

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-269

FEBRUARY TERM, 2004

	} APPEALED FROM:
	}
	} Rutland Superior
Casella Construction, Inc.	} Court
	}
v.	}
	} DOCKET NO. 769-
Department of Taxes	} 12-00 Rdcv
	}
	} Trial Judge: Richard
	} W. Norton

In the above-entitled cause, the Clerk will enter:

The Department of Taxes appeals from the trial court's order determining appellee Casella Construction, Inc.'s tax liability for the purchase of three tracked vehicles. The Department argues that the trial court erroneously gave Casella the benefit of a tax exemption to which it was not entitled, despite the plain language of the applicable statutes, and it therefore erred in vacating the presumptively valid determination of the Vermont Commissioner of Taxes. We agree, and reverse.

Casella purchased three tracked vehicles (bulldozers) in 1996. At the time, tracked vehicles were included within the definition of motor vehicles. See 23 V.S.A. ' 4(21) (1996). Pursuant to chapter 219 of Title 32, the State imposes a tax on the purchase and use of motor vehicles at the time of their purchase, which is payable upon the registration or titling of the vehicle. See 32 V.S.A. ' ' 8905(a), (b), (f). The tax shall not apply to . . . (5) nonregistered motor vehicles [or] (9) motor vehicles on which a state sales or use tax has been paid by the person applying for a registration in Vermont@ 32 V.S.A. ' 8911(5), (9). Further, an owner does not have to register a motor vehicle unless it will be operated on a highway. See 23 V.S.A. ' 301. In 1996, the motor vehicle purchase and use tax was capped at \$750 for non-pleasure vehicles, which included tracked vehicles. See 32 V.S.A. ' 8903(a) (1996).

Also implicated in this decision is the sales tax, which generally applies to the purchase of all tangible personal property, but exempts from taxation motor vehicle purchases and use taxed under chapter 219 of this title. See 32 V.S.A. ' 9741(12); 32 V.S.A. ' ' 9701(7), (15). In 1997, the law was amended to exclude tracked vehicles from the definition of a motor vehicle under 23 V.S.A. ' 4(21) and, as a result, such vehicles became subject only to the sales tax. As of June 1997, the general sales tax on tracked vehicles was capped at \$900. See 32 V.S.A. ' 9741(38).

Casella did not register its bulldozers after purchasing them, nor did it pay the motor vehicle purchase and use tax, or the 5% sales tax. The Department audited Casella and assessed a 5% sales tax on the bulldozers. Casella appealed to the tax commissioner, which upheld the Department's assessment. The commissioner concluded that Casella was not entitled to the motor vehicle exemption. To benefit from the exemption, the commissioner explained, the vehicles would have had to have been taxed under chapter 219 of Title 32. Because Casella's bulldozers were never registered as motor vehicles, nor taxed under that chapter, the commissioner ruled that the exemption did not apply. Consequently, the bulldozers were subject to a 5% sales tax.

Casella appealed this decision to the superior court, which vacated the commissioner's order. The court concluded that when Casella purchased the bulldozers, they were considered motor vehicles and the law provided a motor vehicle

exemption to the sales and use tax statutes. Had Casella registered its vehicles at the time of purchase, the court explained, it would have been liable for only \$750 per vehicle. The 1997 change in the law removed tracked vehicles from the definition of motor vehicles. Consequently, the bulldozers were no longer subject to the motor vehicle purchase and use tax but instead subject to the sales and use tax, which was capped at \$900 for tracked vehicles. A It cannot be ignored,@ the court explained, A that pre-1997 statutes allowed bulldozers to be taxed at \$750 and that after 1997, a \$900 tax was imposed on those self same tracked vehicles. Statutes on the same subject are to be construed together, in pari materia.@ The trial court therefore vacated the commissioner= s finding and found Casella liable for \$900 per vehicle. Pursuant to the Department= s motion to amend the judgment, the court reduced Casella= s sales and use tax liability to \$750 per vehicle, the rate payable to the commissioner of motor vehicles for registered vehicles prior to the 1997 law change. This appeal followed.

We first address Casella= s assertion that we lack jurisdiction over this appeal. Casella maintains that the Department= s notice of appeal was untimely because it was filed with this Court rather than the superior court. Rule 4 provides that if a notice of appeal is mistakenly filed in the Supreme Court, the clerk of the Supreme Court shall note the date on which it was received and transmit it to the clerk of the superior court, and it shall be deemed filed in the superior court on the date so noted. Pursuant to the rule, the notice of appeal was timely filed in the Supreme Court. Casella argues that because the same notice was also filed in the superior court, but a day late, the Department must have known it had an obligation to file there, and the filing in the Supreme Court was not a mistake. We decline to interpret the rule so narrowly. Since an appellant has no obligation to file a copy of its notice of appeal in the Supreme Court, any filing here -- whether or not supplementary to one in the trial court -- is mistaken with the meaning of the rule. The Department filed its notice of appeal with this Court within thirty days of the trial court= s order, and pursuant to V.R.A.P. 4, it is considered timely filed. We therefore have jurisdiction.

The Department argues that the trial court erred in vacating the tax commissioner= s assessment of Casella= s tax liability and giving Casella the benefit of the motor vehicle exemption to the sales and use tax. We agree.

On review, we examine the tax commissioner= s decision using the same standard as that used by the superior court. See Rock v. Dep= t of Taxes, 170 Vt. 1, 5 (1999). Thus, we will not set aside the commissioner= s findings of fact unless they are clearly erroneous. Id. A While conclusions of law are not so protected, we accord deference to the Department= s construction of tax statutes so long as they are being construed rather than reconstructed.@ Id.

When Casella purchased its bulldozers in 1996, they were presumptively subject to a sales and use tax. The sales tax statute in effect in 1996 exempted A [m]otor vehicle purchases and use taxed under chapter 219 of this title@ from the general sales and use tax. 32 V.S.A. ' 9741(12) (1996). Exemptions from taxation are strictly construed, and A no claim of exemption will be allowed unless shown to be within the necessary scope of the statute.@ Id. The taxpayer bears the burden of establishing his entitlement to an exemption. Id. When construing a statute, we presume that words have their plain and ordinary meaning. In re Middlebury College Sales and Use Tax, 137 Vt. 28, 31 (1979).

The tax commissioner concluded that to be entitled to the motor vehicle exemption, Casella needed to demonstrate that it had registered the bulldozers and actually paid the motor vehicle purchase and use tax. The commissioner rejected Casella= s argument that it was entitled to the exemption because it had the option in 1996 of paying the \$750 per vehicle purchase and use tax. As the commissioner explained,

[i]t does not avail the taxpayer that it *could* have registered the vehicles and paid \$750.00 per vehicle in 1996. It did not do so and so it became subject to the uncapped sales tax under chapter 233. By the time that the taxpayer tried to register the vehicles, the law had changed and the [bulldozers] could not be registered and taxed under 219.

The tax commissioner= s determination that the words A taxed under chapter 219@ require an actual payment of taxes under chapter 219 is a reasonable construction of the statute, and it is entitled to deference. See Rock, 170 Vt. at 5. The commissioner= s conclusion is strongly supported by the fact that unregistered motor vehicles are not taxed under chapter 219. See 32 V.S.A. ' 8911(5). In this case, the record shows that Casella did not register its vehicles nor did it pay the motor vehicle purchase and use tax. Thus, the tax commissioner correctly determined that Casella was not entitled to the motor vehicle exemption and instead owed a 5% sales tax on the purchase of the bulldozers. The trial

court erred in concluding that the commissioner's assessment of Casella's tax liability was clearly erroneous, and we therefore reverse.

Reversed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice