

CUSTOMS AND EXCISE

EXCISE TAX ACT

Appeal from Tax Court of Canada (T.C.C.) decision allowing respondent's appeal against notice of assessment issued by Quebec Minister of Revenue under *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA), Part IX — T.C.C. rejecting Minister's position that, because respondent part of group involved in drug trafficking, respondent jointly, severally, or solidarily, liable with other members for payment of goods, services tax (GST) collectible on sale of narcotics — T.C.C. holding alleged partnership contract binding group members null under *Civil Code of Québec*, C.Q.L.R., c. CCQ-1991 (C.C.Q.), s. 1413 insofar as contract involved object contrary to public order — Therefore, according to T.C.C., no partnership for purposes of ETA, s. 272.1 because contract deemed never to have existed pursuant to C.C.Q., s. 1422 — Issue whether T.C.C. erred in finding no partnership for purposes of ETA given C.C.Q., ss. 1413, 1417, 1422 — T.C.C. did not err in interpreting concept of "partnership" described in ETA, s. 272.1, not only in light of C.C.Q., s. 2186, but also ss. 1413, 1417, 1422 — T.C.C.'s interpretation not only consistent with case law on subject, but also only interpretation compatible with principle of complementarity — Concept of "partnership" not defined in ETA, s. 272.1(5) — In accordance with principle of complementarity, must therefore use definition provincial law provides to describe private law concept of "partnership" — Although C.C.Q., s. 2186 setting out three specific conditions for existence of partnership contract, provision not establishing exhaustive list of conditions partnership contract must meet to be valid — Like any other contract, partnership contract must also conform with general rules applicable to obligations — Under s. 1413, "contract whose object is prohibited by law or contrary to public order is null" — Contract null if this condition of formation of contracts not respected, nullity retroactive, contract therefore stripped of all effects contract could have had — That is, contract having object contrary to public order not only unenforceable, but also legally non-existent — Appellant arguing principles of tax neutrality, fairness clearly displacing C.C.Q., ss. 1413, 1417, 1422 in this case; however, argument not accepted — *Interpretation Act*, R.S.C., 1985, c. I-21, ss. 8.1, 8.2 giving Parliament option to make provincial law inapplicable (by using words "unless otherwise provided by law"); however, this cannot be achieved implicitly — Case law cited by appellant with respect to principles of tax neutrality, fairness not supporting appellant's contention C.C.Q., s. 1413 should be disregarded — Words as broad as "taxable supply", "commercial activity" found in ETA, ss. 123(1), 165, 221 must be interpreted without regard to considerations of lawfulness, public order, morality; however, issue in this case not taxable nature of sale of drugs, but rather joint, several character of resulting debt — Therefore, absolutely no basis for appellant's contention judge's interpretation of case might exclude any illegal transactions from application of tax legislation — For all these reasons, T.C.C. did not err in refusing to hold respondent jointly, severally, or solidarily, liable under ETA, s. 272.1(5) for tax debt arising from group's business activities — Appeal dismissed.

CANADA V. RAPOSO (A-154-18, 2019 FCA 208, de Montigny J.A., reasons for judgment dated July 17, 2019, 29 pp.)