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

v.

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

Supreme Court of B.C. (A881299) Vancouver Registry

Before The Honourable Mr. Justice MacDonell (in Chambers)

Vancouver, June 24, 1989

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

Reasons for Judgment July 12, 1988

This appeal by way of Stated Case concerns the categorisation of some 100 blending tanks of the appellant, installed as port of an oil refinery owned by Chevron in Burnaby. For the year 1985 the tanks were classified within Class 5 of Part 1 of B.C. Regulation 438/81. What is in issue is the interpretation of s. 26.2 of the 1987 amendment to the Assessment Act.

The position taken by the appellant is that although its 100 blending tanks were assessed as Class 5 of Part 1 of B.C. Regulation 438/81 in 1985, they should, in fact, have been classified as Class 4. The reason for this is that a test case was taken by Chevron concerning 35 of their total of 135 blending tanks to the Supreme Court by way of stated case and, by judgment dated March 13th, 1987, the Honourable Mr. Justice Meredith held that the blending tanks were improperly classified as Class 5 and should have been Class 4. The stated case went to the Court of Appeal, which upheld the judgment of Mr. Justice Meredith. Those blending tanks have since been reclassified for the years 1983, 1984, 1985, 1986, 1987 and 1988 to Class 4. The other 100 tanks which, for the purpose of the stated case, are agreed to be similar, have not been so reclassified. To understand what is in issue an analysis will have to be made of s. 26.2 (1) (a) and (b):

> 26.2 (1) For the purposes of section 26.1, the exclusions contained in paragraphs (n) to (q) of the definition of "improvements" in section 1 do not apply and improvements that fall within the definition of "industrial improvement" in section 26.1 means all improvements that fall within paragraphs (a) to (m) of the definition of "improvements" in section 1, other than an improvement that
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> > (a) was classified, for the purposes of taxation during the 1985 calendar year, within Class 4 of Part 1 of B.C. Regulation 438/81.
> >
> > (b) was completed after September 30, 1984, was or will be completed on or before September 30, 1989 and would have been classified, for the purposes of taxation during the 1985 calendar year, within Class 4 of Part 1 of B.C. Regulation 438/81 if it had been completed on or before September 30, 1984.

It is argued on behalf of the appellant that, although the words contained in 26.2 (1) (a) are "was classified for the purposes of taxation during the 1985 calendar year", nevertheless what must

have been contemplated by the Legislature is that they were dealing with a lawful classification that includes what should have been classified as Class 4 as well as what in fact was classified as Class 4. The appellants argue that the 100 tanks should be treated the same as the 35 that have been reclassified following the Chevron appeal case.

Counsel for the Assessor argues that the plain working of s. 26.2 (1) (a) is "was classified" and it should be given no other meanings as it is not ambiguous nor unclear, and cites a considerable amount of authority for that proposition which is a well known principle of statutory interpretation.

Counsel for the appellant, however, relies heavily on s. 26.2 (1) (b) to show a legislative intent consistent with his argument that the lawful classification was what the Legislature had in mind. Section 26.2 (1) (b) covers the situation where blending tanks are not completed until after September 30th, 1989. In that case the criterion is how they would have been classified for the purposes of taxation during the 1985 calendar year. The appellant argues that the words "would have been classified" must mean lawfully classified pursuant to the Chevron appeal case and not pursuant to the whim of the Assessor. The appellant argues that to put a literal interpretation on the words "was classified" conflicts with the legislative intent spelled out in 26.1 (b), which contemplates accepting future blending tanks similar to the 35 in a category that they should be in, but leaves those improperly classified in a wrong class subject to taxation.

It is my opinion the words "was classified" in s 26.2 (1) (a) of the 1987 amendment to the *Assessment Act* should be interpreted as meaning lawfully classified. In interpreting the section in this manner I am mindful of the line of authorities that say that if the legislation is clear and unambiguous on its face, then it should be given the natural meaning attributable to the words. However, there is another line of cases which point to the overriding duty of the Courts to attempt to discern and give effect to the legislative intention. It is the latter route that I follows as, in my view, there is a conflict between 26.2 (1) (a) and (b). In my view, 26.2 (1) (b) brings in the additional concept of improvements that have not yet been completed at the close of the 1984 Roll, but will be completed on or before September 30th, 1989 and in that case those improvements that would have been classified for the purposes of taxation during the 1985 calendar year within Class 4 are treated as Class 4. The only reasonable interpretation to put on that subclause is that you would look to the lawful classification of the improvements of 1985. The lawful classification would be in accordance with the Chevron appeal case, which would put the mixing tanks in question within Class 4. To interpret 26.2 (1) (a) as the actual way the Assessor classified the improvements, although incorrectly, puts the balance of the section in conflict and has the effect of perpetuation of an error at the cost of the taxpayer. In my view, the legislative scheme when the *Assessment Act* was amended in 1989 was to exempt those improvements classified as Class 4, either as they were classified, or should have been classified, in 1985, or which, coming onto the Roll between 1984 and 1989, would also be exempt. In following this route I am following the reasoning of Mr. Justice McIntyre in Goldman v. The Queen, [1980] 1 S.C.R. 976:

> It is elementary to say that the courts must discern and apply the legislative intent when construing the statutes. The intent must be found upon an examination of the words employed in the enactment for it is the intent which the legislature expressed which must have effect.

and the words of Beetz, J. in R. V. Nabis, [1975] 2 S.C.R., 485:

> ...legal interpretation must tend to integrate various enactments into a coherent system rather than towards their discontinuity.

and the comments of Lock, J. in Canadian Fishing Co. Ltd. et al v. Smith et al., [1962] S.C.R. 294:

> Where the usual meaning of the language falls short of the whole subject of the Legislature, a more extended meaning may be attributed to the words if they are fairly susceptible to it... you are not to attribute to general language used by the Legislature a meaning that would not carry out its object but produce consequences which, to the ordinary intelligence, are absurd.

Accordingly, the answer to the question posed in the stated case 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 of Part 1 of B.C. Reg. 438/81, in law, but which were not classified by the Assessor within Class 4 of Part 1 of B.C. Reg. 438/81, for the purposes of taxation during the 1985 calendar year.

is in the affirmative.

The appellant is entitled to its costs.