1967

Union Pacific Railroad Company, A Corporation v. State Tax Commission of Utah : Newly Uncovered Authority

IN THE SUPREME COURT OF THE STATE OF UTAH

UNION PACIFIC RAILROAD COMPANY, a corporation,	:	NEWLY UNCOVERED AUTHORITY
Plaintiff,	:	
vs.	:	Case No. 10710
STATE TAX COMMISSION OF UTAH,	:	
Defendant.	:	

Pursuant to Rule 75 (p)(2) of the Utah Rules of Civil Procedure, the Defendant, State Tax Commission of Utah, hereby directs the Court's attention to the case of St. Louis Refrigerating & Cold Storage Co., v. The United States, 43 Fed. Supp., 476, (Ct. Cl. 1942) cited in Defendant's brief herein but newly uncovered as to matters referred to in the dissenting opinions of the Court

and, therefore, pertinent to any rehearing herein.

In that case, the taxpayer was engaged in the manufacture and sale of ice, the manufacture, distribution and sale of refrigeration, and the refrigeration of its own warehouses in which were stored many kinds of perishable commodities. It was alleged that the taxes were erroneously assessed and collected under Section 616 of the Revenue Act of 1932, the language of which has been conceded to have been before the Utah legislature when Section 59-15-4 UCA 1953 as amended was enacted. The Court defined the issue as "whether Plaintiff's use of electrical energy is commercial consumption as defined in the quoted provision of the Revenue Act." As the entire body of the opinion is pertinent to various issues raised in the majority and dissenting opinions of the Utah Supreme Court in Union Pacific Railroad Co. v. State Tax Commission, _____ Utah _____ 426 Pac. 2d 231, the Court's attention is

directed to the opinion which, in substantial part provides:

"It is earnestly insisted by plaintiff that there is a zone between commerce and industry and that plaintiff's business in the main is within this twilight zone.

"There is no distinction written into the terms of the taxing provisions. The only exception named in the statutes is energy furnished the Government or political subdivisions thereof.

"True, Treasury Regulations 42 recognize certain named activities as neither commercial nor industrial within the meaning of the Act, but such regulations do not name the type of business actively involved in this case as falling between the two classifications. Besides, regulations may not serve to change the provisions of a statute.

"Plaintiff insists that the intention of the Congress, as reflected in the history of the legislation, was to reach only the individual consumers and the small business concerns and not users on a large scale.

"The discussions in the Congress covered a wide range. Many individual statements were made. These are quoted in extenso by both parties with conflicting interpretations. However, the conference report, which was made by a joint conference committee representing both the Senate and the House, and which was the last committee explanation before the final vote was taken, contained the following explanation of the taxing provision which is involved

here:

" 'The House recedes with an amendment substituting a tax of 3 per cent of the price paid for electrical energy for domestic or commercial use (as distinguished from industrial use), to be paid by the purchaser and collected by the vendor, with necessary administrative provisions and an exemption in the case of electrical energy sold to the United States, any State or Territory or political subdivision thereof, or the District of Columbia.'

"If any ambiguity existed and any explanations were needed apart from the language of the statute, this final joint conference committee report makes it clear that it was the intention that the term 'commercial' should have a meaning broader than the restricted sense which plaintiff would have us apply. It explains that the tax applies to commercial as distinguished from industrial use. It then exempts only electrical energy sold to the Government, National or State, or a political subdivision thereof.

"We may add that this seems that the natural construction of the wording of the statute.

"The use of the two terms by way of contrast followed by the reference to political subdivisions as the only named exemption would seem to preclude the intermediate classification which plaintiff attempts to read into the statute.

"It hardly seems necessary to go behind the clear wording of the statute. Certainly it is unnecessary to go behind the joint conference committee report into the maze of discussion and interpretation by the individual Members of the Congress when the statute itself, which is the final product of their labors, is couched in simple language clearly ex-

pressed.

"We think some of the confusion has arisen from the effort on the part of the administrative unit to establish an intermediate field between commerce and industry. This makes the problem more difficult. Since there are no definite calls, the construction of two dividing lines instead of one is made necessary, and the extent of such field, if established, can be measured only by the somewhat varying use of otherwise well-known words.

"In the general understanding commerce and industry cover the entire business field and while it is sometimes difficult to know whether a borderline business falls mainly in the field of commerce or industry it is far less difficult than to attempt to establish shadowy lines. It is far less complicated to follow the generally accepted meaning of the terms which are used in the taxing statute.

"This conclusion is further strengthened by the wording of the Act of June 16, 1933, in which section 616 is reenacted with only one change pertaining to exemptions, namely the exemption of publicly owned electric and power plants. The inclusion of this exemption indicates the exclusion of other similar exemptions. While the Act of 1933 has no application to the period involved in the instant case, the naming of the exemption supports the conclusion that the Congress had no thought of establishing the intermediate business field for which plaintiff contends."

* * *

"The Commissioner of Internal Revenue has a most difficult task in interpreting the numerous taxing statutes and the many statutory changes that

are necessarily made from time to time by the Congress to fit the vase and rapidly changing business structure of the country. But we must construe the language of the Act as we find it.

"It is contended by plaintiff that Congress after the issuance of the Treasury Regulations 42 repeatedly reenacted the tax law without substantial change in this provision, thus confirming the Commissioner's action. The contention loses much of its force in the light of the numerous rulings, decisions, and exceptions that have been made necessary by the complicated and widely varying nature of the many businesses affected. But if this viewpoint is accepted the fact remains that the Commissioner of Internal Revenue, who prepared the regulations, also held that plaintiff's business did not fall within the nontaxable intermediate field. It would be rather illogical to hold that the Government would be bound by the Commissioner's construction limiting the application of the statute as expressed in the regulations, and at the same time disregard the Commissioner's interpretation of those limits.

"Even if the term 'commercial' were construed in the narrower sense for which plaintiff contends, it would not necessarily follow that it would be exempt from the tax. With the single exception of the manufacture of ice, plaintiff's activities are predominantly commercial. Its servicing is commercial. Its business is primarily commercial. It follows the product in the process of distribution. Its activities are an integral part of the current or stream of commerce. Thus, regardless of whether the Commissioner of Internal Revenue properly construed the Act in undertaking by regulation to exempt certain businesses on the

ground that they are neither industrial nor commercial, the plaintiff's business is subject to the tax.

"It follows that plaintiff's petition must be dismissed and it is so ordered."

Respectfully submitted,

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