NO. 8910PTC455

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 1990

IN THE MATTER OF:

THE APPEAL OF JACKSON PAPER MANUFACTURING COMPANY FROM THE JACKSON COUNTY BOARD OF COMMISSIONERS AND THE JACKSON COUNTY BOARD OF EQUALIZATION AND REVIEW FOR 1987

Property Tax Commission
No. 87PTC245

Appeal by both taxpayer and Jackson County from Final Decision entered 15 December 1988 by the North Carolina Property Tax Commission sitting as the State Board of Equalization and Review. Heard in the Court of Appeals 7 November 1989.

The taxpayer, Jackson Paper Manufacturing Company, claims that the Jackson County Tax Supervisor erred in listing and assessing property taxes from 1983 through 1986 on certain equipment which the taxpayer contends qualifies for exclusion from its taxable property pursuant to G.S. § 105-275(8)b because the equipment is used for recycling operations and pollution abatement. The taxpayer also seeks a refund of the taxes paid on the subject equipment for those years. Taxpayer has also filed a civil action for refund. On 1 April 1987, The Jackson County Tax Supervisor denied taxpayer's request for exclusion "[s]ince the application and tax certificate from the Department of Human Resources was not filed during the annual tax listing period for the year 1986 and previous years." Taxpayer appealed to the Jackson County Board of Equalization and Review (the "Board"). The Board also denied the taxpayer's claim for exclusion for

those years in a letter dated 7 August 1987.

The taxpayer appealed to the North Carolina Tax Commission, sitting as the State Board of Equalization and Review (the "Commission"). The Commission affirmed the denial of an exclusion for the years 1982, 1983, 1985, and 1986. It held, however, that taxpayer is entitled to an exclusion for the year 1984 because the Commission found that, unlike the other years in question, taxpayer filed a timely application for exclusion for the year 1984. Both parties appeal.

Coward, Cabler, Sossomon & Hicks, P.A., by Orville D. Coward and William H. Coward, for petitioner-appellant.

W. Paul Holt, Jr. and Randal Seago, for respondent-appellee and cross-appellant Jackson County.

JOHNSON, Judge.

We first address the County's argument that the Commission had no jurisdiction to hear this matter and that the taxpayer should have brought its appeal in the form of a civil action in the appropriate division of the general court of justice. We disagree.

Taxpayer's argument is essentially that certain of its property, because it is used primarily in recycling, should not, pursuant to G.S. § 105-275(8)b, be "listed, appraised, assessed, or taxed." G.S. § 105-275. G.S. § 105-290(b) states in part that "[t]he Property Tax Commission shall hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners." In re Appeal of K-Mart Corp.,

319 N.C. 378, 354 S.E.2d 468 (1987). Further, G.S. § 105-282.1 (1985), which is applicable to the case before us and is entitled "[a]pplications for property tax exemption or exclusion," states in pertinent part that "[i]f an application for exemption or exclusion is denied by the tax supervisor, he shall notify the owner of his decision in time for him to appeal to the board of equalization and review and from the county board to the Property Tax Commission." G.S. § 105-282.1(b)(1985).

The County contends that taxpayer is really appealing the denial of a refund, and as such, under G.S. § 105-381, the Property Tax Commission is without subject matter jurisdiction. However, the parties have stipulated, and the Commission found as a matter of law, that "the Jackson County Board of Equalization and Review for 1987 properly met to consider the [taxpayer's] applications for exclusion for the years 1982 through 1986, and that the [taxpayer] received written notice of the Board's denial of the applications by letter dated 7 August 1987." The issue appealed by taxpayer is the denial of its application for exclusion. Under our statutory scheme, as set forth above, the Property Tax Commission has subject matter jurisdiction to hear this appeal. This argument is overruled.

Next, the County argues that the Commission erred in concluding that the certificate of compliance does not have to be filed along with an application for exclusion. In this case, the Department of Human Resources had not certified the taxpayer's property as excludable at the time the taxpayer had applied for exclusion. The County says the application was incomplete until

the certificate was received, and by then the application was late.

Applicable G.S. § 105-282.1(a) requires, with certain exceptions, that "every owner claiming exemption or exclusion hereunder shall annually, during the regular listing period, file an application therefor." The term "application" is not defined in this statute, however, the statute states that applications shall be filed on a "form approved by the Department of Revenue." The other provision bearing on the County's argument is G.S. § 105-275(8)b (1985), which allows that real or personal property will not be listed for property taxes

> if the Department of Human Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Human Resources has found that the described property has been or will be constructed or installed, complies or will comply with the regulations of the Department of Human Resources, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste. (Emphasis added.)

The Commission determined from testimony that the Department of Human Resources' normal practice is to furnish the certificate at issue to the taxpayer in spite of the statutory mandate that it be furnished to the tax supervisor. It also stated that G.S. § 105-275(8) "contemplates a timely application for exclusion, . . . [but that o]f necessity, the issuance of the tax certification by the Department may not occur until much later than the time prescribed for the filing of the application; indeed, it may not occur, as happened here, until a later tax year."

We believe that the Commission was correct in concluding that the taxpayer made a timely application for the year 1984 when it timely filed its application for exclusion. The time taken by the Department of Human Resources and its failure to furnish the certificate directly to the tax supervisor were matters beyond the control of the taxpayer, and it should not be penalized. This argument is overruled.

Last, we turn to the taxpayer's argument that the Commission erred in not applying the doctrine of estoppel to the facts of this case to estop Jackson County from denying the taxpayer exclusions for the years 1985 and 1986. We disagree. The taxpayer essentially argues that over a period of five years it was led by the County to believe that it was doing everything necessary to apply for exclusions. The County, on the other hand, denies misleading the taxpayer and points to certain testimony of the taxpayer's comptroller, a certified public accountant, to the effect that the taxpayer failed to file tax certificates along with applications because of the difficulty involved in separating cost data.

A county is not subject to being estopped to the same extent as a private corporation or individual. Washington v. McLawhorn, 237 N.C. 449, 75 S.E.2d 402 (1953). Our Supreme Court has stated that "[t]he imposition and collection of taxes are, of course, governmental functions; and the State cannot, by the conduct of its agents be estopped from collecting taxes lawfully imposed and remaining unpaid." Henderson v. Gill, Comr. or Revenue, 229 N.C. 313, 316, 49 S.E.2d 754, 756 (1948). Although the Court in

Henderson found that the taxpayer had presented a more appealing case for the application of estoppel than those which typically support a plea for estoppel (and much more compelling than the situation in the instant case), the Court declined to apply the doctrine. It did so to "prevent a chaotic condition and endless dispute in the collection of taxes." Id.

In support of its position, taxpayer points to language by our Supreme Court in Washington, supra that "an estoppel may arise against a county out of a transaction in which it acted in a governmental capacity, if an estoppel is necessary to prevent loss to another, and if such an estoppel will not impair the exercise of the governmental powers of the county." Washington, supra, at 454, 75 S.E.2d at 406. We find that application of this principle to the case at bar would impair the county in the exercise of its governmental powers. We also find the policy considerations discussed in Henderson, supra to be relevant to the situation before us. Therefore, we hold that the Commission did not err in failing to find the County estopped from denying taxpayer exclusions for the years 1985 and 1986.

In sum, we hold that the taxpayer's hearing before the Property Tax Commission was fair and free of prejudicial error.

Affirmed.

Judges COZORT and LEWIS concu

Report per Rule 30(e).