WASHINGTON SUPREME COURT

Tesoro Refining & Marketing Co. v. Department of Revenue

164 Wash. 2d 310 (2008) · Decided August 14, 2008

SUMMARY

The Washington Supreme Court held that Tesoro Refining & Marketing Company's possession and use of refinery gas as a heat source constituted a taxable possession of a hazardous substance under Washington's hazardous substance tax. The court rejected Tesoro's argument that the refinery gas qualified for an exemption under WAC 458-20-252(7)(b), concluding that the gas was not integrated into another product or otherwise consumed within the meaning of the regulation. The court also held that the Department of Revenue had not improperly repudiated an interpretive tax advisory because the advisory was superseded by later statutory changes.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Fairhurst, J.; Alexander; Chambers; Fairhurst; Johnson; Madsen; Owens; Sanders; Stephens
JURISDICTION	Washington
DECIDED	August 14, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tesoro sought a refund of hazardous substance tax paid on refinery gas used as a heat source at its refinery. After the Department of Revenue denied the refund, the superior court granted the Department summary judgment, the Court of Appeals affirmed, and the Washington Supreme Court accepted review.
STANDARD OF REVIEW	The court reviewed legal conclusions in the tax refund case and matters of statutory interpretation de novo.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential
PARTIES	Tesoro Refining and Marketing Company v. Department of Revenue

TOPICS

tax · state and local tax · statutory interpretation · administrative law · judicial review of agency action

PRACTICE AREAS

taxation · administrative law · statutory interpretation · environmental law

QUESTIONS PRESENTED

1. Whether the hazardous substance tax applies to Tesoro's possession and use of refinery gas within its refinery.
2. Whether Washington Administrative Code Rule 252(7)(b) exempts refinery gas used as a heat source during refining.
3. Whether the Department of Revenue repudiated an interpretive regulation or advisory ruling on which Tesoro relied.

HOLDINGS

1. The hazardous substance tax unambiguously applies to Tesoro's possession of refinery gas because refinery gas is a petroleum product designated as a hazardous substance and control includes the power to use the substance, even without the power to sell it.
2. Rule 252(7)(b) does not exempt refinery gas that Tesoro burns as an independent heating agent because the gas does not become a component or ingredient of another product and is not otherwise consumed in the regulatory sense.
3. The Department of Revenue did not improperly repudiate its prior interpretation because the advisory guidance was superseded by later statutory amendments; an interpretation that conflicts with the current statute is void and cannot support reliance.

KEY QUOTATIONS

> *"In short, having the power to sell or use a petroleum product gives rise to taxation under RCW 82.21.030, the HST."* (316-17)

> *"We hold Tesoro's refinery gas is not consumed in the refining or manufacturing process as described in Rule 252(7)(b) and therefore incurs taxation under the HST."* (322)

> *"By disputing Tesoro's argument, DOR is not attempting to repudiate its own regulation."* (325)

> *"We hold RCW 82.21.030 unambiguously assesses a tax on the privilege of possessing refinery gas."* (325)

FACTUAL BACKGROUND

Tesoro operated an Anacortes refinery that continuously produced refinery gas as a byproduct of refining crude oil. Tesoro collected the gas and burned it in process heaters and boilers, using it to supply approximately 75 percent of the refinery's heat; excess gas was burned in a flare. The gas was not stored, sold, incorporated into crude oil, or otherwise made a component or ingredient of another product.

PROCEDURAL HISTORY

The Department of Revenue assessed Tesoro for unpaid hazardous substance tax on refinery gas. Tesoro sued in Thurston County Superior Court for recovery of $937,889 in taxes paid, but the court granted the Department summary judgment. The Court of Appeals, Division Two, affirmed in a published split opinion, and the Supreme Court affirmed after accepting review.

DISPOSITION

affirmed

CASES CITED

- Simpson Inv. Co. v. Dep't of Revenue, 141 Wn.2d 139, 148-50, 3 P.3d 741 (2000)
- Burns v. City of Seattle, 161 Wn.2d 129, 140, 146, 164 P.3d 475 (2007)
- Agrilink Foods, Inc. v. Dep't of Revenue, 153 Wn.2d 392, 396-97, 103 P.3d 1226 (2005)
- Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11-12, 20 n.10, 43 P.3d 4 (2002)
- State v. Keller, 98 Wn.2d 725, 729, 657 P.2d 1384 (1983)
- HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs., 148 Wn.2d 451, 473 n.95, 61 P.3d 1141 (2003)
- Mader v. Health Care Auth., 149 Wn.2d 458, 472-73, 70 P.3d 931 (2003)
- Stevens v. Brink's Home Sec., Inc., 162 Wn.2d 42, 47, 169 P.3d 473 (2007)
- City of Seattle v. Allison, 148 Wn.2d 75, 81, 59 P.3d 85 (2002)
- Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wn.2d 868, 889, 154 P.3d 891 (2007)
- Group Health Coop. of Puget Sound, Inc. v. Wash. State Tax Comm'n, 72 Wn.2d 422, 428, 433 P.2d 201 (1967)
- Hansen Baking Co. v. City of Seattle, 48 Wn.2d 737, 743-44, 296 P.2d 670 (1956)
- Dep't of Labor & Indus. v. Granger, 159 Wn.2d 752, 764, 153 P.3d 839 (2007)
- State v. Adams, 107 Wn.2d 611, 615, 732 P.2d 149 (1987)
- Cerrillo v. Esparza, 158 Wn.2d 194, 201-02, 142 P.3d 155 (2006)
- Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660, 684 n.10, 72 P.3d 151 (2003)
- Tesoro Ref. & Mktg. Co. v. Dep't of Revenue, 135 Wn. App. 411, 144 P.3d 368 (2006)
- Tesoro Ref. & Mktg. Co. v. Dep't of Revenue, 161 Wn.2d 1022, 169 P.3d 830 (2007)