



HIGH COURT OF AUSTRALIA

7 August 2013

FORTESCUE METALS GROUP LIMITED AND ORS v THE COMMONWEALTH OF AUSTRALIA

[2013] HCA 34

Today the High Court unanimously dismissed proceedings brought by Fortescue Metals Group Limited (and certain of its wholly-owned subsidiaries) ("Fortescue") claiming that some provisions of the *Minerals Resource Rent Tax Act 2012* (Cth) ("MRRT Act") and the *Minerals Resource Rent Tax (Imposition–Customs) Act 2012* (Cth), *Minerals Resource Rent Tax (Imposition–Excise) Act 2012* (Cth) and *Minerals Resource Rent Tax (Imposition–General) Act 2012* (Cth) ("the Imposition Acts") were not valid laws of the Commonwealth. The MRRT Act and the Imposition Acts created and imposed a minerals resource rent tax ("MRRT"), which commenced on 1 July 2012.

Under the MRRT Act, liability to pay MRRT arises only when a miner derives an annual profit of \$75 million or more after taking into account certain deductions for expenditure and allowances. Once MRRT is payable, it is calculated so that a reduction in the mining royalty payable to a State government would, all other things being equal, result in an equivalent increase in a taxpayer's liability and vice versa. The State legislative regimes for mining royalties are different and may be varied from time to time.

Fortescue's wholly-owned subsidiaries held registered mining leases in Western Australia and were required to pay MRRT. Fortescue brought proceedings in the High Court in its original jurisdiction, contending that certain provisions of the MRRT Act and Imposition Acts were invalid on four bases: first, as laws with respect to taxation which discriminate between States contrary to s 51(ii) of the Constitution; second, as laws or regulations of trade, commerce or revenue, which, contrary to s 99 of the Constitution, give preference to one State over another State; third, as laws which contravene the *Melbourne Corporation* doctrine, on the basis that the legislative powers of the Commonwealth do not authorise legislation directed to the control or hindrance of the States in the execution of their governmental functions; and fourth, as laws that are inconsistent with s 91 of the Constitution, which preserves a State's power to grant an aid or bounty on the mining for other metals. The Attorneys-General for Western Australia and Queensland intervened in support of Fortescue's challenge to the validity of the MRRT Act and the Imposition Acts.

Pursuant to s 18 of the *Judiciary Act 1903* (Cth), questions were reserved for determination by the Full Court of the High Court on the basis of the parties' pleadings and documents referred to in the pleadings. The Full Court unanimously dismissed the challenge to the validity of the Acts. The Court held that the treatment of State mining royalties by the MRRT Act and the Imposition Acts did not discriminate between States and that the Acts did not give preference to one State over another. The Court also rejected the submissions that the Acts breached the *Melbourne Corporation* doctrine or contravened s 91 of the Constitution.

- *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.*