COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT

McNamara v. Stauffer Chemical Co.; City of Baton Rouge and Parish of East Baton Rouge, et al. v. Stauffer Chemical Co.

506 So. 2d 1252 (1st Cir. 1987) · No. Nos. 86 CA 0822, 86 CA 0823 · Decided April 14, 1987

SUMMARY

The Louisiana Court of Appeal, First Circuit, held that Stauffer Chemical Company's process of regenerating customers' spent sulfuric acid constituted a taxable repair service under Louisiana's sales-tax statute and applicable local ordinances. The court also rejected application of the further-processing exclusion to sulfuric acid used to transport oleum, upheld a $50,000 attorney-fee award, and affirmed the trial court's judgments. A dissent argued that treating the chemical regeneration process as a repair impermissibly expanded the taxing statute.

CASE DETAILS

COURT	Court of Appeal of Louisiana, First Circuit
WRITING FOR THE COURT	John S. Covington; Savoie; Crain
JURISDICTION	Louisiana
DECIDED	April 14, 1987
DOCKET	Nos. 86 CA 0822, 86 CA 0823
DISPOSITION	affirmed
PROCEDURAL POSTURE	Stauffer Chemical Company suspensively appealed judgments imposing state and local sales taxes and interest on its sulfuric-acid regeneration services. The appeal also addressed attorney fees following a Louisiana Supreme Court remand concerning the constitutionality and reasonableness of the fee provisions.
STANDARD OF REVIEW	The court reviewed the attorney-fee determination under the manifest-error or clearly-wrong standard. Statutory interpretation and taxability were reviewed by applying the governing statutory language and principles of construction.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Stauffer Chemical Company v. Shirley McNamara, Secretary of the Department of Revenue and Taxation, State of Louisiana, City of

Baton Rouge, Parish of East Baton Rouge, East Baton Rouge Parish School Board

TOPICS

sales and use tax | statutory interpretation | state and local tax | municipal law | commercial litigation

PRACTICE AREAS

taxation | state and local taxation | sales and use tax | municipal law | commercial litigation

QUESTIONS PRESENTED

1. Whether Stauffer's regeneration of spent sulfuric acid constituted a taxable repair service under LSA-R.S. 47:301(14)(g) and the corresponding local ordinances.
2. Whether the customers' sulfuric acid was tangible personal property subject to the repair-service tax.
3. Whether the reprocessing or further-processing exclusion in LSA-R.S. 47:301(10) applied to the oleum or fuming sulfuric acid transactions.
4. Whether the $50,000 attorney-fee award was excessive or unreasonable under LSA-R.S. 47:1512 and the corresponding local ordinance.

HOLDINGS

1. Stauffer's restoration of spent sulfuric acid to a usable condition constituted the furnishing of repairs to tangible personal property and was taxable as a service under LSA-R.S. 47:301(14)(g) and the corresponding local ordinances.
2. The sulfuric acid was tangible personal property because it was corporeal movable property under Louisiana law.
3. The reprocessing or further-processing exclusion did not apply because the restored sulfuric acid did not become part of the customers' final products.
4. The $50,000 attorney-fee award was reasonable and was not manifestly erroneous or clearly wrong.

KEY QUOTATIONS

> *“Only those services specifically itemized under the provisions of R.S. 47:301(14)(a) through (g) are taxable.”* (1255)

> *“It would be difficult, based upon the above well accepted and universally available definitions of the word "repair", and the testimony adduced at trial by witnesses of both parties, to conclude other than the restoration of spent sulfuric acid by Stauffer comes well within common usage of the word "repair" and its accepted meaning and understanding.”* (1257)

> *“We find defendant's argument urging the oleum exception without merit since the restored sulfuric acid does not form any part of the end product of Stauffer's customers.”* (1259)

FACTUAL BACKGROUND

Stauffer Chemical Company regenerated spent sulfuric acid returned by industrial customers after the acid had become diluted and contaminated. The process removed impurities and water, chemically reduced the material to sulfur dioxide, and then reconstituted it into usable sulfuric acid; customers paid sales tax on newly added acid but not on the regeneration-service charge. The State and local taxing authorities sought sales taxes and interest on the service charges, asserting that the process was a taxable repair of tangible personal property. In some transactions involving oleum, the restored sulfuric acid served as a transporter and did not become part of the customers' final products.

PROCEDURAL HISTORY

The State sued Stauffer for sales taxes and interest for tax years 1973 through 1975, and the City-Parish later filed a tax rule for local sales taxes, interest, penalties, and attorney fees for 1976 through 1984. The cases were consolidated for trial. The trial court found the regeneration process taxable, entered judgment for the State and City-Parish, denied penalties, awarded $50,000 in attorney fees, and found the statutory attorney-fee provisions unconstitutional. The Louisiana Supreme Court later upheld the constitutionality of the fee provisions and remanded for review of whether the fees were excessive or unreasonable. The court of appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Baton Rouge v. Stauffer Chemical Co., 500 So. 2d 397 (La. 1987)
- Graeme Spring and Brake Service v. De Felice, 98 So. 2d 314 (La. App. 1957)
- Exxon Corp. v. Traigle, 353 So. 2d 314 (La. App. 1st Cir. 1977), writ denied, 354 So. 2d 1385 (La. 1978)
- St. John the Baptist Parish School Board v. Marbury-Pattilo Construction Co., 254 So. 2d 607 (La. 1971)
- American Sign and Indicator Corp. v. City of Lake Charles, 320 So. 2d 234 (La. App. 3d Cir. 1975)
- Traigle v. PPG Industries, Inc., 332 So. 2d 777 (La. 1976)
- McNamara v. Oilfield Construction Co., Inc., 417 So. 2d 1311 (La. App. 3d Cir. 1982), writ denied, 422 So. 2d 157 (La. 1982)
- Arceneaux v. Domingue, 365 So. 2d 1330 (La. 1978)
- Hibernia National Bank v. Louisiana Tax Commission, 196 So. 15 (La. 1940)
- South Central Bell Telephone Co. v. Traigle, 357 So. 2d 610 (La. App. 1st Cir. 1978), rev'd on other grounds, 367 So. 2d 1143 (La. 1978)