



Press Summary

17 May 2023

Commissioners for His Majesty's Revenue and Customs (Appellant) v SSE Generation Ltd (Respondent)

[2023] UKSC 17

On appeal from: [2021] EWCA Civ 105

Justices: Lord Reed (President), Lord Briggs, Lord Hamblen, Lord Leggatt, Lord Stephens

Background to the Appeal

SSE Generation Ltd (“SSE”) claimed capital allowances on expenditure incurred when constructing a hydro-electric power station at Glendoe, Fort Augustus in Scotland. Such allowances may be deducted from income for the purpose of calculating a company’s trading profits subject to corporation tax. Commissioners for His Majesty’s Revenue and Customs (“HMRC”) disputed certain allowances claimed by SSE for tax years 31 March 2006 to 31 March 2012 on the basis that in their view certain relevant assets did not give rise to allowable expenditure under the Capital Allowances Act 2001 (the “Act”).

SSE appealed to the First-tier Tribunal (the “FTT”). The FTT held that SSE was entitled to some of the allowances claimed but upheld HMRC’s view on others. HMRC appealed to the Upper Tribunal (the “UT”), who dismissed the appeal and allowed SSE’s challenge to parts of the FTT’s decision. As a result, the FTT remade the decision largely in SSE’s favour. HMRC appealed to the Court of Appeal (the “CA”). The CA allowed the appeal in relation to certain parts of the UT’s decision, but otherwise dismissed HMRC’s appeal. HMRC now appeals to the Supreme Court and SSE cross-appeals.

The issue in the appeal before the Supreme Court is whether items constructed for the collection and transmission of water to, through and from the hydro-electric power station (the “disputed items”) are a “tunnel” or an “aqueduct” within the meaning of those words as used in section 22 List B of Chapter 3, Part 2 of the Capital Allowances Act 2001. If they are then the expenditure on the disputed items does not qualify for capital allowances. The value of the expenditure on the disputed items is around £200 million.

Judgment

The Supreme Court unanimously dismisses the appeal, holding that the disputed items are neither a “tunnel” nor an “aqueduct” within the meaning of those words as used in section 22 List B of Chapter 3, Part 2 of the Act. Lord Hamblen gives the judgment, with which all the other members of the Court agree.

Reasons for the Judgment

In this case, the CA identified two possible ordinary meanings of both the words “tunnel” and “aqueduct”. Where there are two possible ordinary meanings, it may be appropriate to rely on a thematic connection which explains the grouping of items in a list such as List B. This is an important part of the statutory context [31, 33]

The meaning of “tunnel”

HMRC contend that the ordinary meaning of the word “tunnel” is “any subterranean passage”. While it is correct that this is one ordinary meaning of “tunnel”, another ordinary meaning as given by the Oxford English Dictionary (“OED”) is “a road-way excavated underground”. In deciding which of those meanings was intended, the CA and the tribunals below were correct to consider the context and whether that assisted in identifying the correct meaning. In List B a choice has been made to identify specific structures which are to be excluded from capital allowances in all cases, to group those structures in separate lists and to decide the list to which each structure belongs. It is reasonable to conclude that those grouping choices were made for a reason, most obviously a thematic reason. The theme linking the group in which “tunnel” is included (which comprises “tunnel, bridge, viaduct, aqueduct, embankment or cutting”) is that of structures related to the construction of transportation routes or ways [35]. Thus, a “tunnel” is a subterranean passage through an obstacle for a way (such as a railway, road or canal) to pass through [36].

HMRC observe that the word “tunnel” appears not only in section 22 List B of the Act, but also in section 23 List C. Items contained in List B are excluded from capital allowances, while items contained in List C are exceptions to those exclusions. HMRC contend that the presence of the term “tunnel” in List C saving certain sorts of tunnel from capital allowances disqualification (specifically “underground ducts or tunnels with a primary purpose of carrying utility conduits”) strongly indicates that the use of the term in List B is not limited in meaning [34]. The Court rejects this argument. An underground passageway can have a primary purpose of carrying utility conduits, so there is no contradiction between the meaning given to “tunnel” by the Court and the meaning of the term in List C [38].

The meaning given to “tunnel” by the Court is based on an objectively reasonable contextual inference and is not speculative. The meaning is clear and ‘draws a line in the sand’ in accordance with the Act’s statutory purpose to remove uncertainty as to where the boundary between capital-allowances-qualifying and non-qualifying expenditure lies [29, 34, 39].

The meaning of “aqueduct”

HMRC contend that the ordinary meaning of the word “aqueduct” is a conduit to convey water. While it is correct that this is one ordinary meaning of the word “aqueduct”, another ordinary meaning given by the OED is a structure by which a canal is carried over a river. Other dictionaries give as their first or most common meaning of aqueduct a form of bridge-like structure for carrying water. As Rose LJ observed in the Court of Appeal, a bridge-like

structure for carrying water is what “immediately comes to mind”, an observation that reflects that common meaning.

In List B, “aqueduct” is listed immediately after “bridge, viaduct” and in the context of a theme of structures relating to the construction of transportation routes or ways. In that context, the Court considers that the term refers to a bridge-like structure for carrying water (such as where a canal is carried over a river or valley), which includes but is not limited to carrying a canal. That is its most common meaning and it makes good sense in the context of the statute [43, 45].

If, as HMRC contend, “aqueduct” simply meant a water conduit, it would be very surprising for it to be listed after “bridge, viaduct” and in the same grouping as “tunnel”, “embankment” and “cutting”, as it has nothing in common with those items. It would also render other water conduits specifically included in List B (such as “canal”, “dike” and “drainage ditch”) superfluous [44].

Conclusion

For these reasons, the Court rejects HMRC’s suggested interpretations of both “tunnel” and “aqueduct” and upholds the decision reached by the CA. It is therefore unnecessary for the Court to consider SSE’s alternative case raised by way of cross-appeal that the disputed items fall within List C [47].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)