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SC 107 Amoco Petro & Westcoast Trans. v. Commissioner

AMOCO CANADA PETROLEUM COMPANY LIMITED and WESTCOAST TRANSMISSION COMPANY LIMITED

v.

ASSESSMENT COMMISSIONER

Supreme Court of British Columbia (No. 0531 Victoria Registry)

Before: MR. JUSTICE J.A. MACDONALD

Victoria, June 9, 1977

D.P. Laughton for the Appellants
K.C. Murphy, Q.C. for the Respondent

Reasons for Judgment

July 21, 1977

Applying s. 51 (1) of the *Assessment Equalization Act*, R.S.B.C. 1960, c. 18, the Assessment Appeal Board has submitted for the opinion of the Court questions of law which have arisen in the course of appeals by the appellants.

I quote from the case.

"4. The pipelines under assessment consist of various sizes of pipeline owned by the Appellants and located in the Beaver River Gas Field, approximately 110 miles Northwest of Fort Nelson, British Columbia.

5. The Pipelines which are the subject matter of the assessment under appeal transport natural gas from the wells in the unit and then another pipeline carried the gas to the processing plant, which in this case was at Taylor. Over the years several companies, including the Appellants, have changed from small individual dehydrators to one large central dehydration unit and as a result of this the pipelines from the wells to the dehydrator are now longer and usually larger than in the past and instead of having one small line from each well to an individual dehydrator, each well is joined by a separate

pipeline to a central pipeline which then transports the natural gas from all the wells to a central dehydration plant. The pipelines which are the subject matter of the assessment under appeal consist of:

1. Seven and twenty-nine one-hundredths (7.29) miles of pipeline within the gas field itself, connecting each individual well to a central pipeline and transporting the natural gas from each well to the central pipeline; and
2. The central pipeline itself, which then transports the natural gas from the Beaver River Gas Fields one and ninety-three one-hundredths (1.93) miles to the intake valve at the Beaver River gas plant where the water contained in the gas is removed; and

3. The gas with the water removed then goes to a central gas plant for processing and refining, approximately 130 miles away, and from thence to the market.

There is no dispute between the Assessor and the Appellants that the line from the gas dehydration plant (after the water has been removed) to the processing and refining gas plant near Fort Nelson, approximately 130 miles away, is a 'gathering line' as defined under Section 32 of the *Taxation Act* and taxed accordingly, or that the lines from the gas plant to the market are 'transportation lines' and also defined and taxed under the said Section 32 of the Act.

6. The said pipe-lines were assessed in 1972 and 1973 under Section 31 of the *Taxation Act* and by virtue thereof pursuant to Section 37 of the *Assessment Equalization Act*, but on appeal to the Assessment Appeal Board from the Court of Revision against the 1973 assessment, the said Board by decision dated August 6th, 1973, rules that the pipe-lines should be assessed under section 32 of the *Taxation Act* and they were assessed accordingly for 1973.
7. The Lieutenant Governor in Council passed Order-in-Council number 3230 on October 2nd, 1973 ordering that: . pursuant to section 162 of the *Taxation Act* regulations be made in the following form:

TAXATION ACT PIPE-LINE REGULATION

The assessed value of all pipelines used to transport natural gas, petroleum or petroleum products from the well to the intake valve at the dehydrator or to the intake valve at the primary treatment and storage tank battery shall be ascertained pursuant to section 31 of the Act and shall be taxed at the Improved Land Tax Rate.'

8. Section 162 (2) of the *Taxation Act* provides:

'162 (2) All rules and regulations made under this section shall be published in one issue of the "Gazette", and shall thereupon have the same force and effect as if incorporated herein.'

9. The said regulation was published in one issue of the B.C. 'Gazette' as therein provided and regulation number 335/73 came into force and is known as the 'Taxation Act Pipe-Line Regulation' and is in the same words as set out above."

The pipelines were assessed for 1974 under s. 31 of the *Taxation Act* and s. 37 of the *Assessment Equalization Act*. The appellants appeal contending that they should have been assessed under s. 32 of the *Taxation Act*. The dispute relates only to the lines from the wells to the dehydration plant.

The following questions have been submitted for the opinion of the Court:

- "1. Is B.C. Regulation No. 335/73 'Taxation Act Pipe-Line Regulation' made pursuant to Order-in-Council number 3230 passed October 2, 1973 ultra vires?
2. Are the assessed values of the pipelines, the subject matter of this appeal, determined pursuant to regulation 335/73, 'Taxation Act Pipe-Line Regulation' which directs that the assessed values be ascertained pursuant to section 31 of the *Taxation Act*? or;
3. Are the said pipelines 'gathering lines' or 'transportation lines' as defined in the *Taxation Act* and the value thereof assessable pursuant to section 37 (6) of the *Assessment Equalization Act* and section 32 of the *Taxation Act*? or;

4. Do they fall within the general term 'improvements' as defined in both the *Assessment Equalization Act* and *Taxation Act* and therefore assessable under section 37 of the *Assessment Equalization Act* pursuant to section 31 of the *Taxation Act*?"

The word "improvements" in s. 2 of the *Taxation Act*, R.S.B.C. 1960, c. 376 includes the pipelines involved here. S. 31 provides:

"31. The assessed value of land and improvements as defined in this Act shall be determined under the *Assessment Equalization Act*."

Accepting this direction, we go to the *Assessment Equalization Act*. S. 37 (1) states that the assessor shall determine the actual value of land and improvements and provides how he may go about doing so. S. 37 (6), in part, provides:

"Notwithstanding the provisions of this section

(a) the assessed value of pipe-lines for the transportation of petroleum, petroleum products, or gas shall be determined under the *Taxation Act* or the *Municipal Act*,"

The *Municipal Act* not applying, we return to the *Taxation Act* from which I quote parts of s. 32.

"32 (1) In this section, unless the context otherwise requires, 'gathering pipelines' means pipe-lines for the transportation of,

(a) natural gas from the final point of well-head preparation to the intake-valve at the scrubbing, processing or refining plant;

...

'natural gas distribution pipe-lines' means the low-pressure pipe-lines which receive the natural gas for distribution purposes from the high-pressure transportation pipe-lines at the pressure-reducing valves;

...

'transportation pipe-line' means a pipe-line, other than a distribution pipe-line or gathering pipe-line, used for the transportation of natural gas, petroleum, or petroleum products.

32 (6) Notwithstanding section 31, gathering pipe-lines and transportation pipelines shall be assessed as follows:-"

The procedure for assessment was then prescribed.

"32 (10) The assessed value of all distribution pipe-lines, including all pipe-lines situate within a natural-gas, petroleum, and petroleum-product refinery, depot bulk plant, and pipe-line terminal, shall be ascertained pursuant to section 31.

(11) Pipe-lines shall be assessed and taxed at the improved-land rate.

(12) Any dispute arising between the Surveyor of Taxes and the pipe-line company over the classification of a pipe-line as a distribution, gathering, or transportation pipe-line system shall be settled by the Minister on issuance of his certificate designating or redesignating

those pipe-lines which he deems are for distribution, gathering, or transportation of natural gas, petroleum, or petroleum products or by designating or redesignating the pipe-lines which form part of each distribution, gathering, or transportation pipe-line system of each pipe-line company. "

Neither counsel contends that the pipelines in dispute are distribution pipelines. Clearly they are not. Are they gathering lines, as counsel for the appellants submits? Under the definition, these are lines for the transportation of the gas "from the final point of wellhead preparation to the intake valve at the . . . refining plant". Under the new system with a central dehydrator, it appears that no preparation of the gas takes place right at the wellhead. If any preparation is done there certainly the final preparation, the removal of water, is done at the dehydrator. In my opinion these are not gathering pipelines. The appellants go on to contend that if they are not within that definition then they fall within the definition of transportation pipeline. Under the Act, that expression means a pipeline, other than a distribution pipeline or gathering pipeline, used for the transportation of natural gas. And it is pointed out that these lines transport the gas some miles. Transportation itself does not connote conveying for any particular distance. I am satisfied that in the context of this Statute the word was intended to mean conveying from region to region, from city to city, as distinct from the few miles involved in taking the gas from various wells to a dehydrator. So I find that the lines are not transportation pipelines.

As the lines are not covered by any of the three definitions of pipelines, there is not in this case a dispute which the Minister could settle by issuance of his certificate under s. 32 (12).

The result of what I have stated is that the Statutes do not make express provision for the assessment of the pipelines in question. Such provision was made by B.C. Regulation No. 335/73 (*Taxation Act Pipeline Regulation*). I quote s. 162 (1) of the *Taxation Act* and I have *italicized* the words therein which, in my view, make the regulation *intra vires*.

"162. (1) In order to promote and facilitate the collection and recovery of taxes, and to give full and due effect to the meaning and intent of this Act or any amendment thereof, the Lieutenant-Governor in Council may from time to time make and discharge such rules and regulations as may, in his opinion, be necessary or desirable for carrying out the spirit, intent, and meaning of this Act in relation to matters for which no express provision has been made, or for or in respect of which only partial or imperfect provision has been made; or when the time limited for any act or step is insufficient, or where, by accident or otherwise, such act or step has not been taken, or it appears to the Lieutenant Governor in Council that an alteration in dates is necessary or desirable, or where any proceeding under this Act, or intended so to be, has been taken and failed, or if, in the opinion of the Lieutenant-Governor in Council, any ambiguity or difficulty arises in the construction of or in applying this Act, or if any change of practice, procedure, or method may be deemed desirable, the Lieutenant-Governor in Council may, by rules or regulations, from time to time make and promulgate such enlargement, extension, or alteration in times or dates as he may see fit; and make such change of practice, procedure; or method; and, without restricting the generality of the foregoing, may make regulations

- (a) vesting in the Surveyor of Taxes or the Real Property Administrative Committee any powers and rights deemed necessary or advisable to enable the Surveyor of Taxes or the Real Property Administrative Committee to carry out the provisions of section 113, and administer the regulations effectively;
- (b) prescribing fees to be paid in respect of property that becomes subject to the provisions of section 113;

(c) respecting appeals to the Minister from orders and directions of the Surveyor of Taxes or the Real Property Administrative Committee; and

(d) defining any word or expression used in the Act or in the regulations and not defined herein."

The questions are answered as follows:

Question No. 1-No.

Question No. 2-Yes.

Question No. 3-No.

Question No. 4-Yes.