



HIGH COURT OF AUSTRALIA

18 October 2023

VANDERSTOCK & ANOR v STATE OF VICTORIA [2023] HCA 30

Today, the High Court, by majority, held that s 7(1) of the *Zero and Low Emission Vehicle Distance-based Charge Act 2021* (Vic) ("the ZLEV Charge Act") is invalid on the basis that it imposes a duty of excise within the meaning of s 90 of the *Constitution*. Section 90 relevantly provides that the power of the Commonwealth Parliament "to impose duties of customs and of excise" is "exclusive" of the powers of the States and self-governing Territories.

Section 7(1) of the ZLEV Charge Act requires the registered operator of a zero or low emissions vehicle ("ZLEV") to pay a charge for "use of the ZLEV on specified roads" ("the ZLEV charge"). "Specified road" is defined under the ZLEV Charge Act to include, in effect, all public roads in Australia. The ZLEV charge is determined annually at a prescribed rate for each kilometre travelled by the ZLEV on specified roads during a financial year. For the 2021-2022 financial year, the prescribed rate was 2.5 cents for a ZLEV that is an electric vehicle or hydrogen vehicle, and 2 cents for a ZLEV that is a plug-in hybrid electric vehicle. The ZLEV charge is a debt due to the State of Victoria.

The plaintiffs, Christopher Vanderstock and Kathleen Davies, are registered operators of ZLEVs. They have been issued with invoices for, and have paid, the ZLEV charge. The plaintiffs commenced proceedings against the defendant, the State of Victoria, in the original jurisdiction of the High Court challenging the validity of s 7(1) of the ZLEV Charge Act on the basis that it imposes a duty of excise within the meaning of s 90 of the *Constitution*. The Commonwealth Attorney-General and the Australian Trucking Association intervened in support of the plaintiffs. The Attorneys-General of each other State and of the Australian Capital Territory and the Northern Territory intervened in support of the defendant.

The High Court, by majority, held that s 7(1) of the ZLEV Charge Act is invalid. The Court reopened and overruled its decision in *Dickenson's Arcade Pty Ltd v Tasmania* (1974) 130 CLR 177, which held by majority that a tax on the consumption of goods does not constitute a duty of excise. The Court held that an excise within the meaning of s 90 is an inland tax on goods. The question of whether a tax is to be characterised as a tax on goods turns on whether, first, the tax bears a close relation to the production or manufacture, sale, distribution, or consumption of goods, and, second, whether the tax is of such a nature as to affect the goods as the subjects of manufacture or production or as articles of commerce. The ZLEV charge is a tax on goods because there is a close relation between the tax and the use of ZLEVs, and the tax affects ZLEVs as articles of commerce, including because of its tendency to affect demand for ZLEVs.

- *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.*