

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

V.

USX CORPORATION
600 Grant Street
Pittsburgh, PA 15230

Petitioner.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. U. 88-111

ORDER

The Petitioner, USX Corporation, filed two petitions for refund of use tax concerning the periods April through June, 1984 and July, 1984 through May, 1987. The Revenue Department denied the petitions and the Petitioner appealed to the Administrative Law Division.. A hearing was conducted on April 6, 1989. The Petitioner was represented at the hearing by A. J. Schmidt, Tax Accounting Manager, and Gary W. Walsh, Esq. Assistant Counsel John J. Breckenridge appeared for the Department. Based on the evidence and arguments presented by the parties, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The Petitioner manufactures steel and steel products at its Fairfield Works near Birmingham, Alabama. The Petitioner purchased pig iron molds and stools outside of Alabama during the subject period for use at its manufacturing facility in Alabama.

The molds and stools served two functions. First, they were used during the manufacturing process to form steel ingots in the Petitioner's casting operation. The useful life of a mold or stool for casting purposes is approximately 50 pours, covering a period

of from 25 to 50 days.

When the molds and stools could no longer be efficiently used for casting, they were scrapped and used as a primary source of high grade pig iron in the Petitioner's furnaces. Pig iron constitutes approximately 25% of each furnace charge. The molds and stools were purchased with the intent and purpose that they would eventually become an ingredient or component part of the steel produced by the Petitioner.

The Department contends that the molds and stools should be taxed as machines used in the manufacturing process because they were initially used for that purpose. Conversely, the Petitioner maintains that the molds and stools were purchased at wholesale and thus not taxable in that they "enter into and become an ingredient or component part" of the steel products manufactured by the Petitioner, see Code of Ala. 1975, §40-23-60(4)(b).

The parties agree that the molds and stools were initially used in the manufacturing process and eventually became an ingredient or component part of the steel manufactured by the Petitioner. The issue thus is whether the items are removed from the "ingredient or component part" provision because they were first used as machines in the manufacturing process.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-60(4)(b) defines "wholesale sale" as follows:

b. A sale of tangible personal property or products, including iron ore, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which such manufacturer or compounder manufactures or compounds for sale, and the finished container and label thereof;

The reasoning behind the "ingredient or component part" provision is that the material will be taxed later as part of the final product, and thus should be purchased tax-free by the manufacturer. The courts have ruled that the provision is satisfied if "any part of a product purchased by a manufacturer is intended to remain and does remain in the finished product". Boswell v. General Oils, Inc., 368 So.2d 27, 29; see also Robertson and Associates (Alabama), Inc. v. Boswell, 361 So.2d 1070.

The General Oils and Robertson decisions were issued in 1978 and involved the companion sales tax section, Code of Ala. 1975, §40-23-1(a)(9)b, which at the time was identical to the use tax section presently in issue. However, the Legislature amended the sales tax section in 1981 so that the "ingredient or component part" provision would apply "whether or not any such tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it becomes a component of the finished product." The companion use tax section was not amended.

The 1981 amendment to the sales tax statute is immaterial to the issues in this case, not because the use tax statute was not amended as was the sales tax law, but because the requirement for exemption exists in this case.

The Petitioner argues that the Alabama taxing scheme discriminates against out-of-state taxpayers in that the use tax section requires an intent that the property remain in the finished product, whereas the sales tax section as amended makes the intent of the manufacturer irrelevant. However, while a discrepancy between the two statutes does exist, it is irrelevant in the present case because it is undisputed that the stools and molds were initially purchased with the intent that they would become a part of the manufactured steel.

The General Oils and Robertson cases were discussed in a 1984 use tax case, State v. Alabama Metallurgical Corp., 446 So.2d 41.

That case is the latest on the subject and outlines the test first stated in Robertson as follows:

The test is whether the manufacturer used the material with the intent and purpose of making it an ingredient or component part of the finished product; or was its presence in the finished product merely incidental to its primary function. In other words, if any part of a product purchased by a manufacturer is intended to remain for a purpose and does remain in the manufacturer's finished product, the purchase is at wholesale, and therefore is not subject to sales tax. Furthermore, the material in question can serve a dual function, in this case, supply heat and become an appropriate ingredient of the finished product.

There is no dispute that the stools and molds were purchased with the intent that they would eventually be scrapped and become a part of the Petitioner's final product. However, the use of the elements of an item occurring at the end of the useful life of a

product cannot act to make the purchase or use at the beginning of the useful life tax exempt. The taxpayer purchased stools and molds for their value as stools and molds. During their use as stools and molds they did not become a component part of any product. Their use as scrap at the end of their useful life with a greatly reduced value cannot exempt from use tax their much higher value at the beginning of the useful life as stools and molds.

As an example, if a primary ingredient in taxpayers product were scrap steel and taxpayer purchased a new Mercedes automobile for the use of the company president, with the intent that, at the end of its useful life, it would be scrapped and made a component part of taxpayer's product, such a transaction would not be a "wholesale sale" within the meaning of §40-23-60(4)(b). To rule otherwise would allow any product that has a scrap value to be purchased tax free by any company using that type of scrap irrespective of the useful life, original purpose or original value.

It is inappropriate to characterize use of scrap at the end of the useful life of the stools and molds as a "dual purpose" as described in Alabama Metallurgical Corp., supra. The fact that the elements of an item have value after the end of the usefulness of the item as a product, do not give the product some additional purpose or function.

The above considered, the refunds in issue are due to be and they are hereby denied. This final order is subject to judicial review pursuant to Code of Ala. 1975, §41-22-20.

Entered this 13th day of July, 1989.