SUPREME COURT OF KANSAS

In re Appeal of Sprint Communications Co., L.P., 278 Kan. 690

101 P.3d 1239 (2004) · No. Nos. 90,663, 90,664, 90,665, 90,666, 90,667 · Decided December 17, 2004

SUMMARY

The Kansas Supreme Court reviewed consolidated appeals concerning the denial of sales and use tax refund claims by telecommunications companies. The court held that telecommunications are defined as services under the Kansas Retailers' Sales Tax Act, so equipment used to produce or deliver telecommunications did not qualify for the manufacturing exemption in K.S.A. 79-3606(kk). The court also rejected the taxpayers' equal protection and summary judgment arguments and affirmed the Board of Tax Appeals.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.
JURISDICTION	Kansas
DECIDED	December 17, 2004
DOCKET	Nos. 90,663, 90,664, 90,665, 90,666, 90,667
DISPOSITION	affirmed
PROCEDURAL POSTURE	Taxpayers appealed the Board of Tax Appeals' denial of their sales-and-use-tax refund claims. The appeals were consolidated in the Kansas Court of Appeals and transferred to the Supreme Court of Kansas on its own motion.
STANDARD OF REVIEW	Under the Act for Judicial Review and Civil Enforcement of Agency Actions, relief may be granted when agency action is unconstitutional on its face or as applied, or when the agency erroneously interpreted or applied the law. BOTA receives great weight and deference in its area of expertise, but appellate courts take corrective action when its interpretation of law is erroneous as a matter of law. The summary-judgment issue was reviewed as a question of law because the dispositive issue was statutory.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	Sprint Communications Company, L.P., United Telephone Co. of Kansas, United Telephone Co. of Missouri, United Telephone Co. of

Arkansas, United Telephone Co. of Iowa v. Kansas Department of Revenue

TOPICS

sales and use tax | tax refunds | statutory interpretation | judicial review of agency action | equal protection

PRACTICE AREAS

sales and use tax | state tax | administrative law | constitutional law | statutory interpretation

QUESTIONS PRESENTED

1. Whether telecommunications equipment used in engineering or controlling and measuring telecommunications qualifies for the manufacturing exemption under K.S.A. 79-3606(kk).
2. Whether the Department of Revenue's application of K.S.A. 79-3606(kk) violated the Equal Protection Clauses of the United States and Kansas Constitutions.
3. Whether BOTA properly resolved the exemption issue on summary judgment despite disputed facts concerning the telecommunications process.

HOLDINGS

1. Equipment used to engineer a telecommunication product or to control or measure the telecommunications process is not exempt under K.S.A. 79-3606(kk), because the Kansas Retailers' Sales Tax Act defines telecommunications as a service rather than tangible personal property.
2. The Department's denial of the manufacturing exemption to the telecommunications taxpayers did not violate the Equal Protection Clauses of the United States or Kansas Constitutions.
3. BOTA properly applied summary-judgment principles because the dispositive issue was a legal question and the disputed facts concerning the telecommunications process were irrelevant to the statutory determination.

KEY QUOTATIONS

> *“BOTA is a specialized agency and is considered to be the paramount taxing authority in this state.”* (695)

> *“Tax exemption statutes, however, are to be construed strictly in favor of imposing the tax and against allowing the exemption for one who does not clearly qualify.”* (696)

> *“Our conclusion is governed by the plain and unambiguous language of the Kansas Retailers' Sales Tax Act, which defines telecommunications as a service and not tangible personal property.”* (699-700)

FACTUAL BACKGROUND

The taxpayers purchased switches, computers, peripheral equipment, and related parts used in their Kansas telecommunications operations from March 1994 through March 2000. They claimed refunds under Kansas's manufacturing exemption for machinery and equipment used directly and primarily in manufacturing, arguing that telecommunications are composed of electricity and therefore constitute tangible personal property manufactured for resale. The Department denied the claims, and BOTA ruled that the Kansas Retailers' Sales Tax Act defines telecommunications as taxable services rather than tangible personal property.

PROCEDURAL HISTORY

The Secretary of Revenue's designee denied five telecommunications companies' refund claims for sales and use tax paid on telecommunications equipment. The taxpayers appealed to BOTA, which granted the Department's motion for summary judgment and denied the taxpayers' cross-motion, holding that the equipment did not qualify for the manufacturing exemption and that the exemption's application did not violate equal protection. BOTA denied reconsideration; the taxpayers appealed, and the cases were consolidated and transferred to the Kansas Supreme Court.

DISPOSITION

affirmed

CASES CITED

- In re Tax Appeal of Colorado Interstate Gas Co., 276 Kan. 672, 682-83, 79 P.3d 770 (2003)
- In re Tax Exemption Application of Central Illinois Public Services Co., 276 Kan. 612, 616, 78 P.3d 419 (2003)
- In re Tax Appeal of Collingwood Grain, Inc., 257 Kan. 237, 238, 891 P.2d 422 (1995)
- Sprint v. Commissioner of Revenue, 676 N.W.2d 656 (Minn. 2004)
- Southwestern Bell Tel. v. Director of Rev., 78 S.W.3d 763, 764-68 (Mo. 2002)
- Bell Atlantic Mobile Systems, Inc. v. Commonwealth, 799 A.2d 902 (Pa. Commw. 2002), aff'd, 577 Pa. 328, 845 A.2d 762 (2004)
- Colorado Interstate Gas Co. v. Beshears, 271 Kan. 596, 609, 24 P.3d 113 (2001)
- In re Tax Appeal of City of Wichita, 274 Kan. 915, 920, 59 P.3d 336 (2002)
- In re Tax Appeal of Alsop Sand Co., Inc., 265 Kan. 510, 520, 522, 962 P.2d 435 (1998)
- Peden v. Kansas Department of Revenue, 261 Kan. 239, 930 P.2d 1 (1996), cert. denied, 520 U.S. 1229 (1997)