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SC 111 Assessment Commissioner v. Hawes

ASSESSMENT COMMISSIONER

v.

WAYNE HAWES

Supreme Court of British Columbia (No. 166/78)

Before: MR. JUSTICE E.D. FULTON

Victoria, March 1, 1978

R.B. Hutchison for the Appellant

Reasons for Judgment (Oral)

March 1, 1978

The Court: This is an appeal by way of stated case against the decision of the Assessment Appeal Board on a hearing held in Grand Forks, B.C., on 15th of September, 1977; the decision being handed down the 20th of December, 1977. The decision appealed from required an interpretation of section 4 (b) of the *Mobile Home Tax Act* which deals with

"mobile homes which are held in storage or which form part of the inventory of a manufacturer or dealer."

Section 4 provides that if mobile homes are within either of those categories they are not subject to tax under the Act.

I am satisfied that the question involved is, in fact, a matter of law and that in making a decision whether the mobile home in question was within an exempt category, the Assessment Appeal Board was deciding a question of law. Although they were arriving at a decision of fact, they were applying principles of interpretation which are principles of law. Therefore, I hold that I have jurisdiction to deal with the appeal subject to the remarks which were made earlier with regard to a possible preliminary objection and that point will be disposed of in a case to be heard tomorrow.

With respect to the interpretation given by the Assessment Appeal Board in this case, in my respectful opinion, they did err in law. In reaching this conclusion, I look at the definition of mobile home as it appears in section 1 of the Act as follows:

" . . . "mobile home" means a dwelling unit that is designed to be mobile and to be used as a permanent or temporary residence."

A mobile home falling in that definition is prima facie subject to tax; then that home is exempt only if it falls within one of the categories of section 4, the exemption provision, and in this case the only provision alleged to be applicable is that of section 4, subsection b, which I have already quoted. So the question is: was this mobile home which was parked on a tourist lot operated as such at Christina Lake, a resort area, and was occupied during the summer as a residence and after Labor Day was closed down but simply left on the park for the balance of the year - the

question is: Was that mobile home in storage or not? I have little if any hesitation in reaching the conclusion that it was not in storage within any ordinary and sensible application of that term.

I have looked at the definition of storage as it appears in the shorter Oxford English Dictionary and I find the following at the first column of page 39.

"Storage 1. Capacity or space for storing.

2. The action of storing; the condition or fact of being stored.

3. A place where something is stored."

The relevant definition here is the second one:

"The action of storing; the condition or fact of being stored."

I find in the circumstances here nothing that would bring this mobile home into that definition as having been stored. It was simply used as a temporary home during the summer and was left on the lot in readiness to be used again whenever circumstances should permit and the fact it wasn't actually removed after December 31st to some other place does not, in my view, alter the result and that is that it was not in storage for the balance of the year, 1976.

I hold that the appeal should be allowed. More precisely, I should say that the four questions asked in the stated case are all answered in the affirmative.

As indicated earlier, that is my decision on the merits of the case. There is no order to be entered to give effect thereto, however, until after I have disposed of the preliminary objection in tomorrow's case which raises the question of the status of the acting chairman to sign the stated case.

Mr. Hutchison: Thank you. We don't ask, I should say, for costs. I won't put them in the order and we don't ask for them.

The Court: In view of the fact of that, I also make no order for costs.