SUPREME COURT OF APPEALS OF WEST VIRGINIA

Concept Mining, Inc. v. Helton, 217 W. Va. 298

617 S.E.2d 845 (2005) · No. No. 31866 · Decided April 28, 2005

SUMMARY

The Supreme Court of Appeals of West Virginia held that a tax refund proceeding remained governed by the transition provisions applicable to the former Tax Commissioner's Office of Hearings and Appeals because an administrative hearing had occurred before December 31, 2002. The resulting decision was treated as an administrative decision issued by the Tax Commissioner, which the Commissioner could not appeal under the governing statute. The court affirmed the circuit court's dismissal of the Commissioner's appeal without reaching the merits of the constitutional challenge to coal severance taxes.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Judge Wilson, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	April 28, 2005
DOCKET	No. 31866
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Acting State Tax Commissioner appealed the Kanawha County Circuit Court's order holding that he could not appeal an administrative decision awarding the taxpayers refunds of severance taxes.
STANDARD OF REVIEW	De novo review applies to a lower court's interpretation of a statute.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia.
PARTIES	Virgil T. Helton, Acting State Tax Commissioner of the State of West Virginia v. Concept Mining, Inc., The Ridge Land Company, Inc.

TOPICS

tax refunds · tax · administrative law · statutory interpretation · appellate jurisdiction

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the July 9, 2003, administrative decision was governed by the transition provisions for cases in which an administrative hearing had occurred before December 31, 2002.
2. Whether the Tax Commissioner was authorized to appeal that administrative decision to the circuit court.

HOLDINGS

1. Under West Virginia Code § 11-10-9(c), a petition pending before the Tax Commissioner's Office of Hearings and Appeals remained on the Commissioner's docket when an administrative hearing had been held before December 31, 2002, and the Commissioner was required to issue the administrative decision.
2. The Tax Commissioner could not appeal the decision because, notwithstanding its Office of Tax Appeals letterhead and late issuance, it was treated as an administrative decision issued under West Virginia Code § 11-10-9(a); under § 11-10-10(a)(1), only the taxpayer could appeal such a decision.

KEY QUOTATIONS

> *"In short, if a hearing has been held by December 31, 2002, the Commissioner is required to rule on the matter, W. Va.Code § 11-10-9(c), and if no hearing has been held by December 31, 2002, the Commissioner is required to transfer the case for disposition by the Office of Tax Appeals, W. Va.Code § 11-10-9(b)."* (850)

> *"Therefore, insofar as an administrative decision was rendered on July 9, 2003, it will be presumed to be one issued by the Commissioner in accordance with the clear mandates of W. Va.Code § 11-10-9(c)."* (851)

FACTUAL BACKGROUND

Concept Mining and The Ridge Land Company sought refunds of severance taxes paid for tax years 1998 and 1999. Their petitions were pending before the Tax Commissioner's Office of Hearings and Appeals, and an administrative hearing was held on October 30, 2002, before the statutory transition to the Office of Tax Appeals. A final decision issued on July 9, 2003, awarded the taxpayers refunds, and the Tax Commissioner attempted to appeal that decision.

PROCEDURAL HISTORY

The taxpayers filed separate refund petitions with the Tax Commissioner's Office of Hearings and Appeals, and the petitions were consolidated. An administrative hearing occurred before December 31, 2002, after which statutory amendments created the Office of Tax Appeals. A July 9, 2003, decision issued on Office of Tax Appeals letterhead awarded the taxpayers refunds. The circuit court held that the matter remained governed by the transition statute and that only the taxpayers could appeal the decision. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Appalachian Power Co. v. State Tax Dep't of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Smith v. State Workmen's Comp. Comm'r, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- State ex rel. McGraw v. Combs Servs., 206 W. Va. 512, 526 S.E.2d 34 (1999)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- DeVane v. Kennedy, 205 W. Va. 519, 519 S.E.2d 622 (1999)
- Nelson v. West Virginia Pub. Employees Ins. Bd., 171 W. Va. 445, 300 S.E.2d 86 (1982)
- State v. Allen, 208 W. Va. 144, 539 S.E.2d 87 (2000)
- Maupin v. Sidiropolis, 215 W. Va. 492, 600 S.E.2d 204 (2004)
- Deutsch v. Mortgage Secs. Co., 96 W. Va. 676, 123 S.E. 793 (1924)

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