SUPREME COURT OF LOUISIANA

Mallard Bay Drilling, Inc. v. Kennedy

914 So. 2d 533 (La. 2005) · No. 2004-C-1089 · Decided June 29, 2005

SUMMARY

The Supreme Court of Louisiana held that Act No. 40 of 2002, which purported to clarify the meaning of a sales-tax exemption after a prior judicial interpretation, could apply only prospectively because retroactive application violated separation-of-powers principles. The court further held that Mallard Bay Drilling was not entitled to the exemption for diesel fuel used by its drilling barges, and that the taxes did not unconstitutionally burden interstate commerce.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Kimball, Justice; Johnson, Justice; Weimer, Justice
JURISDICTION	Louisiana
DECIDED	June 29, 2005
DOCKET	2004-C-1089
DISPOSITION	reversed
PROCEDURAL POSTURE	The Louisiana Department of Revenue sought review of a court of appeal judgment affirming a district court judgment that awarded Mallard Bay a refund of sales taxes paid on diesel fuel used in drilling operations. The Louisiana Supreme Court granted certiorari and reversed.
STANDARD OF REVIEW	The Board of Tax Appeals' factual findings are reviewed for manifest error. Statutory interpretation and constitutional separation-of-powers issues are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John Neely Kennedy, Secretary of Department of Revenue, State of Louisiana v. Mallard Bay Drilling, Inc.

TOPICS

sales and use tax · tax refunds · statutory interpretation · separation of powers · commerce clause

PRACTICE AREAS

state and local tax | sales and use tax | constitutional law | admiralty

QUESTIONS PRESENTED

1. Whether Act No. 40 of 2002, which purported to clarify La. R.S. 47:305.1 and apply retroactively, could constitutionally be applied to this pending litigation.
2. Whether Mallard Bay's drilling barges qualified as ships or vessels under La. R.S. 47:305.1(B) and therefore qualified for the sales-tax exemption.
3. Whether La. R.S. 47:305(E) prohibited sales taxation of diesel fuel sold, delivered, and consumed in Louisiana.
4. Whether the sales tax on the diesel fuel violated the Commerce Clause of the United States Constitution.

HOLDINGS

1. Act No. 40 could not be applied retroactively to this pending case because the legislature's attempt to abrogate the Supreme Court's prior interpretation of La. R.S. 47:305.1 improperly exercised the judicial function and violated separation-of-powers principles.
2. Mallard Bay was not entitled to the exemption because its drilling barges, which lacked their own motive power and were towed from location to location, were barges rather than ships or vessels for purposes of La. R.S. 47:305.1(B).
3. La. R.S. 47:305(E) did not prohibit taxation of the diesel fuel because the fuel was sold, delivered, and consumed in Louisiana.
4. The sales tax on diesel fuel sold, delivered, and consumed in Louisiana did not violate the Commerce Clause.

KEY QUOTATIONS

> *"Under our system of government, it is emphatically the province and duty of the judicial department to say what the law is."* (544)

> *"Statutory construction and interpretation of legislative acts is solely a matter within the province of the judicial branch."* (545)

> *"We therefore conclude that for purposes of the tax exemptions provided in La. R.S. 47:305.1, at least prior to the effective date of Act 40, a craft that has no motive power of its own and is required to be moved from place to place by another craft is more akin to a "barge" than a "vessel.""* (549)

FACTUAL BACKGROUND

Mallard Bay Drilling operated drilling barges along the Gulf Coast. From January 1, 1993, through December 31, 1995, it purchased diesel fuel that was delivered to and consumed by its drilling barges during drilling operations in Louisiana. Mallard Bay paid sales taxes on the fuel and sought a refund, asserting a statutory exemption for materials and supplies purchased by owners or operators of ships or vessels engaged exclusively in foreign or interstate coastwise commerce and asserting that the tax burdened interstate commerce.

PROCEDURAL HISTORY

The Department of Revenue denied Mallard Bay's claim for a $238,442.08 refund of sales taxes paid on diesel fuel purchased from 1993 through 1995. The Board of Tax Appeals denied Mallard Bay's petition for redetermination. The district court reversed and awarded the refund, and the court of appeal affirmed. The Supreme Court of Louisiana reversed the court of appeal and reinstated the denial of the refund.

DISPOSITION

reversed

CASES CITED

- Archer Daniels Midland Co. v. Parish School Bd. of Parish of St. Charles, 802 So. 2d 1270 (La. 2001)
- Unwired Telecom Corp. v. Parish of Calcasieu, 903 So. 2d 392 (La. 2005)
- Vallo v. Gayle Oil Co., Inc., 646 So. 2d 859 (La. 1994)
- Mosing v. Domas, 830 So. 2d 967 (La. 2002)
- Board of Commissioners of Orleans Levee District v. Department of Natural Resources, 496 So. 2d 281 (La. 1986)
- St. Paul Fire & Marine Insurance Co. v. Smith, 609 So. 2d 809 (La. 1992)
- Bourgeois v. A.P. Green Industries, Inc., 783 So. 2d 1251 (La. 2001)
- Cole v. Celotex Corp., 599 So. 2d 1058 (La. 1992)
- Showboat Star Partnership v. Slaughter, 789 So. 2d 554 (La. 2001)
- McNamara v. Central Marine Service, Inc., 507 So. 2d 207 (La. 1987)
- ABL Management, Inc. v. Board of Supervisors of Southern University, 773 So. 2d 131 (La. 2000)
- Orgeron v. Avondale Shipyards, Inc., 561 So. 2d 38 (La. 1990)
- X-L Finance Co. v. Bonvillion, 244 So. 2d 826 (La. 1971)
- Stewart v. Dutra Construction Co., 543 U.S. 481 (2005)
- Hall v. Brookshire Brothers, Ltd., 848 So. 2d 559 (La. 2003)
- Collector of Revenue v. Olvey, 117 So. 2d 563 (La. 1959)
- Columbia Gulf Transmission Co. v. Broussard, 653 So. 2d 522 (La. 1995)
- Sales Tax District No. 1 of Lafourche Parish v. Express Boat Co., Inc., 500 So. 2d 364 (La. 1987)
- Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)
- Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175 (1995)
- International Harvester Co. v. Indiana, 322 U.S. 340 (1944)
- Indiana v. Wood Preserving Corp., 313 U.S. 62 (1941)
- Maryland v. Louisiana, 451 U.S. 725 (1981)

- St. Pierre's Fabrication & Welding, Inc. v. McNamara, 495 So. 2d 1295 (La. 1986)

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