1983

Institutional Laundry, Inc. v. Utah State Tax Commission : Respondent's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

INSTITUTIONAL LAUNDRY, INC.	)	
	)	
Petitioner/Appellant,	)	
	)	
vs.	)	Case No. 19390
	)	
UTAH STATE TAX COMMISSION,	)	
	)	
Respondent.	)	

BRIEF OF RESPONDENT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
HONORABLE TIMOTHY R. HANSON, PRESIDING

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STATEMENT OF THE NATURE OF THE CASE

The issue in this case is whether petitioner is exempt from the payment of sales tax under Utah sales tax law.

DISPOSITION IN THE LOWER COURT

The district court on cross motions for summary judgment by both parties, granted summary judgment for respondent and thereby affirmed the assessment of sales taxes made by the Utah State Tax Commission.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the decision of the district court affirmed whereby petitioner was found to be liable for payment of the sales tax.

STATEMENT OF FACTS

The respondent, Utah State Tax Commission, generally accepts the petitioner's Statement of Facts with the following additions:

The organizational structure of Institutional Laundry, Inc., during the audit period was:

(a) Institutional Laundry, Inc. was a separate corporation. It was a wholly owned subsidiary of Wasatch Medical Management Services, Inc. (WMMS). WMMS was also a corporation and was used as the management vehicle to own and manage five nursing homes or convalescent centers. The five homes are the Bountiful Convalescent Center, Maytime Manor, Clearfield Convalescent Center, Ben Lomond Convalescent Center and the Clearfield Home Training Center.

WMMS is 100 percent owned by a Mr. and Mrs. McPhie. The nursing homes were operated for profit and Institutional Laundry and WMMS were nonprofit for management purposes. There was a built in cost factor with Medicaid and Medicare patients, that provided a profit. Institutional Laundry was not a provider. WMMS was the provider.

Under 59-15-4(g) a sales tax is charged on laundry and dry cleaning services.

ARGUMENT

POINT I

PETITIONER IS NOT EXEMPT FROM THE PAYMENT OF SALES TAX

Petitioner is a corportion and under § 59-15-4(g), Utah Code Annotated, the sales tax statutes, is required to charge sales tax. Under § 59-15-5 petitioner must remit the tax if they should have collected it. Petitioner is not exempt

from such tax under § 59-15-6 as they are not a religious or charitable institution.

Petitioner makes no claim of exemption under our statutes, but takes the position they should not be taxed for reasons other than those exemptions allowed by statute. Our tax laws do not provide or allow such an interpretation as desired by petitioner. The administrative and legal difficulties encountered by such reasoning of petitioner would place unreasonable burdens upon the Tax Commission.

Petitioner cites Mapo, Inc. v. State Board of Equalization, 53 Cal. App. 3d 245, 125 Cal. Rptr. 727 (1975) as reason to overcome Utah's specific tax liability. The facts and reasoning of that case should provide no encouragement to the petitioner. That case was brought under entirely different statutory language and the appellate court, in stating reasons for ruling contrary to the general rule, stated:

> Productions acts in good faith with the Board, and before implementing the Mapo project it obtained a favorable sales tax ruling from the Board's tax counsel. The Board now contends Productions did not satisfy the provision of the tax ruling which required Productions to exercise day-to-day control over Mapo operations. The Board stresses the fact that WED personnel directed much of Mapo's activities and Mapo craftsmen exercised discretion in implementing the basic designs prepared by WED. We think the Board ignores substance for form. The evidence shows, and the trial court found, that Roger Broggie of WED ran the day-to-day operations of Mapo, even to the details of individual work, as agent for Productions, that Productions controlled all operations of WED, and that WED and Mapo carried out no projects without approval

> from Productions. Productions thus fully complied with the spirit of the Board's contemporaneous interpretation of Section 6006, an interpretation which we are entitled to weigh in construing the statute. (Emphasis added.)

There has surely been no agreement between the petitioner and the Tax Commission which would provide for tax exemption.

As petitioner has no exemptions under the law (religious or charitable) it is liable for sales tax on all its laundry services.

POINT II

SALES TAX ON LAUNDRY SERVICES APPLIES EVEN THOUGH MEDICARE OR MEDICAID PAYS THE BILLS

Ogden Union Railway v. State Tax Commission, 395 P.2d 57 (1964) specifically addresses the liability of a subsidiary to pay sales tax even though all of its work is done on a nonprofit basis for its parent company.

The applicable sales tax statutes and facts differ in Ogden Railway and the present case but certain pronouncements of the court in Ogden Railway are important and certainly apply to laundry services as well as they do to the facts of the Railway case:

> Passage of title and delivery to the user and consumer are the important requisites of the Sales Tax Act, not whether one is a wholesaler or a retailer. Only those categories of sales specifically exempted by the Act are not taxed.

* * *

> Other courts have addressed themselves to the problem of profit motivation and have found it sufficient that the transactions confer or are intended to confer a benefit or advantage to the parties involved. That actual profit is made is immaterial. Trico Electric Cooperative v. State Tax Commission, 79 Ariz. 293, 288 P.2d 782 (1955). We think the reasoning of these cases that profit motivation is unimportant, and that all that is required by the statute is that title to tangible personal property pass to the consumer or user within the state is sound and applicable to our statute. (Emphasis added.)

There is no exemption under our law even though the bills are paid by Medicare or Medicaid. The Laundry was not a provider to Medicare or Medicaid. Even though laundry done by petitioner was utilized by such patients the laundry was done for WMMS. WMMS was reimbursed for such expenses at the lower of 1) actual cost or 2) the going rate for such services in the industry. The reimbursement was not on a nonprofit basis but included a built in profit. Such reimbursable costs included a fair return on equity and depreciation on building and other property. (Since the audit period of this case medicare and medicaid payments are made on a flat rate basis.)

Ogden Railway (supra) upholds the sales tax liability of a so-called nonprofit subsidiary. The references in that case to Valier Coal Co. v. Dept. of Res. (Illinois) 143 N.E.2d 35, did not, in any way, enlarge the tax exemptions of our sales tax law.

Unlike the facts of the instant case, Valier Coal stood for the narrow ruling that the coal company was not engaged in the business of selling tangible personal property at retail as contemplated by the Retailers' Occupation Tax Act of Illinois. The coal company was forbidden by the Illinois Public Utilities Commission from selling or supplying coal to the general commercial trade.

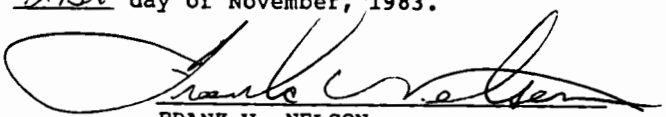
In Valier Coal the company did not come under the taxing act. In the instant case petitioner is specifically under our sales tax act and they do not qualify for an exemption.

Good taxation practices demand uniformity, consistency and reliability. In the recent cases of In the Matter of Loyal Order of Moose v. County Board of Equalization, No. 17573, filed Oct. 28, 1982, and Salt Lake County v. Laborers Local 295 Building Association, No. 17102, filed Feb. 3, 1983, the Supreme Court emphasized the "general rule is that the language of the exemption should be strictly construed." In those two cases the court was specifically dealing with tax exemptions on real property. The conclusions should be the same when applied to sales tax law.

CONCLUSION

There is no exemption under Utah Code Ann. § 59-15-6, supra, which allows an exemption on such activities as performed by petitioner.

DATED this 21st day of November, 1983.



FRANK V. NELSON
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify I mailed a true and exact copy of the foregoing Brief of Respondent, first-class, postage prepaid to M. Stephen Coontz, P.C., 1650 Park Avenue, Suite 206, P.O. Box 1918, Park City, UT 84060.

DATED this 21st day of November, 1983.

Vicki L. Walker