



NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

MINISTER OF FINANCE

Appellant

- and -

2390750 NOVA SCOTIA LIMITED  
(Silver Spoon Desserts)

Respondent

REASONS FOR  
JUDGMENT BY:

CLARKE, C.J.N.S.  
(Orally)

The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

The first issue is whether the Nova Scotia Utility and Review Board (the Board) made a reversible error of law when it reversed an assessment of \$11,636.00 plus interest of \$686.05, made by the Provincial Tax Commission against the respondent vendor.

The assessment was made on July 12, 1995 and confirmed on October 27, 1995 after the Commissioner made an estimate of the sales tax payable by the vendor pursuant to s. 19(1) of the **Health Services Tax Act**, R.S.N.S. 1989, c. 198.

The vendor filed a notice of objection to the estimate based assessment thus bringing the matter before the Board. The vendor was engaged in the restaurant, cafe, deli and related business. It had been filing monthly returns with the Commission. The Commissioner was of the opinion that the respondent's records did not conform with the returns.

At the Board hearing the principal witness for the Tax Commission was its auditor, Mr. Collins, and for the vendor its internal accountant, Mr. Robert Silver.

The vendor brought a box of daily slips and checks to the hearing alleging the contents reflected the sales of the vendor during the period under review. The Board decided to recess the hearing to give the Tax Commission time to analyze the checks and documents of the vendor together with evidence of the vendor concerning such matters as days the business was closed in whole or in part, the latter information not having been earlier tendered to the Commission.

When the hearing reconvened many days later, the auditor of the Commission agreed, quoting a summary of his evidence as recorded in the decision of the Board, that

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... if Mr. Silver's statement of the total source documents were present in the box then his estimated returns and remittances as made were accurate within \$50.00 and this degree of accuracy was perfectly acceptable in the practical world of tax collection and payment and audit standards.

The Board made findings of credibility in favour of the vendor, especially the

evidence given by Mrs. Silver. The Board wrote:

... Mrs. Silver gave the answers raised by the questions on her rebuttal. The Board believed her. This belief moved the Board to accept Mr. Silver's statement that his source documents were complete, that there was no separate bookkeeping system germane to this appeal, and there were no missing slips in the context to support the estimate.

After reviewing the process involved in the audit requested by the Board and the analysis which resulted therefrom, the Board member stated:

The net effect of Mr. Silver's and Mr. Collins' efforts set out above was that Mr. Silver, in effect, confirmed Mr. Collins belated Board ordered audit. Mr. Collins conceded that if the source documents were complete then the amount of tax differed by only \$50.00 from the returns filed. This was not enough of a discrepancy to matter in this context.

With that in mind the Board accepts as the correct tax payable is that which was collected returned and remitted by the Appellant and the Board therefore reverses the decision of the Commissioner in accord with ss. **20L(5)** of the **Act**.

The appellant contends the Board erred in law in its interpretation of the standard of proof required to meet the onus set forth in s. 19(2) of the **Act**.

Section 30 of the **Utility and Review Board Act**, S.N.S. 1992, c. 11, provides:

30 (1) An appeal lies to the Appeal Division of the Supreme Court from an order of the Board upon any question as to its jurisdiction or upon any question of law, upon filing with the Court a notice of appeal within thirty days after the issuance of the order.

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The subject matter of this appeal came within the jurisdiction of the Board. It made findings of credibility and findings of fact based on the evidence before it. Such findings of fact made within the jurisdiction of the Board are "binding and conclusive". So says s. 26 of the **Utility and Review Board Act**. There being evidence upon which the Board could base its findings, we are disinclined to disturb its conclusion.

The second issue raised by the appellant is an allegation of an apprehension of bias by the member of the Board who sat on the application. Although an application to adduce fresh evidence appears to have been contemplated by the appellant, none was in

fact made.

We have thoroughly canvassed the record before the Court. We are unable to conclude that the allegation is well founded.

Accordingly on both issues the appeal is dismissed without costs.

C.J.N.S.

Concurred in:

Chipman, J.A.

Roscoe, J. A.