



27 November 2020

PRESS SUMMARY

Commissioners for Her Majesty’s Revenue and Customs (Appellant) v London Clubs Management Ltd (Respondent)
[2020] UKSC 49
On appeal from: [2018] EWCA Civ 2210

JUSTICES: Lord Carnwath, Lady Black, Lady Arden, Lord Kitchin, Lord Sales

BACKGROUND TO THE APPEAL

Gaming duty is an excise duty that is charged in accordance with the provisions of the Finance Act 1997 (the “FA”) on any premises where dutiable gaming takes place. “Non-negotiable gaming chips” and “free bet vouchers” (collectively referred to as “**Non-Negs**” for the purposes of this appeal) are promotional tools provided free of charge by some casino operators to selected gamblers to encourage them to gamble in their casinos. Non-Negs may typically only be used to place bets at the gaming tables for their face value and cannot be used to buy goods or services, nor encashed.

This appeal is about whether Non-Negs should be taken into account as part of the “banker’s profits” for the purposes of computing gaming duty in accordance with section 11(8)(b) read with section 11(10) of the FA. “Banker’s profits” are defined by section 11(10) as “*the value, in money or money’s worth, of the stakes staked with the banker in any such gaming*” (section 11(10)(a)) less “*the value of the prizes provided by the banker to those taking part in such gaming otherwise than on behalf of a provider of the premises*” (section 11(10)(b)). The valuation of prizes for the purposes of section 11(10)(b) is governed by section 11(10A) of the FA which incorporates by reference, “*with any necessary modifications*”, certain provisions of the Betting and Gaming Duties Act 1981 (the “**BGDA**”).

From October 2008 until September 2012, London Clubs Management (“**LCM**”) included the face value of all the Non-Negs played by gamblers and retained by its casinos in the calculation of its banker’s profits for the purposes of computing its liability for gaming duty. It subsequently considered that this approach was incorrect and that it had overpaid gaming duty by over £1.97 million. Her Majesty’s Revenue and Customs (“**HMRC**”) rejected LCM’s claim for repayment of the alleged overpayment and LCM appealed that decision.

The First-tier Tribunal dismissed LCM’s appeal. The Upper Tribunal allowed LCM’s appeal. The Court of Appeal dismissed HMRC’s further appeal. HMRC appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. The leading judgment is given by Lord Kitchin, with whom Lord Carnwath and Lady Black agree. Lady Arden gives a separate judgment, agreeing that the appeal should be dismissed but for materially different reasons. Lord Sales gives a separate judgment agreeing with the majority on the decisive issues in the appeal but reaching a different conclusion on a related issue.

REASONS FOR THE JUDGMENT

Lord Kitchin holds that Non-Negs are neither “*stakes staked*”, nor have any value in money or money’s worth within the meaning of section 11(10)(a) of the FA [31-48].

First, the assessment of the gross gaming yield from any premises requires a focus on the activity of gaming and not the provision of other goods or services [36]. Second, the assessment required by section 11(10) must be carried out from the banker’s perspective, for it is the banker’s profits which must be brought into account in calculating the gross gaming yield [37]. Third, the reference to “*money or money’s worth*” in section 11(10)(a) emphasises that it is the real world value of the stakes in the hands of the banker which matters [38].

A gambler who plays with cash chips in a casino is not staking the chips as such but the money those chips represent, which the gambler has deposited with the casino [31-35]. That is not the case when a gambler places a bet using a Non-Neg, which essentially amounts to a free bet. Therefore, a Non-Neg holds no real world value to the casino when a gambler loses it in a bet, save that it eliminates the chance that the casino may have to pay out the winnings corresponding to that bet. However, that does not impart a “*value, in money or money’s worth*” to the Non-Neg, nor mean that it is a “*stake staked*” within the meaning of section 11(10)(a) of the FA [44].

Lord Sales agrees with Lord Kitchin’s reasoning in this regard and provides further reasons in support of the conclusion [88-92].

Lady Arden adopts different reasoning for dismissing the appeal [61-78]. She holds that the “*value*” of a stake for the purposes of section 11(10)(a) is what a person would pay for it in the open market [62]. The objective valuation of the stake means that it can be taken into account at an appropriate value if it has generated gaming activity, which is what gaming duty is charged upon [70]. A Non-Neg is a stake for the purposes of assessing the banker’s profits under section 11(10)(a) of the FA [75]. However, the appeal fails on the facts of this case as no evidence was adduced to support any objective valuation [68].

The Supreme Court also considers the related issue of what value, if any, should be given to Non-Negs for the purposes of section 11(10)(b) of the FA. Lord Kitchin expresses the view that, as with section 11(10)(a), it is the real world cost to the banker of providing the prizes that must be brought into account for the purposes of assessing the value of the prizes provided by the banker, subject to the relevant provisions of the BDGA [38]. Under the BDGA, the cost to the banker of awarding a voucher as a prize is taken to be its face value if, among other things, it may be used in place of money as whole or partial payment for benefits of a specified kind obtained from a specified person. Non-Negs do not satisfy this condition and must therefore be treated as having no value for the purposes of section 11(10)(b) of the FA [54]. Lord Kitchin is confirmed in his views by the consideration that the result is a coherent scheme for the treatment of Non-Negs, whether used by gamblers to place bets or when returned to gamblers as prizes [56].

Lord Sales reaches a different conclusion from the majority in this regard. When a Non-Neg is awarded as a prize, it represents a real cost to the banker which ought to be brought into account [93]. A Non-Neg given as a prize satisfies the relevant conditions under the BDGA 1981, such that it should normally be treated as having its face value for the purposes of section 11(10)(b) of the FA [95-104]. Lady Arden agrees with Lord Sales’s conclusion in this regard [82-84].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>