COURT OF APPEALS OF MARYLAND

Baltimore Foundry & Machinery Corp. v. Comptroller, 211 Md. 316

127 A.2d 368 (1956) · No. No. 28, October Term, 1956 · Decided October 28, 2001

SUMMARY

The Maryland Court of Appeals considered whether a foundry owed sales tax on patterns purchased for resale to customers and also used in manufacturing steel castings. The court held that the patterns fell within the statutory exclusion for property purchased for resale, notwithstanding the foundry's ancillary purpose of using them in production. The judgment was reversed and the case remanded for a refund.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Henderson, J.; Brune, C.J.; Collins, J.; Hammond, J.; Prescott, J.
JURISDICTION	Maryland
DECIDED	October 28, 2001
DOCKET	No. 28, October Term, 1956
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a judgment of the Baltimore City Court affirming the Comptroller's denial of the appellant's claim for a refund of sales tax paid under protest.
STANDARD OF REVIEW	De novo review of the legal question concerning the construction and application of the Maryland retail-sales-tax statute; the material facts were undisputed.
PRECEDENTIAL VALUE	Published Maryland appellate opinion; precedential.
PARTIES	Baltimore Foundry & Machinery Corporation v. Comptroller

TOPICS

sales and use tax · tax refunds · statutory interpretation · state and local tax · administrative law

PRACTICE AREAS

sales and use tax · state and local tax · tax refunds · statutory interpretation · administrative law

QUESTIONS PRESENTED

1. Whether patterns purchased by the foundry for profitable resale to its customers were excluded from the statutory definition of a retail sale even though the foundry also used the patterns to manufacture castings.
2. Whether the patterns were taxable because title did not pass to the customers in every instance before the patterns were used in production.

HOLDINGS

1. A purchaser's use of property to facilitate manufacturing does not defeat the statutory exclusion from retail sales taxation when the purchaser had a definite, contemporaneous purpose and commitment to resell the property in its original form at a real and profitable resale price.
2. The inability to establish that title passed before production began in every instance was not controlling where the purpose to resell was manifested and a resale price was quoted contemporaneously with each pattern order.

KEY QUOTATIONS

> *"Sales in the categories mentioned are simply not within the scope of the taxing statute."* (320)

> *"The purpose to resell was manifested and a resale price quoted in every instance contemporaneous with the placing of the order for the patterns."* (322)

> *"Construing the statute in a light most favorable to the taxpayer, and in the light of its manifest purpose to limit the tax to retail sales and relieve the wholesalers and manufacturers, we think the appellant has made out a case for exclusion from the tax sought to be imposed and is entitled to refund."* (322)

FACTUAL BACKGROUND

Baltimore Foundry purchased patterns used to form sand molds for steel castings. It quoted each customer a separate, profitable resale price for the pattern and billed the pattern separately, although the patterns were sometimes used in production before the supplier billed the foundry or before title passed. The foundry had a definite purpose and commitment to resell each pattern to its customer, and it collected tax on the resale price of both the pattern and the finished product.

PROCEDURAL HISTORY

The Comptroller denied Baltimore Foundry's refund claim concerning sales tax assessed on patterns purchased from pattern makers. The Baltimore City Court affirmed the denial. The Court of Appeals of Maryland reversed and remanded.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

The judgment was reversed, with costs, and the case was remanded for further proceedings consistent with the entitlement to a refund.

CASES CITED

- Comptroller v. Rockhill, Inc., 205 Md. 226, 234
- Comp. of Treas. v. American Can Co., 208 Md. 203, 208
- Kirk v. Johnson, 99 P.2d 279 (Cal. App.)
- Jacobs v. Joseph, 126 N.Y.S.2d 274
- Comptroller v. Aerial Products, 210 Md. 627, 640
- United Aircraft Corp. v. O'Connor, 107 A.2d 398 (Conn.)
- Avco Manufacturing Corporation v. Connelly, 113 A.2d 364 (Conn.)
- District of Columbia v. Seven-Up Washington, Inc., 214 F.2d 197, cert. denied, 347 U.S. 989
- State v. Reynolds Metals Company, 83 So. 2d 709, 711 (Ala.)
- American Molasses Co. of New York v. McGoldrick, 22 N.E.2d 369 (N.Y.)
- Evans v. Memphis Dairy Exchange, 250 S.W.2d 547 (Tenn.)
- Consolidated Paper Co. v. Nims, 10 N.W.2d 833 (Mich.)