



HIGH COURT OF AUSTRALIA

29 September 2010

TRAVELEX LTD v COMMISSIONER OF TAXATION
[2010] HCA 33

Today the High Court held that a sale of foreign currency on the departures side of the Customs barrier at Sydney International Airport was a GST-free supply under s 38-190(1) of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("the GST Act").

In November 2007, an employee of Travelex Ltd flew from Sydney to Fiji. After clearing Customs, he went to the Travelex counter in the departure hall and purchased F\$400 in bank notes.

Travelex sought a declaration in the Federal Court that it was exempt from paying GST on the sale of foreign currency to a passenger who had passed through Customs. Item 4(a) of s 38-190(1) of the GST Act provides that, except to the extent that it is a supply of goods or real property, a supply that is made in relation to rights is GST-free if the rights are for use outside Australia. The primary judge and, on appeal, a majority of the Full Court of the Federal Court rejected Travelex's argument that the supply was a supply "in relation to" rights, and therefore a GST-free supply. Both the primary judge and the majority of the Full Court took the view that the relevant supply was the supply of bank notes and that the rights attaching to those bank notes, as legal tender in Fiji, were merely incidental to that supply.

The High Court allowed the appeal and substituted for the orders of the primary judge a declaration that the sale was a supply of or in relation to rights and a GST-free supply under the GST Act. A majority of the Court, observing that the value of bank notes is in the rights that attach to them, characterised the transaction as a supply by which the purchaser acquires the rights that attach to the bank notes, rather than simply a supply of bank notes. The Commissioner of Taxation was ordered to pay Travelex's costs.

- *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.*