



HIGH COURT OF AUSTRALIA

Public Information Officer

22 May 2008

COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA v RELiance CARPET CO PTY LIMITED

Goods and services tax (GST) was payable on a deposit forfeited by a purchaser when a contract for the sale of commercial property was terminated for default by the purchaser, the High Court of Australia held today.

Reliance Carpet entered into a contract on 10 January 2002 to sell commercial premises in Camberwell in Melbourne for \$2,975,000, with the purchaser paying a deposit of \$297,500. Settlement was to take place 12 months later, but Reliance exercised its option to defer settlement for six months to allow time to relocate its business. The purchaser failed to complete on 10 July 2003. After giving 14 days' notice to complete, Reliance rescinded the contract and forfeited the deposit. In 2004, the Commissioner assessed Reliance as liable to pay GST on the forfeited deposit. It disallowed Reliance's objection.

The Commissioner funded the matter as a test case. The disallowance of the objection was affirmed by the Administrative Appeals Tribunal, but an appeal by Reliance to the Full Court of the Federal Court succeeded. The Full Court held that there was no taxable supply because the contract was rescinded. The deposit was not consideration for a taxable supply. The Commissioner appealed to the High Court, which unanimously allowed the appeal.

The Court held that the forfeited deposit was consideration for a taxable supply subject to GST. Under the *A New Tax System (Goods and Services Tax) Act*, there is an extended definition of supply and the issue was whether there was a "taxable supply". The Court held that upon execution of the contract Reliance made a supply in that it entered into an obligation to do certain things under the contract, including maintaining the property, paying rates, taxes, insurance premiums and other outgoings. Upon its forfeiture for failure by the purchaser to perform its obligation under the contract, the deposit was to be treated as consideration for a taxable supply. Under the Act, if the contract had proceeded to completion then the deposit would have been counted towards payment of the purchase price and GST would have been payable on the purchase price. Where, as here, the contract was terminated for breach, the deposit, when forfeited, was treated by the Act as consideration for supply and this was a taxable supply.

- *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.*