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BERNARD LOTZKAR

v.

ASSESSOR OF AREA 11 - RICHMOND/DELTA

Supreme Court of British Columbia (A820214) Vancouver Registry

Before: MR. JUSTICE L.G. McKENZIE

Vancouver, February 8, 1982

J.R. Lakes for the Appellant
John E.D. Savage for the Respondent

Reasons for Judgment February 8, 1982

The Court: This Stated Case inspired by the appellant's dissatisfaction with the ruling of the Assessment Appeal Board that the property upon which he operates a scrap metal business should be put in Class 5 of the Classes and Percentage Levels Regulation (B.C. Reg. 455/80) issued under the Assessment Act.

He is dissatisfied because that assessment class produces a higher assessment than would class 6 which covers "business and other".

The relevant language for consideration under Class 5 appears in the opening four lines which read:

> "Class 5 - Industrial shall include land or improvements or both used or held for the purpose of extracting, processing, manufacturing, transportation or storage of any products, and without limiting the generality of the foregoing includes land or improvements or both used or held for the purpose of ..."

The regulation then goes on to specify thirteen particular industrial activities.

It's apparent here that the activity in which the appellant is engaged does not fall within the ambit of any of the thirteen particularized categories. If he is to be caught in the industrial class, he must be caught by the opening words as quoted.

It is conceded that the appellant carries on some processing in that he receives scrap metal at his property and cuts it into shorter sizes. The appellant argues that the words "for the purpose of extracting, processing, manufacturing, transportation..." assert a single purpose made up of those four connected activities. It is the single purpose combining all of four defined functions. According to this argument it is not enough that the appellant be engaged in one or another of those four activities. He must be engaged in all of them.

The language then continues:

"...or storage of any products..."

Extending the appellant's argument he says that, to be caught, the appellant must be engaged in all of the first four defined activities, or, alternatively, in the activity of storage.

The Assessment Appeal Board found in its decision that the predominant use of the property was processing, sorting and storage of scrap metal and the subsequent sale to customers, the majority of whom purchased, not for their own end use, but for the resale in either the form in which the material was purchased or in some other form. Because one of those predominant uses was "processing", the Board confirmed the classification of the land and improvements as industrial.

The traditional view has been that taxation statutes should be "strictly construed against the taxing authority". Some question has been raised as to the current application of that traditional rule by the decision of the B.C. court of Appeal in Sammartino v. Attorney General of British Columbia (1972) 1 W.W.R. 24 at Page 32. Tysoe, J.A., in giving Judgment of the Court quoted from in Re Simon Fraser University (1968), 66 KW.W.R. 684, from Page 687: "... a statute is to be expounded according to the intent of them that made it. If the words of the statues are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature."

In my view the quoted language describing industrial Class 5 in general terms are without ambiguity. I cannot extract from these words, viewing them in their natural and ordinary sense, as I see them, as meaning anything other than that one of the activities must be performed on the property. It is not necessary, put it in the other way, that to qualify under the first branch the taxpayer has to engage in four different processes, or alternatively, to be engaged in storage of the products. I think that the use of the disjunctive "or" makes that clear.

Counsel for the appellant has suggested the language might have been improved to make it more precise but I am unable to see that it lacks precision as presently cast.

I, therefore, find that the Assessment Appeal Board did no err in law in confirming the classification of the appellant's land and improvements as under Class 5 (industrial). I find further that the Assessment Appeal Board did not err in law in interpreting Class 5 (industrial) as applying to the appellant's land which is not used or held for the purpose of extracting, processing manufacturing, transportation or storage of any products.