SUPREME COURT OF LOUISIANA

F. Miller & Sons, Inc. and Lake Charles Harbor & Terminal District v. Calcasieu Parish School Board, Rufus Fruge, Jr., as Director of Calcasieu Parish Sales & Use Tax Department, et al.

838 So. 2d 1269 (La. 2003) · No. 2002-C-1680 · Decided February 25, 2003

SUMMARY

The Louisiana Supreme Court held that F. Miller & Sons, Inc. acted as the purchasing agent of the tax-exempt Lake Charles Harbor & Terminal District when acquiring materials for a public construction project. Accordingly, the purchases were exempt from local sales and use taxes under La. R.S. 47:301(8)(c), and Miller was not liable for the taxes assessed by the Calcasieu Parish School Board. The court affirmed the court of appeal's judgment.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Victory, J.
JURISDICTION	Louisiana
DECIDED	February 25, 2003
DOCKET	2002-C-1680
DISPOSITION	affirmed
PROCEDURAL POSTURE	The School Board appealed from a trial-court judgment granting Miller and the Port's cross-motion for summary judgment and holding that Miller acted as the Port's agent when purchasing materials for a public construction project. The Louisiana Supreme Court granted the School Board's writ application and affirmed the court of appeal.
STANDARD OF REVIEW	The existence of an agency relationship is a factual finding reviewed for clear error.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; binding precedent in Louisiana.
PARTIES	Calcasieu Parish School Board, Rufus Fruge, Jr., as Director of Calcasieu Parish Sales & Use Tax Department v. F. Miller & Sons, Inc., Lake Charles Harbor & Terminal District

TOPICS

sales and use tax · government contracts · construction law · municipal law · statutory interpretation

PRACTICE AREAS

state and local taxation · government contracts · construction law · agency and mandate · statutory interpretation

QUESTIONS PRESENTED

1. Whether the Port validly appointed Miller as its agent for purchasing materials and equipment used in the public construction project.
2. Whether purchases made by Miller as the Port's agent qualified for the governmental sales and use tax exemption under La. R.S. 47:301(8)(c).

HOLDINGS

1. The Port and Miller entered into a valid agency or mandate agreement through the contract's supplementary condition SC 6.15, which expressly authorized Miller to purchase materials and supplies on the Port's behalf.
2. Miller was not liable for local sales and use taxes on qualifying materials purchased as the Port's agent because the Port is a tax-exempt political subdivision under La. R.S. 47:301(8)(c).

KEY QUOTATIONS

> *"After reviewing the record and the applicable law, we affirm the judgment of the court of appeal and hold that Miller was acting as agent for the Port, a tax-exempt governmental entity under La. R.S. 47:301(8)(c), when it made the purchases at issue in this case and therefore is not liable to the Calcasieu Parish School Board for sales and use taxes."* (1270)

> *"Thus, applying the law as stated in Bill Roberts to the facts of this case, if Miller can prove that it was the Port's agent for purchasing supplies and equipment used on this public works Project, then it will be exempt from local sales taxes under La. R.S. 47:301(8)."* (1274)

> *"Therefore, we find that Miller, as agent for a tax-exempt governmental agency, is not liable to the School Board for the payment of local sales and use taxes."* (1278)

FACTUAL BACKGROUND

The Lake Charles Harbor & Terminal District contracted with F. Miller & Sons to renovate and repair a dock at its deepwater port. The contract expressly appointed Miller as the Port's agent for purchasing materials and equipment permanently incorporated into the project and directed that sales taxes not be included in the bid. Miller purchased project materials from vendors, provided documentation of the Port's tax-exempt status, and did not pay sales tax on those purchases. The Calcasieu Parish School Board later assessed Miller more than $100,000 in sales tax, interest, and penalties.

PROCEDURAL HISTORY

The School Board conducted a sales-tax audit and assessed Miller sales tax, interest, and penalties on purchases made for the Port's construction project. The Port paid the assessments under protest and sued for a refund. The trial court granted summary judgment for Miller and the Port, and the Third Circuit affirmed. The Supreme Court of Louisiana granted review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Bill Roberts, Inc. v. McNamara, 539 So. 2d 1226 (La. 1989)
- Claiborne Sales Co. v. Collector of Revenue, 233 La. 1061, 99 So. 2d 345 (1957)
- State v. J. Watts Kearny & Sons, 181 La. 554, 160 So. 77 (1934)
- Boulos v. Morrison, 503 So. 2d 1, 3 (La. 1987)
- F. Miller & Sons, Inc. v. Calcasieu Parish School Board, 817 So. 2d 1261 (La. App. 3 Cir. 2002)
