1963

Barrett Investment Company v. State Tax Comm. Of Utah : Plaintiff's Brief

Utah Supreme Court

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A. Pratt Kesler; M. Reed Hunter; Attorneys for Defendant;

IN THE SUPREME COURT

OF THE

STATE OF UTAH

BARRETT INVESTMENT COMPANY,

Plaintiff,

—vs.—

THE STATE TAX COMMISSION OF UTAH,

Defendant.

Case No. 9872

PLAINTIFF'S BRIEF

Certiorari From The Decision of
The State Tax Commission of Utah

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CASES CITED

STATUTES CITED

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STATEMENT OF THE NATURE OF THE CASE

This is an action wherein the defendant, The State Tax Commission of Utah, determined that there was due from the plaintiff a use tax upon the purchase by the plaintiff of certain machinery and equipment, which machinery and equipment constituted the component parts of a ski lift which was erected near Brighton, Utah.

DISPOSITION BEFORE THE TAX COMMISSION

The amount in question is a part of an assessment made by the Auditing Division of The State Tax Commission of Utah. From this assessment, the plaintiff petitioned for a hearing before The State Tax Commission. Upon this hearing, the assessment was vacated in

part, and affirmed in part by the defendant Tax Commission. From that part of the decision of the defendant Tax Commission affirming the assessment, the plaintiff appeals.

RELIEF SOUGHT ON CERTIORARI

The plaintiff seeks to reverse the decision of the defendant Tax Commission in so far as it affirms the assessment made by the Auditing Division, and a determination by this Court that the transaction upon which the use tax is sought to be imposed is not a taxable transaction under the Utah Use Tax Act.

STATEMENT OF FACTS

The facts relative to this appeal have been stipulated by the parties (Record pp. 4 & 5) and are as follows: That the purchases upon which the use tax is sought to be imposed were of certain motors and equipment, which items are the component parts of the Solitude Ski Lift at Brighton, Utah, and that these items were purchased, assembled, and presently constitute the said ski lift. It is further stipulated that no sales or use tax has been paid in the State of Utah upon these purchases, and it is further stipulated that the plaintiff, Barrett Investment Company, has filed sales tax returns and has collected and remitted sales tax on the admissions paid to ride the said Solitude Ski Lift.

POINTS URGED FOR REVERSAL

POINT 1.

THAT THE PURCHASES ARE EXEMPT FROM THE UTAH USE TAX BY REASON OF THE PROVISIONS OF 59-16-4(d), UTAH CODE ANNOTATED 1953.

POINT 2.

THAT THE PURCHASES ARE EXEMPT FROM THE UTAH USE TAX BY REASON OF THE PROVISIONS OF 59-16-4(h), UTAH CODE ANNOTATED 1953.

ARGUMENT

POINT 1.

THAT THE PURCHASES ARE EXEMPT FROM THE UTAH USE TAX BY REASON OF THE PROVISIONS OF 59-16-4(d), UTAH CODE ANNOTATED 1953.

POINT 1.

It is the position of the plaintiff that the relevant statute, reading as follows:

> "59-16-4. *Exemptions.*—The storage, use or other consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this act:
>
> "(d) Property, the gross receipts from the sale, distribution or use of which are now subject to a sale or excise tax under the laws of this state of the United States.",

exempts the purchase of the property comprising the Solitude Ski Lift from imposition of the use tax. The

defendant Tax Commission contends that the receipts of the plaintiff from the use of the ski lift (admissions) are subject to the imposition of the Utah Sales Tax. The plaintiff has conceded to this position, and has accordingly collected sales tax upon the admissions to the lift, has filed sales tax returns upon such use, and has remitted the sales tax to the State Tax Commission. If the defendant Tax Commission would concede that the receipts from the use of the property (admissions) are not subject to sales tax, the plaintiff would in turn agree that the use tax herein sought to be imposed is proper. However, if "property, the gross receipts from the . . . use of which are now subject to a sales . . . tax under the laws of this state . . ." is "specifically exempted from the tax imposed by this act", then it must follow that the position of the defendant Tax Commission is inconsistent. Either the storage, use, or other consumption of the subject property is subject to a use tax, or the receipts from the use of the property are subject to a sales tax, but both taxes cannot be imposed by reason of the statute quoted.

This Court has repeatedly recognized the doctrine that taxing statutes are, in case of doubt as to the intention of the legislature, to be construed strictly against the taxing authority and in favor of those on whom the tax is levied. As a corollary, the Court has recognized the rule that statutes exempting taxpayers from a general taxing statute are construed strictly against those seeking to escape the tax burden. See *Norville v. State Tax*

Commission, 98 Utah 170, 97 Pac. (2d), 937, and the cases therein cited. It would appear that the wording of the subject statute is clear and unambiguous, and exempts from the use tax property the gross receipts from the use of which are subject to a sales tax. This would be consistent with and parallel to the imposition of the sales tax upon retail sales, and the exemption of property purchased for resale. Had this plaintiff purchased skis rather than a ski lift, and sold the skis instead of ski rides, there would be no question but that the purchase of the skis in the first instance by the plaintiff would be exempt from the sales or use tax. In the same manner, the purchase of property, the only use or consumption of which can be through the charging of admissions, should be exempt from the use tax, if those admissions —the receipt from the use of the property—are subject to sales tax.

The case of *Union Portland Cement Co. v. State Tax Commission,* 110 Utah, 135, 170 Pac. (2d), 164, modified 110 Utah 176, 176 Pac. (2d) 879, construed the subsection of the statute here involved as it applied to the purchase of coal outside the State of Utah, which coal was used in the manufacture of cement. The court, in construing the effect of sub-section (d) upon the transaction states at page 145 (Utah):

> "Plaintiff's cause is in no way aided by subsection (d) because the gross receipts from the sale, distribution or use of the coal involved in this case are not shown to be subject to a sale or excise tax, other than the Utah use tax, of any state of the Union."

However, it will be noted that in the instant case it is stipulated that the gross receipts from the use of the property subject of this transaction have been subjected to the Utah Sales Tax.

POINT 2.

THAT THE PURCHASES ARE EXEMPT FROM THE UTAH USE TAX BY REASON OF THE PROVISIONS OF 59-16-4(h), UTAH CODE ANNOTATED 1953.

It is the contention of the plaintiff that the property subject of this transaction is property which entered into and became an ingredient or component part of the property which the plaintiff, engaged in business for profit, compounded for a profitable use. Accordingly, it is contended that the use of this property is specifically exempted from the use tax by the provisions of 59-16-4(h) providing as follows:

> "(h) Property which enters into and becomes an ingredient or component part of the property which a person engaged in the business of manufacturing, compounding for sale, profit or use manufactures or compounds, or the container, label or the shipping thereof."

It will be noted that (Trans. p. 4, Line 26 to p. 5, Line 2) the property subject of the claimed deficiency constitutes the component parts of the Solitude Ski Lift at Brighton; and further (Trans. p. 5, Lines 15 to 18) that it is stipulated that the plaintiff has filed sales tax returns and has remitted sales tax on the admissions paid to ride the

ski lift subject of this proceeding. This Court, in the case of *Union Portland Cement Co. v. State Tax Commission,* heretofore cited, rejected the application of this subsection of the statute upon the consumption of fire brick, iron grinding balls, and coal, which were used and consumed in the manufacture of cement, upon the specific grounds that such consumption and use was incidental to the manufacturing process and that such consumption of machinery occurred in all manufacturing processes. However, the instant case is clearly distinguishable in that the property here involved had no other use or function as purchased and assembled than as a ski lift. Accordingly, the use and consumption by the plaintiff of this property is in no way incidental to the production of the end product, but in fact constitutes, in and of itself, the product which the plaintiff sells to the public, and which product has been and is subjected to the Utah Sales Tax.

CONCLUSION

It is the contention of the plaintiff that the purchases by it which are subject of the claimed deficiency assessment are purchases, the gross receipts from the use of which are subject to the Utah Sales Tax, and which property entered into and became a component part of the property which the plaintiff compounds for sale, profit

and use, to-wit: ski rides, are properly exempt from the Utah Use Tax, and that the finding of the defendat Tax Commission should be reversed.

Respectfully submitted,

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