



HIGH COURT OF AUSTRALIA

2 October 2012

COMMISSIONER OF TAXATION v QANTAS AIRWAYS LIMITED

[2012] HCA 41

Today the High Court held, by majority, that Qantas Airways Limited ("Qantas") was liable to pay goods and services tax ("GST") when it received fares on unclaimed flights.

Qantas and its subsidiary Jetstar Airways Pty Limited ("Jetstar") provide domestic airline travel services. These airline travel services have variable fare rules and conditions of carriage. Not all passengers take the flight they book. Whether the fare the passenger has paid is refundable is determined by the applicable fare rules and conditions of carriage. Even if a refund can be claimed, not all passengers who have not taken the booked flight claim the refund.

The Commissioner of Taxation ("Commissioner") assessed a GST liability on the fares received for flights not taken. The Administrative Appeals Tribunal affirmed the assessment. On appeal, the Full Court of the Federal Court held that as actual travel was the sole purpose of the transaction, there was no taxable supply if the travel does not occur. This meant a GST liability was not incurred.

By special leave, the Commissioner appealed to the High Court of Australia. The High Court held, by majority, that Qantas made a taxable supply which attracted GST when it received fares whether or not the passenger took the flight that was booked. Flights were sold and bookings taken on the basis that Qantas would use its best endeavours to carry the passenger and baggage, having regard to the circumstances of the business operations of the airline. Consequently, even if the passenger did not actually travel, there was a taxable supply incurring GST liability and Qantas was liable to remit the GST received on fares for unclaimed flights to the Commissioner.

- *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.*