SUPREME COURT OF APPEALS OF WEST VIRGINIA

Kanawha Eagle Coal, LLC v. Tax Commissioner of the State of West Virginia, 216 W. Va. 616

609 S.E.2d 877 (2004) · No. No. 31791 · Decided December 1, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia held that freight charges paid to a third-party carrier to transport fully processed coal from a preparation plant to a river dock were deductible in calculating the coal's taxable gross value for severance tax purposes. The court concluded that reloading coal after its initial loading at the preparation plant is part of the delivery process rather than a taxable mining or treatment activity. The court reversed the circuit court's affirmance of the excess severance tax assessment.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Albright; Justice McGraw
JURISDICTION	West Virginia
DECIDED	December 1, 2004
DOCKET	No. 31791
DISPOSITION	reversed
PROCEDURAL POSTURE	Kanawha Eagle Coal appealed the circuit court's affirmance of an administrative decision upholding an excess severance tax assessment.
STANDARD OF REVIEW	Under West Virginia Code section 29A-5-4, questions of law are reviewed de novo, while factual findings by the administrative officer receive deference unless clearly wrong. Review of a circuit court's affirmance of agency action is de novo, with factual findings concerning alleged procedural defects reviewed for clear error.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Kanawha Eagle Coal, LLC v. Tax Commissioner of the State of West Virginia

TOPICS

tax · minerals · statutory interpretation · administrative law · appellate procedure

PRACTICE AREAS

state and local taxation | administrative law | mineral taxation

QUESTIONS PRESENTED

1. Whether freight charges paid to a third-party common carrier to transport fully processed coal from a preparation plant to a river dock are deductible in determining the coal's gross value for West Virginia severance tax purposes.
2. Whether reloading fully processed coal at a river dock constitutes a taxable treatment process or loading for shipment under West Virginia Code section 11-13A-4(a)(1).
3. Whether the six-day delay in holding the administrative hearing required dismissal of the severance tax assessment.

HOLDINGS

1. Freight charges paid by a coal producer to a third party to transport fully processed clean coal from a preparation plant to the point at which title passes to the buyer are deductible from gross coal-sale proceeds when calculating the West Virginia severance tax under the applicable regulations.
2. The initial loading of fully processed clean coal at the preparation plant is a taxable mining-related event, but subsequent reloading at a river dock is part of the delivery process and is not a taxable treatment process under West Virginia Code section 11-13A-4(a)(1).
3. The six-day delay in holding the reassessment hearing did not require dismissal of the assessment because Kanawha Eagle failed to demonstrate prejudice and the statutory hearing provision did not provide for dismissal as a remedy.

KEY QUOTATIONS

> *"The initial loading of fully processed clean coal at the preparation plant for shipment is one of the specified activities viewed as a taxable event associated with the privilege of mining in this state. However, any reloading of coal that transpires after the initial loading at the preparation plant is part of the delivery process, rather than the mining process"* (884)

> *"we determine that freight charges paid by a coal producer to a third party to transport fully processed clean coal from the coal preparation plant to the point at which title passes to the buyer are costs which are deductible from the gross proceeds of coal sales for purposes of assessing the severance tax"* (884)

FACTUAL BACKGROUND

Kanawha Eagle operated underground coal mines and transported raw coal to a preparation plant, where it was sized, treated, and cleaned. It then transported the fully processed coal approximately six miles by railroad or truck to a river dock, where it was reloaded onto barges and title passed to the buyer. The Tax Commissioner disallowed deductions for freight charges paid to CSX to transport the clean coal from the preparation plant to the dock.

PROCEDURAL HISTORY

The Tax Commissioner assessed Kanawha Eagle Coal $118,979 in severance taxes and interest for 1998 through 2000 after disallowing deductions for transportation costs incurred in moving fully processed coal from a preparation plant to a river dock. An administrative law judge denied dismissal based on a delayed hearing, upheld the freight-deduction disallowance, and reduced the assessment to $59,186.93. The Circuit Court of Kanawha County affirmed the administrative decision, and the Supreme Court of Appeals of West Virginia reversed.

DISPOSITION

reversed

CASES CITED

- Muscatell v. Cline, 196 W. Va. 588, 474 S.E.2d 518 (1996)
- Wheeling-Pittsburgh Steel Corp. v. Rowing, 205 W. Va. 286, 517 S.E.2d 763 (1999)
- Coe v. Errol, 116 U.S. 517, 6 S. Ct. 475, 29 L. Ed. 715 (1886)
- Hope Natural Gas Co. v. Hall, 102 W. Va. 272, 135 S.E. 582 (1926)
- Hope Natural Gas Co. v. Hall, 274 U.S. 284, 47 S. Ct. 639, 71 L. Ed. 1049 (1927)