

1964

American Smelting & Refining Co. v. State Tax Commission of Utah : Defendant's Brief

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *American Smelting & Refining Co. v. State Tax Comm. Of Utah*, No. 10084 (Utah Supreme Court, 1964).
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IN THE SUPREME COURT OF THE STATE OF UTAH

AMERICAN SMELTING &
REFINING COMPANY,

Plaintiff,

—vs—

STATE TAX COMMISSION
OF UTAH,

Defendant.

Case No.
10084

FILED
JUN 1 - 1964

DEFENDANT'S BRIEF

Clerk, Supreme Court, Utah

UPON WRIT OF CERTIORARI TO REVIEW AN ORDER
AND DECISION OF THE STATE TAX COMMISSION
OF UTAH

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Case No.
10084

DEFENDANT'S BRIEF

STATEMENT OF KIND OF CASE

This is an appeal from a decision of the State Tax Commission of Utah. The question presented is whether or not the claim for refund of plaintiff, American Smelting & Refining Company, of a portion of its 1956 Utah franchise tax is barred by the statute of limitations, Section 59-13-43, U.C.A. 1953.

DISPOSITION BEFORE THE TAX COMMISSION

The Tax Commission refused to grant the plaintiff's claim for refund, holding that it was barred by the statute of limitations.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the Commission's decision.

STATEMENT OF FACTS

Plaintiff, American Smelting & Refining Company, is a corporation organized pursuant to the laws of the State of New Jersey, and is qualified to transact business in the State of Utah.

On December 31, 1956 the company requested an extension of time, until October 15, 1957, in which to file its consolidated franchise tax return and pay the tax for the calendar year ending December 31, 1956. The return was due April 15, 1957. On January 7, 1957 the Tax Commission granted the taxpayer an extension of time to October 15, 1957 as requested by the taxpayer to pay the tax. Such extension was for six months as provided under Section 59-13-25(2) U.C.A. 1953. Subsequently, the taxpayer paid the tax as follows: April 10, 1957, \$11,000.00; June 7, 1957, \$11,000.00; September 11, 1957, \$8,000.00; October 14, 1957, \$5,631.44. The total tax due on the company's return filed October 14, 1957 was \$35,631.44.

The company's federal income tax return for 1956 was adjusted by the Internal Revenue Service on September 16, 1960, which, if promptly accounted for on its 1956 Utah franchise tax return, would have permitted a refund from the State Tax Commission to the taxpayer of \$695.30, together with interest thereon at the rate of 6 per cent per

annum. The taxpayer then filed a claim for refund with the State Tax Commission of Utah on the 25th day of November, 1960. The time elapsed between the date of the last payment, made on October 14, 1957, to the date of filing for a refund on November 25, 1960, was three years, one month and ten days.

The taxpayer made no agreement with the U. S. Commissioner of Internal Revenue for an extension of the period for proposing and assessing deficiencies in its Federal Income Tax for the taxable year 1956. (R 27)

The claim for refund was denied by the State Tax Commission after a formal hearing before the Tax Commission on January 9, 1964.

The plaintiff contended that the statute did not begin to run until after that time, or in other words, until December 15, 1957, the last day of the 1957 fourth quarter.

The defendant denied plaintiff's claim, holding that the three year statute of limitation for claiming refund had run from the time the last payment was made, as that was the date the taxpayer had agreed to make its last payment.

ARGUMENT

POINT I

WHERE A TAXPAYER PAYS THE TAX, THE
THREE YEAR STATUTE OF LIMITATION FOR RE-

FUND BEGINS TO RUN FROM THE TIME THE TAX WAS "PAID."

The section in 59-13-43, U.C.A. 1953, dealing with the time limitation for credits and refunds, reads as follows:

59-13-43(2)(a). *"No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed with the tax commission by the taxpayer."* (Emphasis added.)

The section relied on by the Tax Commission to bar plaintiff's claim for refund is Section 2(a) above, "No such refund shall be allowed or made after three years from the time the tax was paid. . ."

Plaintiff's claim for refund was made three years, one month and ten days from the time the last payment was made on the tax.

In the excellent work of Cooley, *Taxation*, Vol. 3, 4th ed., Sec. 1304, p. 2593, Statute of Limitations, it states:

"The time allowed for bringing the action is generally fixed by statute . . . As the cause of action accrues at the time of payment, the statute of limitations begins to run from that time, even though the illegality may not have been known." (Emphasis added.)

Footnote cites *Centennial Eureka Mining Co. v. Juab Co.*, 22 Utah 396, 62 Pac. 1024.

Further, as stated in 84 C.J.S., p. 1298:

“If there are special statutes of limitation applicable to actions for the recovery of taxes paid, and such statutes are valid, the action is barred unless brought within the prescribed time after the cause of action has accrued. . . .”

And, page 2594:

“. . . Except insofar as statutes may otherwise provide, the limitation period generally runs *from the time the taxes are paid*, and is not postponed until the legality of the tax has been judicially determined, or the taxpayer discovers that the assessment, levy and collection were illegal. . . .”
(Emphasis added.)

The *Centennial* case, cited above, states on page 404:

“*When a party pays an unlawful tax under protest, a cause of action . . . at once accrues in favor of such party to recover such tax; the statute of limitations begins to run from the date of such payment. . . .*” (Emphasis added.)

And a follow-up case, citing the *Centennial* case, *supra*, *Sperry & Hutchinson Co. v. Matson et al.*, 64 Utah 214, 228 Pac. 755, is directly in point. In that case the plaintiff company paid a tax on the privilege of dealing in trading stamps between January 1, 1916 and January 1, 1917. The Supreme Court of Utah in *State v. Holtgreve*, 58 Utah 563, 200 Pac. 894, subsequently determined this tax unconstitutional. The plaintiff in that case contended that the statute of limitations did not begin to run when the tax was paid but when the *Holtgreve* case determined the stat-

ute unconstitutional. In reply to this, the court in the *Sperry* case held, on pages 218 and 219:

“We dismiss without comment the contention of the plaintiff that the cause of action did not begin to run until the statute was declared unconstitutional in the Holtgreve case in September, 1921. Plaintiff says it did not know the statute was unconstitutional until it was declared to be so in the Holtgreve case. . . The contention on its face has the appearance of being sham and disingenuous. *In any event, the time in which to commence the action began to run when the money was paid to the officer.*” (Emphasis added.)

The court said further, at p. 220, that “the proposition is so utterly untenable as to be undeserving of extended comment.” Also see *Raleigh v. Salt Lake City*, 17 Utah 130, 53 Pac. 974, and *Neilson v. Sanpete County*, 40 Utah 560, 123 Pac. 334.

POINT II

WHERE A TAXPAYER DOES NOT FILE ITS RETURN OR PAY ITS UTAH FRANCHISE TAX ON TIME, AN EXTENSION MAY BE GRANTED BY THE TAX COMMISSION FOR SIX MONTHS, BUT NOT FOR FOUR QUARTERS, UNDER SECTION 59-13-25(2), U.C.A. 1953.

The plaintiff’s brief in paragraph 3 of its statement of facts misstates the facts and the law in the case. Plaintiff contends it elected to pay the franchise tax in four quarterly installments as provided in Section 59-13-25(1), U.C.A.

1953. The statement is misleading and incorrect. *Plaintiff could not and did not so elect to pay the tax.*

Section 59-13-25(1) permits a taxpayer *who has filed a return by April 15th following the taxable year* to pay his tax in four quarterly installments. The plaintiff did not file a return on that date because it could not. Instead, it requested an extension of time to file the return, which extension was granted by the defendant, pursuant to a different section of the Code, Section 59-13-25(2), U.C.A. 1953.

Section 59-13-25(2) gives the Tax Commission authority to grant an extension of time of payment:

“Extension of Time of Payment.

(2) At the request of the taxpayer, the tax commission may extend the time for payment of the amount determined as the tax by the taxpayer, or any part thereof, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.”

The appellant’s request for an extension is as follows (R. 66):

“We hereby request an extension of time to October 15, 1957 in which to file our Consolidated Franchise Tax Return for the calendar year 1956 covering the American Smelting and Refining Company, Federated Metals Corporation (Pennsylvania) and Lone Star Lead Construction Corporation. This

request for extension is necessary because the information to complete the Return will not be available to enable us to file before the requested extension date.”

The Tax Commission granted this request by form letter dated January 7, 1957, which said letter stated (R.67):

“In compliance with your request, you are hereby granted an extension of time to October 15, 1957 within which to file your corporation franchise tax return and pay any tax due for the taxable year ended December 31, 1956.”

It is obvious from the language of the plaintiff's letter that their return could not be filed on time. And without such a filing, no formal payments could be made. Because the taxpayer in fact paid at four different times, it does not follow that these were quarterly installments. Under the extension, the tax could have been paid in one installment or fifty, but all of it was to have been paid before October 15, 1957. Therefore, the due date of the tax was October 15, 1957 and not at the end of of the 1957 fourth quarter as alleged by the plaintiff.

In fact, the Tax Commission had no statutory authority to grant an extension for the length of time plaintiff claims it was entitled, i.e., four quarters, under Section 59-13-25. Plaintiff by so claiming is attempting to repudiate its own extension agreement. Its 1956 tax and return was due on April 15, 1957. The only way it could avoid a penalty and interest for failure to file on that date was to ob-

tain a courtesy extension, which it did. However, plaintiff could not as a matter of right file at a later date without the extension. Now plaintiff wants the advantage of the extension to avoid the interest and penalty for failure to file on time, but doesn't want the resulting disadvantage which accrues when its refund is denied by the statute of limitations. Therefore, under this reasoning, the plaintiff has an alternative: either the statute of limitations applies and its claim for refund of \$695.00 is denied, or it repudiates its extension agreement and is liable in the amount of \$11,043.86 penalty and interest for failure to file and pay the tax on time. See Sections 59-13-27 and 59-13-30(1)(a).

POINT III

WHERE A TAXPAYER FILES A REPORT OF CHANGE OR CORRECTION OF FEDERAL INCOME TAX AFTER THE UTAH STATUTE OF LIMITATIONS FOR REFUND HAS RUN, SECTION 59-13-40, U.C.A. 1953, PROVIDING FOR A SUSPENSION OF THE STATUTE OF LIMITATIONS IS INAPPLICABLE.

Section 59-13-40, U.C.A. 1953, is totally inapplicable to the instant case. This section in essence provides that a taxpayer whose net income is "changed" or "corrected" by the Commissioner of Internal Revenue can file a report of such change or correction with the State Tax Commission within 90 days therefrom. But if such report is not filed, then the taxpayer is not entitled to the 90-day re-assessment period.

In the instant case, American Smelting cannot claim the statute. The Commissioner of Internal Revenue adjusted its 1956 tax on September 16, 1960, 28 days before the Utah statute of limitations for a refund had run. Then, the taxpayer filed a claim for a refund with defendant on November 25, 1960, *70 days* after the federal government adjusted its tax, *and 42 days after the Utah statute of limitation had run on its claim for refund.*

Therefore, the plaintiff is barred as a matter of law from claiming the advantage of Section 59-13-40, U.C.A. 1953.

CONCLUSION

The American Smelting & Refining Company's claim for refund is barred by the statute of limitations. The statute began to run upon payment by the taxpayer as it did in the *Centennial, Eureka Mining Co. v. Juab Co.*, 22 Utah 396, 62 Pac. 1024, and *Sperry and Hutchinson Co. v. Matson et al.*, 64 Utah 214, 228 Pac. 755 cases, *supra*, and as its claim was not submitted within the three year period, the State Tax Commission is now without the power to grant plaintiff relief.

Respectfully submitted,
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