SUPREME COURT OF VIRGINIA

LZM, Inc. v. Va. Dep't of Taxation, 269 Va. 105

606 S.E.2d 797 (2005) · No. Record No. 040779 · Decided January 14, 2005

SUMMARY

The Supreme Court of Virginia held that the true object test applies to transactions involving both the lease of tangible personal property and related services. It concluded that portable-toilet pumping services were inseparable from the toilet rentals and therefore taxable, and that the maintenance contract exemption did not apply. The court affirmed summary judgment for the Virginia Department of Taxation.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Agee, Justice
JURISDICTION	Virginia
DECIDED	January 14, 2005
DOCKET	Record No. 040779
DISPOSITION	affirmed
PROCEDURAL POSTURE	LZM paid a sales-tax deficiency assessment under protest and filed a bill of complaint seeking recovery. The trial court denied LZM's motion for summary judgment and granted summary judgment to the Department. The Supreme Court of Virginia affirmed.
STANDARD OF REVIEW	The Department's tax assessment is prima facie correct, and the taxpayer bears the burden of showing manifest error or total disregard of controlling evidence. The Department's interpretation of tax statutes receives great weight, and the assessment will not be overturned unless contrary to law, an abuse of discretion, or arbitrary, capricious, or unreasonable. Summary judgment is proper when the material facts are established and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion and binding precedent in Virginia.
PARTIES	LZM, Inc. v. Virginia Department of Taxation

TOPICS

sales and use tax · tax audits · tax deficiency · statutory interpretation · administrative law

PRACTICE AREAS

state and local taxation · sales and use tax · administrative law · appellate procedure

QUESTIONS PRESENTED

1. Whether Virginia's true-object test applies to a transaction involving both the lease of tangible personal property and related services.
2. Whether the pumping services were separate and distinct from the portable-toilet leases or instead formed part of the taxable true object of the transaction.
3. Whether the statutory maintenance-contract exemption applied to the portable-toilet pumping services.
4. Whether alleged factual misstatements by the trial court required reversal.

HOLDINGS

1. The true-object test applies to transactions combining a lease of tangible personal property with services because Code § 58.1-602 defines a sale to include a lease or rental.
2. The pumping services were inseparable from the portable-toilet rentals and were taxable as part of the transaction's true object.
3. The maintenance-contract exemption did not apply to LZM's portable-toilet pumping services.
4. The trial court's factual misstatements did not require reversal because they did not affect the protested amount or the court's true-object analysis.

KEY QUOTATIONS

> *"If the object of the transaction is to secure a service and the tangible personal property which is transferred to the customer is not critical to the transaction, then the transaction may constitute an exempt service. However, if the object of the transaction is to secure the property which it produces, then the entire charge, including the charge for any services provided, is taxable."* (269 Va. at 109, 606 S.E.2d at 800)

> *"Otherwise, a taxpayer could create its own tax exemption merely by altering the printing of its invoices."* (269 Va. at 110, 606 S.E.2d at 801)

> *"The maintenance contract exemption contemplates services in addition to those necessary to the item's immediate function."* (269 Va. at 112, 606 S.E.2d at 802)

FACTUAL BACKGROUND

LZM leased portable toilets and offered pumping services to customers who rented its toilets. The lease and pumping charges were separately stated on a single invoice, and customers were not required to purchase the pumping service, although the pumping service was offered only in connection with LZM toilet rentals. After an audit, the Department assessed sales tax on the pumping charges for the period October 1, 1996, through September 30, 1999; LZM paid the assessment under protest and sought a refund.

PROCEDURAL HISTORY

The Department audited LZM for the period from October 1, 1996, through September 30, 1999, and assessed sales tax on charges for pumping portable toilets rented by LZM. After unsuccessfully challenging the assessment administratively, LZM paid the assessment and interest under protest and filed suit. Following an evidentiary hearing, stipulation of facts, and cross-motions for summary judgment, the trial court ruled for the Department; the Supreme Court awarded LZM an appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Department of Taxation v. Delta Air Lines, Inc., 257 Va. 419, 513 S.E.2d 130 (1999)
- General Motors Corp. v. Department of Taxation, 268 Va. 289, 602 S.E.2d 123 (2004)
- Chesapeake Hosp. Auth. v. Commonwealth, 262 Va. 551, 554 S.E.2d 55 (2001)
- County of Mecklenburg v. Carter, 248 Va. 522, 449 S.E.2d 810 (1994)
- Department of Taxation v. Lucky Stores, 217 Va. 121, 225 S.E.2d 870 (1976)
- Department of Taxation v. Wellmore Coal, 228 Va. 149, 320 S.E.2d 509 (1984)
- DKM Richmond Assocs. v. City of Richmond, 249 Va. 401, 457 S.E.2d 76 (1995)
- WTAR Radio-TV v. Commonwealth, 217 Va. 877, 234 S.E.2d 245 (1977)
- Ainslie v. Inman, 265 Va. 347, 577 S.E.2d 246 (2003)
- Industrial Dev. Auth. v. Bd. of Supervisors, 263 Va. 349, 559 S.E.2d 621 (2002)
- WTAR Radio-TV v. Commonwealth, 217 Va. 877, 234 S.E.2d 245 (1977)
- Strickland v. Sperry Rand Corp., 248 Ga. 535, 285 S.E.2d 1 (1981)