

STATE OF NEW YORK
STATE TAX COMMISSION

File Tot Peter

In the Matter of the Petition

of

SLATTERY CONTRACTING COMPANY, INC.
(ID# 11-1338620)
For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(X) 28 of the
Tax Law for the (Year(s))

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

State of New York
County of Albany

Margaret Ann Wood, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of March, 1970, she served the within Notice of Decision ~~(or Determination)~~ by ~~(certified)~~ mail upon Slattery Contracting Co., Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Slattery Contracting Company, Inc.
46-36 54th Road
Maspeth, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

9th day of March, 1970

John Wright

Margaret Ann Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
:
of
:
SLATTERY CONTRACTING CO., INC.
:(ID# 11-1338620)
:
For a Redetermination of a Deficiency or
a Refund of Sales and Use
:
Taxes under Article(~~8~~) 28 of the
Tax Law for the (Year(~~8~~))
:

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (~~CERTIFIED~~) MAIL

State of New York
County of Albany

Margaret Ann Wood , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 9th day of March , 1970, she served the within
Notice of Decision (~~on Determination~~) by (~~certified~~) mail upon Messrs. Whitman,
Ransom & Coulson (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Messrs. Whitman, Ransom & Coulson
522 Fifth Avenue
New York, New York 10036
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

9th day of March , 1970

James H. Wright

Margaret Ann Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
SLATTERY CONTRACTING COMPANY, INC. :
(ID# 11-1338620) :
For a Hearing on a Determination of : DECISION ON DEFAULT
Sales and Use Taxes imposed under :
Article 28 of the Tax Law :

The petitioner having applied for a hearing to review a determination of Sales and Use taxes imposed under Article 28 of the Tax Law, and a hearing having been duly scheduled at the offices of the Department of Taxation and Finance at 80 Centre Street, New York, New York before Francis X. Boylan, Esq., Hearing Officer on January 6, 1970 at 1:30 P.M., and the Department having appeared by E. H. Best, Counsel (Alexander Weiss, Esq., of counsel) and the record having been duly examined and considered, the State Tax Commission finds that:

1. The failure of any appearance on behalf of the petitioner at the scheduled hearing was intentional and constituted a voluntary default.

2. By a letter dated April 14, 1967 the Department of Taxation and Finance assessed sales taxes in the amount of \$23,300 under the 2% statewide sales and use tax which is imposed on sales of personal property sold at retail. The sale was one of certain building materials purchased by Slattery Contracting Co., Inc., the contractor, to be used in a construction contract (Purchase Order #523192) with Consolidated Edison Company and to be installed in construction work at that Company's Ravenswood

Generating Station, an electricity-generating plant, in New York, New York. An exempt use certificate had been given the contractor by the Consolidated Edison Company. The Department, in making the assessment, in effect determined that the said materials were not exempt as machinery or equipment for use directly and exclusively in generating electricity for sale within the meaning intended by the provision of Section 1115.(a)(12) of the Tax Law.

3. The materials under consideration here, according to the description on the face of the specification for the job, (Specification No. SE-9-65) were to be used in the construction of "coal handling foundations, discharge tunnel extension, and (for) associated work...", and in general were raw or finished building materials for use in construction work generally.

Accordingly, the State Tax Commission hereby

DECIDES:

A. That the personal property purchased by petitioner was properly held subject to tax, and not exempt under Tax Law Section 1115(a)(12) which in part exempts "equipment" purchased for use directly and exclusively in the generating of electricity for sale("in the production of...electricity... for sale by...generating...", in the language of the statute), in that the equipment meant is only such personalty as has an identifiable character as equipment at the time of the purchase at retail sought to be exempted, that is to say, property which is personalty at the time of the sale and which is adapted by its design to perform either in conjunction with machinery or otherwise, some particular function in a stage of the generating

process. Neither the finished building materials nor the raw materials purchased constituted such equipment, it is held.

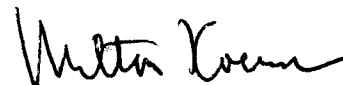
B. The determination, set forth in Paragraph 2 hereof, is therefore affirmed.

Dated: Albany, New York this 9th day of March , 1970.

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER