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LEAVE TO APPEAL

PETRO-CANADA INC., SHELL CANADA LIMITED & CHEVRON CANADA LIMITED

v.

ASSESSOR OF AREA 12 - COQUITLAM & ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER

British Columbia Court of Appeal (V00806) Vancouver Registry

Before the Honourable Mr. Justice Wallace (in Chambers)

Vancouver, B.C., November 3, 1988

John E. D. Savage for the Appellant Assessors
S. Bradley Armstrong for Chevron Canada Limited

Reasons for Judgment December 7, 1988

The Assessor applies for leave to appeal the decision of Mr. Justice Macdonell respecting the classification of 100 blending tanks installed as part of an oil refinery owned by Chevron and the interpretation of s. 26.2 of the 1987 amendment to the Assessment Act.

The facts which gave rise to the stated case before Macdonell, J., reveal that the Assessment Act, as applicable for the year 1983 through 1985, included two definitions of improvements. One definition defined improvements for general municipal and Provincial taxation purposes, and the second definition defined improvements and purposes other than general municipal and Provincial taxation purpose (for school purposes).

For the purposes of taxation in the year 1983 and previous years, the assessor took the position that all the tanks of Chevron were included within the definition of improvements for general municipal and Provincial taxation purposes and did not fall within the definition of Class 4 - machinery and equipment, under B.C. Regulation 438/81.

For the taxation year 1983 Chevron appealed arguing that 35 of the blending tanks were not assessable for general municipal and Provincial taxation purposes which appeal was ultimately upheld in the decision of the Court of Appeal dated February 26, 1986. In the result 35 blending tanks of Chevron were found to be exempt from assessment for general municipal and Provincial taxation purposes and, accordingly, for the 1983, 1984, 1985 and 1986 taxation years were classified under Class 4, Regulation 438/81. The balance of the tanks were not classified under Class 4 of the B.C. Regulation 381/81.

The Assessment Act was amended for the purposes of the 1987 and 1988 taxation years. Under the amendments, a single definition of improvements was applicable with specified exemptions. The 35 blending tanks were determined to be exempt by the assessor for the purposes of the assessment roll prepared on September 30, 1986.

Chevron filed a complaint with the Court of Revision and a Notice of Appeal to the Assessment appeal Board submitting, as one ground for appeal, that a number of the remaining tanks at the refinery are similar to the 35 blending tanks and that they should be exempt from assessment in accordance with s. 26.2 (1) (a) of the Assessment Act, as amended by the Assessment Amendment Act, 1987.

The Assessment Appeal Board stated a case pursuant to s. 74 (1) of the Assessment Act seeking the opinion of the Supreme Court on the issue arising in this appeal.

The following facts are agreed:

(a) In addition to the 35 blending tanks which were the subject of appeals and which were classified for the purposes of taxation during the 1985 calendar year, within Class 4, Part 1 of B.C. Regulation 438/81, Chevron owns and operates additional blending tanks (the "additional blending tanks"), which are similar to the 35 blending tanks;

(b) The additional blending tanks are:

"... fixtures, machinery and similar things, other than buildings and storage tanks as, if erected or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property";

(c) The additional blending tanks are not storage tanks;

(d) For the purposes of taxation during the 1985 calendar year, the assessor included the additional blending tanks as improvements within the definition of improvements for general municipal and Provincial taxation purposes, and therefore did not classify the additional blending tanks within Class 4, Part I of B.C. Regulation 438/81;

(e) All of the tanks have a capacity in excess of 4,500 litres.

The question on which the Board requested the opinion of the Court is as follows:

> "Does the exemption from assessment provided in Section 26.2 (1) (a) of the Assessment Act, as amended by the Assessment Amendment Act, 1987, provide for the exemption of items (such as the Additional Blending Tanks), which were classified within the terms of Class 4, Part I of the B.C. Regulation 438/81, in law, but which were not classified by the Assessor within Class 4, Part I of B.C. Regulation 438/81 for the purposes of taxation during the 1985 calendar year?"

Counsel for the appellant submitted that Mr. Justice Macdonell erred in law in answering the questions posed in the State Case in the affirmation in that:

> (a) He erred in law in finding there to be a conflict between the provision of S.26.2 (1) (a) and s. 26.2 (1) (b) in Bill 67, the Assessment Amendment Act;
>
> (b) He erred in law in his interpretation of s. 26.2 (1) Bill 67, the Assessment Amendment Act, by applying an interpretation of the said section which renders tautologous and superfluous most of the said section; and
>
> (c) He erred in law in misinterpreting the scheme of Bill 67, the Assessment Amendment Act.

Counsel further submitted that leave should be granted since the interpretation of the provision in question affects the assessment of numerous properties throughout the Province of British Columbia and is of general importance.

The considerations which the Chambers Judge should take into account in determining whether or not to grant leave to appeal have been often cited in decisions of the Court. In my view, the principles recently expressed by Southing, J.A., in Galloway Lumber Co. v. Assessor of Area 22 East Kootenay (18 October 1988 - no. CA 009486, Vancouver Registry) are particularly pertinent to this application.

She Stated:

> "in my opinion, leave should be granted where the question of law, as here:
>
> (a) has not been previously addressed by Court,
>
> (b) affects a substantial number of assessment, and, therefore, the taxation base,
>
> (c) can be said to admit rationally of an answer different from that given below."

Leave to appeal is granted.