

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DEDA FUEL OIL CORP. :
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 December 1, 1978 :
through February 28, 1982. :

DECISION

In the Matter of the Petition :
of :
DEDA DEDVUKHA A/K/A DEDA DEDVUKAJ, :
Individually and as Officer of :
Deda Fuel Oil Corp. :
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 December 1, 1978 :
through February 28, 1982. :

Petitioners, Deda Fuel Oil Corp. and Deda Dedvukha a/k/a Deda Dedvukaj, 2910 Valentine Avenue, Bronx, New York 10458, each filed a 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 December 1, 1978 through February 28, 1982 (File Nos. 41171 and 46832).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 5, 1986 at 10:45 A.M., with all briefs to be submitted by March 19, 1986. Petitioners appeared by Michael Sheehan, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether petitioners were properly subjected to penalty and maximum interest imposed pursuant to section 1145(a)(1)(i) of the Tax Law on additional taxes found due as the result of an audit of the books and records of petitioner Deda Fuel Oil Corp.

FINDINGS OF FACT

1. On June 20, 1982, the Audit Division, as the result of a field audit of the available books and records of petitioner Deda Fuel Oil Corp. ("Deda"), issued to Deda a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing additional sales taxes of \$357,299.65, plus penalty of \$63,148.01 and interest of \$62,075.53, for a total amount due of \$482,523.19 for the period December 1, 1978 through May 31, 1982. On the same date, the Audit Division also issued an identical notice to petitioner Deda Dedvukha, individually and as officer of Deda. On February 25, 1982, Mr. Dedvukha, as the president of Deda, executed a consent extending the statute of limitations for issuing an assessment of sales and use taxes for the period December 1, 1978 through November 30, 1981 to June 20, 1982.

2. Each of the petitioners timely filed a petition for revision of the notice.

3. Based on a further review of Deda's books and records conducted by an examiner for the Audit Division on July 16, 1984, the additional sales taxes due were reduced to \$89,046.42 and the audit period to January 1, 1979 through March 31, 1982. Again, on January 18, 1985, the additional taxes due were reduced to \$68,992.69 as the result of a pre-hearing conference.

4. Prior to the commencement of the hearing, petitioners and the Audit Division agreed to a further reduction of the assessments to \$64,721.66.

Petitioner Deda Dedvukha executed withdrawals of petition and discontinuance of case on behalf of himself and the corporate petitioner with respect to the aforesaid amount plus statutory penalty and interest.

5. At the hearing held herein, the petitioners requested and were granted thirty days to submit evidence of reasonable cause for the failure to remit the taxes at issue. No such evidence has been submitted by petitioners.

CONCLUSIONS OF LAW

A. That section 1145(a)(1)(iii) of the Tax Law provides for the remission of penalty and interest in excess of the minimum statutory rate where it is shown that the failure or delay in payment of the tax is due to reasonable cause and not due to willful neglect.

B. That petitioners have failed to present evidence of reasonable cause for failure to pay the taxes at issue; therefore, the Audit Division properly imposed penalty and maximum interest.

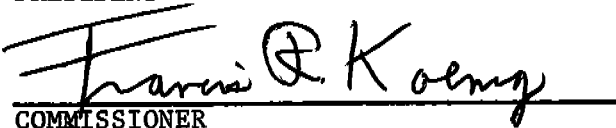
C. That the petitions of Deda Fuel Oil Corp. and Deda Dedvukha a/k/a Deda Dedvukaj, individually and as officer of Deda Fuel Oil Corp., are denied, and the notices of determination and the demand for payment of sales and use taxes due issued June 20, 1982 and revised prior to the hearing (see Finding of Fact "4") are sustained.

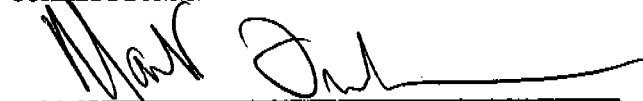
DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER