Based on evidence, including fresh evidence, live controversy remaining between parties regarding amounts owed to appellant — Interests of parties, judicial economy served in hearing this appeal on merits — Motions Judge nor erring in dismissing appellant's motion — S. 229(1) clear, unambiguous — Issue whether scope of Minister's duty in s. 229(1) including requirement that Minister pay refund before any assessment completed — S. 229(3) (providing that interest payable on net refund) part of contextual interpretation, indicating Parliament contemplated not all refunds paid immediately — Obligation to pay refund with all due dispatch not displacing Minister's obligation to verify that refund in fact payable under Act — This conclusion dispositive of question whether appellant having clear right to an order compelling payment of refunds — However, while Act, s. 296(1) confirming that Minister can assess a claim for a net tax refund, this not displacing requirement that any refund found to be owing be paid without delay — Still, appellant overlooking word "payable" in s. 229(1) — Only refunds that are "payable" under Act required to be paid — This in turn meaning that obligation to pay refunds necessarily conditioned by Minister's obligation under Act, s. 275 to confirm that they are in fact owing — Words "all due dispatch" constituting fact, context dependent determination taking into account complexity of audit, amounts involved, diligence of CRA in its execution, degree of cooperation of taxpayer — Having to be considered in light of fact that GST/HST scheme operating on net tax refund basis — Here, appellant going from being net tax remitter to being large tax refund recipient — Mandatory "pay now and ask questions later" interpretation urged by appellant not consistent with sound administration of public revenues or with purpose, object of Act — Appellant having no right, at this time, to compel performance of Minister's duty under s. 229(1) — Issuance of notices of assessment not depriving Federal Court of jurisdiction to consider the Minister's exercise of discretion under Act — Appeal, cross-appeal dismissed.

IRIS TECHNOLOGIES INC. V. CANADA (NATIONAL REVENUE) (A-106-20, 2020 FCA 117, Rennie J.A., reasons for judgment dated July 8, 2020, 21 pp.)