



HIGH COURT OF AUSTRALIA

Public Information Officer

8 February 2005

CHIEF COMMISSIONER OF STATE REVENUE v DICK SMITH ELECTRONICS HOLDINGS PTY LTD

The High Court of Australia today held that stamp duty had been correctly assessed in a transaction involving the sale of shares.

Dick Smith Electronics agreed in 2001 to buy all the shares in InterTAN Australia Ltd, which operates the Tandy Electronics and RadioShack stores. The shares were held by InterTAN Inc, based in Delaware, and InterTAN Canada Ltd. InterTAN Australia is incorporated in New South Wales. The Commissioner assessed duty at \$684,838.20, rather than the \$531,330.60 proffered by Dick Smith. The difference was due to the Commissioner's conclusion that the consideration for the transaction was \$114,139,649, not \$88,555,552 as Dick Smith contended. The difference of \$25,585,097 was a pre-transfer dividend which Dick Smith, under the purchase agreement, was obliged to fund via a loan to InterTAN Australia.

The NSW Supreme Court and the majority of the Court of Appeal accepted Dick Smith's argument that the relevant amount on which duty should be assessed was \$88,555,552. The Commissioner appealed to the High Court, which allowed the appeal by a 3-2 majority.

The High Court majority held that the Commissioner's position that the intended result of the transaction was that the North American vendors received \$114,139,649 was correct. The vendors had bargained for an obligation on Dick Smith to bring about that result. The requirement that Dick Smith fund InterTAN Australia to discharge the debt created by the declaration of the dividend formed part of the consideration for the transfer of the shares to Dick Smith.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*