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Vrontikis Bros, Inc. et al v. Utah State Tax Commission : Brief of Defendant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

DEC 2 - 1958

Clerk, Supreme Court, Utah

VRONTIKIS BROS., INC., a corporation,
NICK VRONTIKIS and PETE VRONTIKIS,
dba VRONTIKIS BROTHERS, a partnership,

Plaintiffs,

Vs.

THE UTAH STATE TAX COMMISSION,

Defendant.

CASE NO. 8962

BRIEF OF DEFENDANT

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Defendant.

CASE NO. 8962

BRIEF OF DEFENDANT

STATEMENT OF FACTS

The facts of this case are the subject of a stipulation of the parties (R. 5). Defendant does not agree with the Statement of Facts set forth in Plaintiffs' brief for the reason that much of it is argumentative. Therefore, Defendant respectfully directs the attention of the Court to the Stipulation of Facts, as set forth in the record.

However, Defendant agrees that it is bound by the statutes enacted by the legislature in administering the Sales Tax Act, and that the proper method of computing sales tax for the purposes of this case is on the basis of 2% of the consideration paid by the purchaser in cash, plus 2% of the fair market value of any articles traded in. Consequently, Defendant does not propose to argue the matters set forth in Points One and Three of Plaintiff's brief.

STATEMENT OF POINTS

1. THE SALES TAX REGULATIONS PROMULGATED BY THE TAX COMMISSION ARE NOT INCONSISTENT WITH THE SALES TAX ACT.

2. THE STATE TAX COMMISSION DID NOT ERR IN RULING THAT THE PROPER METHOD OF COMPUTING SALES TAX IS ON THE BASIS OF "2 PER CENT OF THE CONSIDERATION PAID BY THE PURCHASER IN CASH, PLUS 2 PER CENT OF THE ALLOWANCE FOR THE ARTICLE TRADED IN, REGARDLESS OF WHAT EITHER PARTY DEEMS TO BE THE ACTUAL WORTH OF THE ARTICLE TRADED IN."

3. THE STATE LEGISLATURE IN ESTABLISHING "FAIR MARKET VALUE" AS THE BASIS OF TAXATION OF ARTICLES TAKEN IN EXCHANGE INTENDED TO PROTECT BOTH THE STATE AND THE TAXPAYER FROM INJUSTICE.

ARGUMENT

POINT ONE

THE SALES TAX REGULATIONS PROMULGATED BY THE STATE TAX COMMISSION ARE NOT INCONSISTENT WITH THE SALES TAX ACT.

Section 59-15-4, Utah Code Annotated, 1953 provides in part as follows:

" . . . there is levied and there shall be collected and paid:

(a) A tax upon every retail sale of tangible personal property made within the state of Utah equivalent to two per cent of the purchase price paid or charged, or in the case of retail sales involving the exchange of property, equivalent to two per cent of *the consideration paid or charged, including the fair market value of the property exchanged* at the time and place of the exchange . . ." (Emphasis added.)

This section of the law was enacted in 1933 (see Laws of 1933, Ch. 63, Sec. 4), except that the original enactment specified a different rate of taxation. Except for the change in the rate, the wording of the above quoted part of Section 59-15-4, Utah Code Annotated, 1953 has remained the same ever since its enactment.

Subsequent to the enactment of Section 59-15-4, Utah Code Annotated, 1953, the State Tax Commission promulgated Sales Tax Regulation No. 30, as follows:

“Purchase Price Defined—The term ‘purchase price’ means the price to the consumer and includes not only the amount of money paid but also the value in money of any property of any kind or nature received in exchange.”

Later still, Sales Tax Regulation No. 72, relating specifically to “Trade-Ins,” was promulgated, as follows:

“Trade-ins—‘Retail sale’ or ‘purchase price’ includes not only cash or money received but also the value in money of any property of any kind or nature received in exchange.”

It is not known when the Commission first promulgated these two regulations. However, published copies of the Sales Tax Regulations containing the above quoted portions in exactly the same form as above show that both regulations date back at least as far as November 1, 1937.

Plaintiffs object to the inclusion in these regulations of the words “value in money” as being contrary to the legislative intent with respect to the method of valuing articles traded-in. Even without reference to the familiar rule of statutory construction that an administrative interpretation of statutory words promulgated by regulation which is allowed by the legislature to stand without objection for many years is presumed to announce the legislative intent, it would seem obvious that in order to carry out the legislative directive of including within the sales tax computation 2 per cent of “the fair market value of the

property exchanged” it will be necessary to arrive at some *value expressed in terms of money*.

The legislature has declared that this value should be the “fair market value” of the article traded in, and in the case at bar, in keeping with its general practice, the Commission decided that the market value of each article traded in was the amount agreed upon by the parties to the sale as shown on the sales ticket. (R. 6, Para. 12.) The fact that this value is expressed in terms of money should not be disturbing, since any other expression of value would be meaningless.

In order for the Plaintiffs to prevail, they must show that the *method chosen* by the Commission for arriving at the “value in money” is unreasonable, arbitrary, capricious, or inconsistent with the legislative standard.

In view of the numerous cases cited by Plaintiffs in their brief, which demonstrate that the same method of valuing trade-ins is used by many other states, it would be difficult for them to contend that the decision of the Commission is unreasonable, arbitrary or capricious.

The only question remaining, then, is whether the Commission’s determination that the value of the trade-ins as agreed by the parties to the sale is the fair market value of the article exchanged is inconsistent with the standard set by the legislature. Basically this question involves the meaning of the term “fair market value” as used in Section 59-15-4, Utah Code, Annotated, 1953.

The case of *NORTHERN OIL CO. v. INDUSTRIAL COM’N*, 104 Utah 353, 140 P.2d 329, involved the determin-

ation of the reasonable cash value to be given to some stock under a statute which said:

“The reasonable cash value or remuneration payable in any medium other than cash . . . shall be estimated and determined in accordance with rules prescribed by the [Industrial] Commission.” (Laws of 1939, Ch. 52, Sec. 19(p).)

The Commission found the stock to be worth 10 cents per share, and in its appeal the plaintiff asserted that its stock had no “market or cash value.” The Supreme Court, however, found several criteria of value, one of which was that, “While it was not bought and sold freely upon the open market it was being regularly sold to the public under high pressure promotional methods at ten cents per share.” (*NORTHERN OIL CO. v. INDUSTRIAL COM’N*, supra, 140 2d at 334.)

Later the Court in the same opinion stated at 140 P.2d 334:

“The company was willing to sell its stock at ten cents per share. The highest price a purchaser is willing to pay for a commodity, not being under compulsion to buy, and the lowest price a seller is willing to accept, not being under a compulsion to sell, is certainly evidence of its reasonable cash value. *It is the common method of determining ‘market value.’*” (Emphasis added.)

This is not an isolated definition of the term “market value.” The Supreme Court of Oregon announced a similar rule in the case of *McCALLISTER v. SAPPINGFIELD*, 72 Ore. 422, 144 Pac. 432, 433, as against the argument of one party that the market value was what it would cost to

go out in the market and secure another article of the kind and quality of the one in question. The court said:

“The ‘market value’ of property is the price which the property will bring in a fair market, if reasonable efforts have been made to find a purchaser who will give the highest price for it.”

We need only add the concept of a price “in money” to the above two interpretations of “market value” in order to conform them to the interpretations most often stated by the courts of the term “market value.” Note, for example, the statement of the California Court in the case of *CITY OF NAPA v. NAVONI*, 56 Cal.App.2d, 289, 132 P.2d 566, 577:

“But a given piece of land has only one market value and not a certain market value for one purpose and a different market value for another purpose. This is true because by what has been termed the classic definition, “Market value” is fixed as the ‘highest price *estimated in terms of money* which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it was adapted and for which it was capable.’ ” (Emphasis added.)

The foregoing authorities, when applied to the facts in the case at bar would establish that the money value of the article traded-in as established by the agreement of the parties at the time and place of the sale is the highest price which the purchaser (Vrontikis) would pay. It would also seem to be the lowest price which the seller (Vrontikis’ customer) would be willing to accept for the trade-in, since it could safely be assumed that anyone who thought that the article which they have to trade in had a value

which exceeded the advertised trade-in price would not go to Plaintiffs' establishment to deal. Furthermore, it does not appear that either the Plaintiffs or their customers are under any compulsion to buy or sell at the time they agree on the value of the article traded in. In their brief, Plaintiffs attempt to establish as a fact that they are under some compulsion to buy (which does not appear in the record) by the following statement found on page 16 of their brief:

"This fixed allowance cannot, under the definitions of 'fair market value,' be said to be the item's fair market value, as the purchaser (Vrontikis) of the item cannot reject, but is compelled *by its own advertising*, to accept the item as a trade-in at the agreed price." (Emphasis added)

If this is an attempt to establish some compulsion upon Plaintiffs by way of contract, it is contrary to the established rules of law, for it is well recognized that prices quoted in advertising are invitations to deal, and not contractual offers, particularly where by its terms the advertisement indicates that the value to be given for the article traded in is conditioned upon the purchase of some other article from Plaintiffs. See Corbin on Contracts, Vol. I, Sec. 25; A. L. I., Restatement of Contracts, Vol. I, Sec. 25.

In view of the foregoing authorities, it is respectfully submitted that the Commission was amply justified in determining that the value in money ascribed to the trade-in by the parties to the sale was the fair market value of the article being traded in.

POINT II

THE STATE TAX COMMISSION DID NOT ERR IN RULING THAT THE PROPER METHOD OF COMPUT-

ING SALES TAX IS ON THE BASIS OF "2 PER CENT OF THE CONSIDERATION PAID BY THE PURCHASER IN CASH, PLUS 2 PER CENT OF THE ALLOWANCE FOR THE ARTICLE TRADED IN, REGARDLESS OF WHAT EITHER PARTY DEEMS TO BE THE ACTUAL WORTH OF THE ARTICLE TRADED IN."

Earlier in this brief Defendant agreed with the statement contained in Plaintiff's brief as Point Three that the proper manner of computing sales tax is on the basis of 2 per cent of the consideration paid in cash plus 2 per cent of the fair market value of the article traded in. Defendant agrees with this formula for the reason that such is the wording in the law. However, Defendant asserts that there is no basis here for finding that the term "fair market value" means anything other than the allowance given for the article traded in.

Plaintiffs have quoted language from the case of *HAWLEY v. JOHNSON*, 58 Cal.App.2d 232, 136 P.2d 638, which might seem to indicate a difference between "fair market value" and so-called "agreed value." The Court stated:

"It is to be observed that our statute expressly excludes cash discounts from the tax, but imposes the tax on payments in property 'valued in money.' The parties by bona fide agreement having valued the property in money, under the express terms of the statute have fixed the measure of the tax. To make market value rather than agreed value the measure would create almost insuperable administrative difficulties, since the taxing power would be compelled in every transaction to look behind the agreed value and ascertain the actual market value of the property traded in. In the give and take of the market place the value arrived at by the

free negotiation of the parties may safely be relied upon to furnish a reasonable measure of the value in money of property traded in."

However, this quoted extract is the only place where the court mentions "market value" (except that in restating plaintiff's argument the court indicates that the plaintiff equated the terms "market value" and "appraised value"). This certainly does not amount to a holding that there is a difference between market value and agreed value. It is respectfully submitted that the court actually held only that the term "gross receipts" as found in the California statute included the agreed value of articles traded in, regardless of what their market value might be. The use of market or any other value as the standard would not create any administrative problem, once that value were established. The "insuperable administrative difficulties" spoken of by the court would arise from requiring the Commission to disregard the value put on the article by the "bona fide agreement of the parties" and independently thereof to establish some value for each article traded in to every retailer throughout the state.

The solution proposed by the plaintiffs on page 5 of their brief wherein they assert that the retailers of the state should be charged 2 per cent of the amount for which they subsequently sell articles taken in by them as trade-ins has two principal defects. First, the Utah Sales Tax is a consumer's tax, and the State Tax Commission has no right to impose the obligation to pay any part of the tax upon the retailers of the state. The second principal defect relates to the subsequent disposition of the trade-in by the retailer. From the stipulation of facts on file herein it appears that Plaintiffs could not accurately account for the sales tax on all articles which would be due under such a

scheme. Plaintiffs admit that "in many instances [they] did and do not require the purchaser to surrender the item being traded in nor did or do the petitioners, in all instances, pick up the item traded in." (R. 5, Para. 7) Under Plaintiffs' asserted method the state would receive no sales tax upon such articles, although there is no showing that such articles do not have some market value.

Plaintiffs have further stipulated that they donate "large quantities" or articles traded in to charitable organizations. (R. 6, Para. 8) In their brief, Plaintiffs have assumed that these articles had no market value. This assumption is not supported in the record. In fact, from the record it clearly appears that *due to the limitations of storage space* available for trade-ins and *because of their volume of business* and not because of any lack of market value, it was their practice to donate to charitable institutions all trade-in merchandise which they could not resell within 30 days. (R. 6, Para. 10) Under the method asserted by Plaintiffs the state would receive no tax upon such articles, although there is no showing that they did not have any market value at the time they were traded in to Plaintiffs.

Furthermore, not all retailers of the state follow Plaintiffs' practice of selling or otherwise disposing of articles traded in within 30 days. And it is submitted that even Plaintiffs' 30-day limitation for sales of trade-ins does not satisfy the requirement of Sec. 59-15-4, Utah Code Annotated, 1953 that the tax be paid upon two per cent of the consideration paid "including the fair market value of the property exchanged *at the time and place of the exchange.*" (Emphasis added.)

In view of the undisputed fact that Plaintiffs actually

did allow the amounts shown on the audit deficiencies as the value of merchandise traded in, it is difficult to understand how they can now claim a refund solely upon their assertion, which is unsupported by anything in the record, that the articles which they took as trade-ins were actually worth some other value.

POINT THREE

THE STATE LEGISLATURE IN ESTABLISHING "FAIR MARKET VALUE" AS THE BASIS OF TAXATION OF ARTICLES TAKEN IN EXCHANGE INTENDED TO PROTECT BOTH THE STATE AND THE TAXPAYER FROM INJUSTICE.

The above wording was taken substantially from Plaintiffs' brief because Defendant agrees that such was obviously the legislative intent. Defendant attempted to show under point two herein that the method of computing sales tax asserted by Plaintiffs would not be fair to the state, the retailers, or to the taxpayers if adopted.

Plaintiffs infer in their brief that "if the shoe were on the other foot" and if Plaintiffs were in a position to give less than fair market value for articles traded in the Commission would try to look behind the value fixed by the Plaintiffs. It should be noted that if the Plaintiffs prevail in this appeal, the Commission will be forced to do exactly that.

Plaintiffs find some comfort for their assertion in the case of *HOWARD PORE, INC., v. STATE COMMISSIONER OF REVENUE*, 322 Mich. 49, 33 N.W.2d 657, 4 ALR 2d 1041. In that case the Michigan Commissioner of Rev-

enue issued regulations to the effect that "market value" would be used as the basis of valuation for the article traded in. However, the decision clearly stated as a fact that general economic conditions prevailing at the time compelled purchasers of new automobiles to buy on terms dictated by the retailers, and that it was the general practice of all retailers systematically to undervalue the cars being traded in. Under the circumstances and in order to reach the unreported consideration which otherwise would have evaded taxation the Commissioner of Revenue devised a method designed to force the retailers to ascribe a realistic value to the trade-ins for sales tax purposes.

Should a similar condition prevail in Utah so that the market would no longer be "free and uncontrolled" and the purchasers would be at the mercy of the retailers, then the Utah State Tax Commission might similarly be forced to disregard the values agreed upon by the parties if the Commission could devise some reasonable system for establishing the value which should be ascribed to the trade-in. This should not startle Plaintiffs, since even they define market value as being what a willing buyer would give to a willing seller, *where neither is under any compulsion to deal*.

However, so long as the market remains free and uncontrolled by either buyer or seller the Commission, in the interest of economic administration of the tax laws does not propose to use any value, other than that chosen by the parties. This protects all parties from injustice, since such value was determined by the parties themselves in a bona fide, arms-length transaction into which neither is forced to enter.

CONCLUSION

For the foregoing reasons Defendant respectfully submits that the findings of the Commission should be sustained, and the Plaintiffs' request for a refund of sales tax should be denied.

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