STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DELTA SONIC CAR WASH SYSTEMS, INC.	:	DECISION DTA No. 806086
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period March 1, 1983 through February 28, 1986.	:	

Petitioner Delta Sonic Car Wash Systems, Inc., 570 Delaware Avenue, Buffalo, New York 14203 filed an exception to the determination of the Administrative Law Judge issued on December 13, 1990 with respect to its petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1983 through February 28, 1986. Petitioner appeared by Hodgson, Russ, Andrews, Woods & Goodyear (Paul R. Comeau, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Arnold M. Glass, Esq., of counsel).

Both parties filed briefs on exception. Oral argument, at the request of petitioner, was heard on May 16, 1991.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether certain machinery and equipment purchased by petitioner for the operation of its highly sophisticated car wash facilities were purchased for use or consumption directly and predominantly in the production for sale of tangible personal property by manufacturing or processing and was thereby exempt from the imposition of sales and use taxes pursuant to Tax Law § 1115(a)(12).

II. Whether certain utilities purchased by petitioner qualify for the production exemption provided by Tax Law § 1115(c).

III. Whether petitioner renders a service which constitutes an exempt laundering service pursuant to Tax Law § 1105(c)(3)(ii).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and make an additional finding of fact. The Administrative Law Judge's findings of fact and the additional finding of fact are set forth below.

We find the following additional fact:

Petitioner operates car wash facilities.

Stipulated Facts

On February 7, 1990, the representatives of petitioner and the Division of Taxation entered into a stipulation of facts. The facts contained therein are set forth below.

On December 10, 1986, as a result of a field audit, the Division of Taxation issued to Delta Sonic Car Wash Systems, Inc. (hereinafter "petitioner") a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period May 31, 1983 through February 28, 1986 in the amount of $238,199.37, plus interest, for a total amount due of $277,264.67. At a conciliation conference, the Division agreed that petitioner had made sales for resale of certain uniforms, promotional items and car accessories and (pursuant to a Conciliation Order dated July 8, 1988) thereby reduced the amount of tax due to $235,101.41.

Petitioner agrees with the audit adjustments for residential fuel ($697.71) and prepaid tax on gasoline inventories ($13,275.05).

A Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law was executed by petitioner on May 6, 1986 which permitted assessment of tax due for the period March 1, 1983 through August 31, 1983 at any time on or before December 20, 1986.

During the period at issue, petitioner purchased certain machinery, equipment and supplies from various vendors for use in its business, but did not pay sales or use tax on these purchases.

Petitioner also purchased utilities, but did not pay tax on all of such purchases. With respect to its purchases from National Fuel Gas, petitioner did not pay $15,139.38 in tax. With respect to its purchases from Niagara Mohawk Power Corp., petitioner presented an exempt use certificate to its supplier, and reported on its own returns tax on 15% of its purchases. With respect to its purchases from Rochester Gas and Electric Co., petitioner paid its supplier, and took a credit of 85% of the tax paid. The total tax due on the electricity was determined to be $63,463.50. If petitioner is successful in its claim for exemption from tax pursuant to Tax Law § 1115(a)(12), a determination of the allocation of utility purchases used for such machinery and equipment would have to be made.

As part of its business operation, petitioner purchased water and also purchased certain raw materials, consisting of concentrated chemicals, in bulk. Petitioner established that the chemical concentrates were sold to its customers and the Division excluded these purchases as purchases for resale.

Petitioner maintains facilities at several different locations in the greater Buffalo area. The overall process performed by petitioner is initiated by placing vehicles on a conveyor system, after which the vehicles are passed through various integrated and automated treatment stations where certain products, some of which are optional to the customer, are delivered to the said vehicles. The overall process lasts between one to three minutes, depending upon how quickly the vehicles are passed through the process. The customer chooses which of the various optional products he wishes to have applied to his vehicle and the selected products are delivered and applied to his vehicle during the process. Some of petitioner's products are included in its base price and are applied to every customer's vehicle. During the audit period, the base price for petitioner's process was approximately $3.00 and a customer's selection to

have all of the products applied to his vehicle increased the total cost to approximately $5.00. The process was almost completely automated with persons employed only at the beginning to accept payment and to record the customer's purchase in the computer and at the end to assist in the drying process.

Traces of petitioner's chemical mixtures, foam and water remain on the vehicles of its customers after the completion of the process, most of which can be found in recessed or concealed areas of the vehicle and also on the undercarriage. A substantial portion of the waxes which are dispensed by petitioner's machinery and equipment remain on the vehicles' surfaces.

Petitioner did not separately offer for sale to its customers any of the chemical mixtures, foam, water or waxes which were mixed, treated or dispensed by its machinery and equipment. None of its customers have expressed a desire to purchase petitioner's products as separate items, but rather have requested that petitioner perform the service of washing, waxing or, in some other manner, applying certain products such as whitewall cleaner, chassis bath and rust inhibitor in conjunction with the basic service.

The machinery and equipment employed by petitioner in its process can be categorized as follows:

(a) The first category of machinery and equipment used by petitioner includes those which dilute chemical concentrates to desired formulations, treat water with various chemicals, mix, pressurize, heat and purify the mixtures and those which pump and convey the mixtures to other locations for further mixing and/or conversion to foam;

(b) The second category includes the cloth machinery, hydraulic systems and attendant items which produce foam from the mixtures of various chemicals and those which mix and distribute waxes and conditioners. The cloth machinery serves to agitate the foam which results from the entrainment of air into the various liquid solutions;

(c) The third category includes primarily the blow dryers which smooth and distribute the waxes and other materials and which also serve to dry the vehicles; and

(d) The fourth category of machinery and equipment is that which initiates, regulates and controls the overall process. Included within this category are the computer, electric eye, conveyor system and other switching and regulatory devices which record the customers' purchases, regulate the flow of the materials dispensed to the vehicles, regulate the speed of the vehicles through the process and turn each machine on and off.

Petitioner purchases approximately six million gallons of water per year for each of its car wash locations. All of the water which is used in its process is chemically treated by petitioner.

Additional Facts Made by the Administrative Law Judge

The facts found herein are essentially the same as those found by the State Tax Commission in Matter of Delta Sonic Car Wash Sys. (State Tax Commn., January 9, 1987, confirmed 142 AD2d 828, 530 NYS2d 341). The only difference between the instant matter and the earlier matter is the audit period and the specific amount of the assessment. The machinery and equipment with respect to which petitioner claimed an exemption pursuant to Tax Law § 1115(a)(12) in that case is substantially the same as the equipment at issue herein. Also, the overall process performed by petitioner for its customers in the earlier case is the same as that performed in the instant matter.

Throughout the period at issue, petitioner collected sales tax from its customers on its sales of car washing services. Petitioner properly remitted such taxes to the Division. No part of the assessment herein is based upon petitioner's sale of services to its customers.

Opinion

The Administrative Law Judge, relying on the doctrine of stare decisis, determined that Matter of Delta Sonic Car Wash Sys. (supra) was dispositive of the issue in this case and that the exemption in Tax Law § 1115(a)(12) for machinery and equipment used in the production of tangible personal property for sale was not applicable to petitioner's machinery and equipment.

The Administrative Law Judge rejected petitioner's assertion that Delta Sonic was not controlling and that the Administrative Law Judge was free to reach a different conclusion

because the standard of review applicable to Article 78 proceedings, the nature of the proceeding in Delta Sonic, required only that the court determine if the State Tax Commission decision was reasonable based on the facts and circumstances of the case, i.e., that it was not arbitrary or capricious, not that it was the correct decision.

The Administrative Law Judge found that there was no justiciable issue concerning petitioner's alternative argument that it was a laundering service since the Notice of Determination at issue did not assert liability on the basis of charges to customers.

On exception, petitioner asserts that the Administrative Law Judge erred when he concluded that the principle of stare decisis was dispositive and required the same result as that reached by the court in Delta Sonic. Petitioner asserts that even if the doctrine of stare decisis is generally followed by the Tribunal, it should not be followed in this case because the court in Delta Sonic did not decide that the Tax Commission decision was correct, only that the Commission decision was not unreasonable given the facts and circumstances in the case. Petitioner asserts that the Tribunal in this case is free to reach a different decision based on the facts in the record, in particular the fact that here the parties have stipulated that petitioner sold the chemical concentrates to its customers.

On the substantive issue of whether petitioner meets the requirements of section 1115(a)(12), petitioner asserts that the facts here differ from those in Delta Sonic in that petitioner has not only established that the equipment produced a product, but also that such product was sold to its customers. Accordingly, petitioner asserts it meets the "for sale" requirement of section 1115(a)(12) and, thus, qualifies for the exemption.

Petitioner asserts that it is of no matter that the tangible personal property, i.e., the chemical concentrates, is sold by petitioner as part of the service provided by petitioner because petitioner's service is a taxable service. Petitioner would distinguish this case from the decisions in Matter of Midland Asphalt Corp. v. Chu (136 AD2d 851, 523 NYS2d 697, lv denied 72 NY2d 806, 532 NYS2d 847); Matter of Southern Tier Iron Works v. Tully (66 AD2d 921, 410 NYS2d 711, lv denied 46 NY2d 713, 416 NYS2d 1027); Matter of O.W. Hubbell &

Sons (Tax Appeals Tribunal, March 22, 1990); Matter of Spancrete Northeast (Tax Appeals Tribunal, March 8, 1990) on the basis that those cases involved capital improvements. Petitioner asserts that "[a] capital improvement is not a taxable service. Machinery and equipment used to produce property which is incorporated into a capital improvement cannot qualify for the §1115(a)(12) exemption because the property produced by the equipment cannot be sold to the customer" (petitioner's brief on exception, p. 18).

Petitioner also asserts that assessment of the tax results in an impermissible double taxation, since petitioner must pay taxes on its purchases of car washing equipment and machinery and its customers must also pay taxes on the services purchased from petitioner.

Petitioner argues, in the alternative, that petitioner provides a laundering service which is exempt from tax under section 1105(c)(3)(ii) and that the Administrative Law Judge erred in declaring that this assertion was irrelevant.

The Division fully supports the determination of the Administrative Law Judge on the grounds that Delta Sonic was dispositive of the issue in the present case.

We affirm the determination of the Administrative Law Judge.

We deal first with the merits of petitioner's claim of entitlement to exemptions under Tax Law §§ 1115(a)(12) and 1115(c).

Tax Law § 1115(a)(12) provides, in pertinent part, that receipts from the sale of "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing" are exempt from sales and use tax.

Under Tax Law § 1115(c), utilities used or consumed directly and exclusively in the production of tangible personal property for sale by manufacturing are exempt from the imposition of sales and use tax.

The crux of petitioner's argument, both at hearing and on exception, is that the four categories of equipment at issue (i.e., the machines which dilute the chemicals; the cloth machinery and hydraulic systems which produce the foam from the mixtures; the blow dryers which smooth and distribute the waxes and dry the vehicles; and the equipment which initiates,

regulates and controls the overall process, e.g., the computer, electric eye and conveyor system) produce tangible personal property for sale to its customers within the meaning of the exemption.

We do not agree.

The rule which this Tribunal has gleaned from case law and has applied, is that in order for machinery and equipment to qualify for the exemption, the taxpayer must produce tangible personal property for sale as a separate product. This theory was sustained in Matter of Marriott Family Rests. v. Tax Appeals Tribunal where the court stated "the taxable event is the sale in the restaurant of a combination of food and service, which [the Tribunal] could rationally view as a 'hybrid' transaction rather than the sale of tangible personal property" (Matter of Marriott Family Rests. v. Tax Appeals Tribunal, ___AD2d___, 570 NYS2d 741 citing Matter of Burger King v. State Tax Commn., 51 NY2d 614, 435 NYS2d 689; see also, Matter of Midland Asphalt Corp. v. Chu, supra [where the manufacturing exemption was denied under section 1115(a)(12) and (c) because the taxpayer was manufacturing the asphalt for its own use in its contracting business of providing and applying asphalt, and was not selling the material separately from the construction services it provided]; Matter of Southern Tier Iron Works v. Tully, supra [where the manufacturing exemption was denied because the taxpayer fabricated steel for its own use and in erecting steel structures, a service which was not merely incidental to the manufacture of tangible personal property]; Matter of Spancrete Northeast, supra [exemption denied where the taxpayer provided service installation of over 90% of the tangible personal property it produced]; Matter of Willets Point Contr. Corp., Tax Appeals Tribunal, September 14, 1989 [exemption denied where 96% of the product produced was used in taxpayer's business of providing paving services]).

The facts here indicate that petitioner operates highly sophisticated car wash facilities. The overall process performed by petitioner is almost completely automated and is initiated by placing vehicles on a conveyor system. The vehicles are passed through various integrated and automated treatment stations where certain products, some of which are optional to the

customer at specific prices and others of which are included in the base price, are delivered to the said vehicles. Petitioner did not separately offer for sale to its customers any of the chemical mixtures, foam, water or waxes which were mixed, treated or dispensed by its machinery and equipment. In fact, none of petitioner's customers expressed a desire to purchase petitioner's products as separate items, but rather requested that petitioner perform the service of washing, waxing or, in some other manner, applying certain products such as whitewall cleaner, chassis bath and rust inhibitor in conjunction with the basic service of car washing.

In short, petitioner is in the business of selling a service, car washing, to its customers. Petitioner is not in the business of selling separately any of the products produced by its machinery and equipment. The chemical mixtures and such were produced by petitioner for its own use in providing its service of car washing. Thus, petitioner's machinery and equipment is not eligible for the exemption.

We deal next with petitioner's assertion that imposition of the tax herein results in impermissible double taxation.

We cannot agree.

While petitioner must pay taxes on its purchases of machinery and equipment necessary to allow it to provide its car washing services, the tax on car washing services is imposed on petitioner's customers, not petitioner, and is for the service purchased, not the machinery or equipment. Petitioner would distinguish this case from Matter of Midland Asphalt Corp. v. Chu (supra), Matter of Southern Tier Iron Works v. Tully (supra), and Matter of Spancrete Northeast (supra), on the basis that capital improvements provided by the taxpayers in such cases were not taxable, therefore, the equipment and machinery was not exempt from tax. Not only is there no authority for this position, i.e., that the exemption under Tax Law § 1115(a)(12) is dependent on the taxability of the product produced or service rendered, but the court in Marriott Family Rests. reviewed a comparable question where the taxable event was the sale in its restaurants of food and service, found it a "hybrid" taxable transaction and sustained the imposition of tax on the equipment used to produce the food (Matter of Marriott Family Rests.

v. Tax Appeals Tribunal, supra). Accordingly, we find no impermissible pyramiding or double taxation as asserted by petitioner.

We deal next with petitioner's alternative argument that petitioner's service is a "laundering" service within the meaning of that term as used in section 1105(c)(3)(ii) of the Tax Law which excludes receipts from the services of "laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining . . ." from the general imposition of the sales tax under section 1105(c)(3).

In support of its position, petitioner asserts the rule of statutory construction that words of a statute should be interpreted where possible in their ordinary everyday sense. Petitioner refers to the definition of "laundering" in Webster's Third New International Dictionary, i.e., the "act or process of washing or cleaning" and the fact that such definition is not limited to cloth, clothing and similar items.

We affirm the determination of the Administrative Law Judge.

The term "laundering" is one of several services the receipts from which are excluded from sales tax pursuant to section 1105(c)(3)(ii). It has no definition in the Tax Law nor is it a term which is specifically defined in the Commissioner's regulations. We agree with petitioner that ascribing a dictionary meaning to an undefined term may, under certain circumstances, be useful in determining the sense in which the word is used in a statute. However, we are also mindful that the words of a statute are not construed singly; rather, each is construed in connection with the other words of the context. Indeed, "the meaning of a word . . . may be ascertained by a consideration of the company in which it is found and the meaning of the words which are associated with it" (Popkin v. Security Mut. Ins. Co. of New York, 48 AD2d 46, 367 NYS2d 492, 495; Statutes, §§ 234 and 239). This rule of statutory construction, "noscitur a sociis," is particularly applicable where the word at issue is part of a list of words used in the statute (Third Natl. Bank in Nashville v. Impac Ltd., 432 US 312).

Here, the words associated with "laundering" in the context of section 1105(c)(3)(ii) are "dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining." Clearly, these terms refer to services involving clothing, cloth or leather goods. Indeed, the former State Tax Commission determined that the meaning of "laundering" referred only to the process of cleaning clothes or cloth (see, Matter of Kailburn, State Tax Commn., June 9, 1987; Matter of Douglas H. Casement Enters., State Tax Commn., November 27, 1981; Matter of Scarano, State Tax Commn., December 3, 1975). We would also note that the Commissioner's regulation follows the same line of reasoning (20 NYCRR 527.5[a][3], Example 5: "The charge for washing an automobile is taxable, whether the washing is performed manually or by a coin-operated machine").[1] We agree with this definition and conclude that the term "laundering" as used in section 1105(c)(3)(ii) does not apply to receipts for car wash services.

In view of our determination on the merits of the case, we need not deal with petitioner's arguments concerning the principles of stare decisis and their applicability to this Tribunal in this case.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Delta Sonic Car Wash Systems, Inc. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Delta Sonic Car Wash Systems, Inc. is denied; and

[1]We would also note that while the question was not directly before the court in Delta Sonic, the court did find that petitioner's facilities provided a taxable service to vehicles (Matter of Delta Sonic Car Wash Sys. v. Chu, supra).

4. The Notice of Determination, dated December 10, 1986, as modified by the Conciliation Order dated July 8, 1988, is sustained.

DATED: Troy, New York
November 14, 1991

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner