

NOVA SCOTIA COURT OF APPEAL

Freeman, Roscoe and Pugsley, JJ.A.

Dow & Duggan Log Homes Ltd. v. Nova Scotia (Attorney General),
1994 NSCA 22

BETWEEN:

DOW & DUGGAN LOG HOMES
LIMITED

Appellant

- and -

THE ATTORNEY GENERAL OF
NOVA SCOTIA

Respondent

)
) Norman B. Hill
) for the Appellant
)

)
) John D. Wood
) for the Respondent
)

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) Appeal Heard:
) January 21, 1994
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) Judgment Delivered:
) January 21, 1994
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THE COURT:

Appeal dismissed, per oral reasons for judgment of Roscoe, J.A.; Freeman and Pugsley, JJ.A. concurring.

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

ROSCOE, J.A.:

This is an appeal from the Nova Scotia Utility and Review Board which dismissed an appeal from the Provincial Tax Commissioner respecting an assessment of \$208,741.67 for unpaid sales tax, interest and penalties. The assessment, pursuant to the **Health Services Tax Act** R.S.N.S., 1989 c.198, is for the years 1988 to 1991. The appellant manufactures and sells log home packages. It also custom designs changes in their stock plans, educates their clients on the erection and care of the homes and delivers the package to the buyer's building site. It argued before the Board that it was a contractor. The Board held that during the relevant period of time it was a retail seller required to collect and remit sales tax on its prefabricated homes.

The facts as admitted by representatives of the appellant in their evidence before the Board are that for sales of the log homes within the Province they did charge their customers the applicable sales tax and in most cases remitted the tax as required. However due to poor record keeping, they were found by the tax auditor to have several unreported sales and sales they claimed to have been to out-of-province buyers that could not be verified. The evidence of Mr. Reginald Sollows, the auditor, was as follows:

" And it was found that the vendor was keeping insufficient records. Names and addresses on sales invoices and contracts were not complete. In many cases, only the last name of the customer appeared on the invoices and contracts. Some sales were reported as out-of-province sales when, in fact, the delivery was made in Nova Scotia. Some invoices were marked 'void' when, in fact, the customer had paid the invoice. In some cases, ten percent tax was charged but not remitted.

In other cases, the tax was not recorded as tax payable but recorded as part of the sale. In other cases, sales were not reported to the tax commission and these were also assessed, which resulted in final assessment."

The appellant was given the opportunity to provide evidence to the Tax Commissioner that the sales shown as out-of-province were in fact shipped out of Nova Scotia.

The Board found that the appellant "is not a contractor but rather a manufacturer of prefabricated log buildings which it sells in a retail sale."

The appellant argues before this Court that it is a building contractor and as such should pay sales tax on materials purchased by it but need not collect and remit taxes on its contracts or, in the alternative, that if it is a vendor, then part of the sales on which it is being assessed are sales of non-taxable services and not sales of tangible personal property.

One difficulty with the appellant's first argument is that it did not in fact pay sales tax on building materials it purchased. A second problem is that the Board's ruling that it was a manufacturer and retail seller is a finding of fact, supported by the evidence. There was no error in law on the part of the Board in arriving at this conclusion.

The alternative argument of the appellant is that the service portion of its contracts should not be taxable. The **Act** defines "sale price" as follows:

2(s) "sale price", "purchase price" or "fair value" includes a price in money and also the value of services rendered, the actual value of the thing exchanged and other considerations accepted by the seller or person from whom the property passes as price or on account of
the price of the thing covered by the contract, sale or exchange and includes

...

(iii) charges for installation of the thing sold, for interest, for finance **and for service, unless such charges are shown separately on the invoice or in the contract with the purchaser,**

(iv) **charges for transportation, unless** the total charges for transportation of the thing sold relate solely to transportation within the Province and are **shown separately on the invoice or in the contract with the purchaser;** [emphasis added]

The **Act** therefore includes services and transportation as part of the sale price which is taxable unless the charges for services are shown separately on the invoice. In this case, during the relevant period, the appellant charged its customers a lump sum contract price for the log home package. One

total amount was shown on the invoice; the total was not broken down into costs of materials and charges for the various services. Accordingly, the total amount of the package was taxable and the Board did not err in so finding.

The appeal is dismissed.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Pugsley, J.A.