STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN PRODUCTION MACHINING, INC.,	UNPUBLISHED November 12, 2013
Petitioner-Appellee,	
v	No. 312224 Tax Tribunal
DEPARTMENT OF TREASURY,	LC No. 00-409641
Respondant-Appellant.	

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from the final opinion and judgment of the Michigan Tax Tribunal ("the Tribunal") in which the Tribunal affirmed and adopted a proposed order of the administrative law judge, thereby granting petitioner's motion for summary disposition under MCR 2.116(C)(10). The Tribunal determined that petitioner was engaged in the sale of tangible personal property within the meaning of Single Business Tax Act (SBTA), MCL 208.1 *et seq*.,[1] and canceled respondent's tax assessment of petitioner. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner manufactures and distributes automobile parts to tier-one automobile manufacturers located both inside and outside of Michigan. Generally, petitioner purchases the raw materials, manufactures the automobile parts from those materials, and then sells the finished product to its customers. However, large customers sometimes use their purchasing power to negotiate a lower price for the raw materials. They then purchase the raw materials and have them shipped directly to petitioner for use in manufacturing the automobile parts. Petitioner takes possession but not title to these raw materials. Petitioner is responsible for inspection, storage, and insurance of the materials. The parts produced from materials supplied by a customer are indistinguishable from other parts produced by petitioner. Moreover, under all of petitioner's contracts, petitioner controls all facets of the manufacturing process.

Respondent audited petitioner's single business tax (SBT) liability for taxes levied between September 1, 2001 and August 31, 2005, and concluded that petitioner incorrectly sourced the end

[1] The SBTA was repealed by 2006 PA 325, effective December 31, 2007.

product sales for which customers had purchased the ingredient raw materials. Respondent maintained that those transactions involved the sale of a service under MCL 208.53, rather than the sale of tangible personal property under MCL 208.53. This reclassification resulted in petitioner owing $290,650.96 in additional tax liability and interest. Petitioner petitioned the Tribunal for review, and moved the Tribunal for summary disposition. Ultimately, the Tribunal concluded that respondent had erred and that petitioner was selling tangible personal property (rather than services), and granted summary disposition to petitioner.

II. STANDARD OF REVIEW

> Absent an allegation of fraud, this Court reviews a Tax Tribunal decision for misapplication of the law or adoption of a wrong legal principle. *Briggs Tax Serv, LLC v Detroit Pub Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010). "But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo." *Id*. While agency interpretations of statutes are entitled to respectful consideration and should not be overruled without cogent reasons, they are not binding on this Court and cannot conflict with the Legislature's intent as expressed in the language of the statute. *In re Rovas Complaint*, 482 Mich 90, 103, 108-109; 754 NW2d 259 (2008). The overriding goal of statutory interpretation is the determination of legislative intent and the implementation of that intent once discerned. *AFSCME Council 25 v State Employees' Retirement Sys*, 294 Mich App 1, 8; 818 NW2d 337 (2011). When tax statutes are construed, any ambiguities are resolved in favor of the taxpayer. *Int'l Business Machines v Dep't of Treasury*, 220 Mich App 83, 86; 558 NW2d 456 (1996). [*Kelly Servs v Dep't of Treasury*, 296 Mich App 306, 311; 818 NW2d 482 (2012).]

However, we review the Tribunal's ultimate decision on a motion for summary disposition de novo. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

III. DISCUSSION

Under the SBTA, which imposed "a tax upon the privilege of conducting business activity within Michigan[,]" *Trinova Corp v Dep't of Treasury*, 433 Mich 141, 149; 445 NW2d 428 (1989), a business's SBT liability was determined by apportioning its sales within Michigan in relation to its total sales. MCL 208.45; *Trinova Corp*, 433 Mich at 151. Sales of tangible personal property were deemed to have been made within Michigan if they were "shipped or delivered to a purchaser" within Michigan. MCL 208.52(b). However, sales of something other than tangible personal property, including sales of the performance of a service, were sourced to Michigan if "[t]he business activity [wa]s performed in this state." MCL 208.53(a). Thus, if the automobile parts at issue were tangible personal property, sales outside of Michigan would not be sourced to Michigan for purposes of determining SBT liability. However, if petitioner instead was only selling the service of remanufacturing raw materials and the activity took place in Michigan, the sales would be sourced to Michigan regardless of where the manufactured parts were shipped or delivered.

Both parties agree that MCL 208.7(1)(a)(i) and (ii) contain the controlling definitions of a "sale of tangible personal property," and a "sale of the performance of a service." These sections state:

> Sale" or "sales" means the amounts received by the taxpayer as consideration from the following:
>
> (*i*) The transfer of title to, or possession of, property that is stock in trade or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.
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> (*ii*) The performance of services, which constitute business activities other than those included in subparagraph (*i*), or from any combination of business activities described in this subparagraph and subparagraph (*i*).

Here, the Tribunal correctly concluded that petitioner engaged in the sale of tangible personal property, even when petitioner's customers arranged for the purchase of the required raw materials.

By its terms, MCL 208.7(1)(a)(i) requires only, for example, a transfer of possession of property that is held for sale to customers in the ordinary course of business. Without question, petitioner transferred to its customers automobile parts that it held for sale to its customers in the ordinary course of its business. Petitioner is in the business of supplying manufactured automobile parts to its customers. Its customers, in turn, contract with petitioner for the supply of those automobile parts. Under the plain language of the statute, those transactions therefore constitute the transfer of possession of property that is held by petitioner for sale to its customers in the ordinary course of its business. Ultimately, this case is that simple.

This simplicity of the necessary legal analysis is not overcome by the fact that legal title to certain component raw materials of the automobile parts was held by the customers, rather than by petitioner. According to the express language of the statute, petitioner need not have transferred legal title in order to perfect a sale of tangible personal property. Rather, petitioner had to "transfer title to, *or possession of*, . . . property *held by the taxpayer* primarily for sale to customers in the ordinary course of its trade or business." MCL 208.7(1)(a)(i) (emphasis added). Without question, the automobile parts manufactured and sold by petitioner meet this test, regardless of how legal title to the ingredient raw materials was held.[2]

In any event, even considering the fact that legal title to the customer-sourced raw materials was held by the customers, that fact is of no moment, inasmuch as the statute does not require the transfer of legal title, but only requires the transfer of possession. Petitioner took possession, directly from the supplier, of the raw materials purchased by its customers. It was responsible for their inspection, held the materials in its inventory storage area, insured the materials, and bore the risk of loss. Regardless of the origination or legal ownership of the raw materials, petitioner controlled all facets of the manufacturing process, all of its completed automobile parts were indistinguishable, and the reason for holding the raw materials was "primarily for sale to customers

[2] The sales likely also constitute the transfer of possession of property (i.e., automobile parts) that is "stock in trade" or "other property of a kind which would properly be included in [petitioner's] inventory." MCL 208.7(1)(a)(i).

in the ordinary course of its trade or business." *Id.*[3] It matters not that the sales ultimately were not of the raw materials as such, but rather were of automobile parts manufactured from the raw materials.

Essentially, respondent creatively argues that petitioner provided its customers with the "service" of manufacturing raw materials into end-product automobile parts. In fact, however, petitioner is in the business of manufacturing and selling automobile parts. Those parts, without question, constitute tangible personal property. We decline respondent's invitation to equate the very process by which petitioner manufactures the tangible end products that it is in the business of supplying into the mere provision of a "service." We particularly decline to do so, as respondent suggests, based upon the identity of the party that sources and legally owns the raw materials. The sourcing of and legal title to the raw materials is simply not a proper basis by which to classify certain sales as being sales of "tangible personal property" and certain other sales of identical products as being sales of a "service" for purposes of SBT liability. Ultimately, and regardless of the sourcing or legal ownership of the raw materials used in the manufacturing process, the sales were transfers of possession of property held primarily for sale to customers in the ordinary course of petitioner's trade or business, within the meaning of MCL 208.7(1)(a)(i).

For these reasons, petitioner was engaged in the sale of tangible personal property, and the Tribunal properly granted summary disposition to petitioner.[4]

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra

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[3] As "the goods or equipment needed for carrying on a business," the raw materials arguably also constituted petitioner's "stock in trade," *Random House Webster's College Dictionary* (2d ed), p 1290, as well as property "included in [its] inventory."

[4] Since the sales met the definition of tangible personal property, the sales were not "mixed" and *Midwest Bus Corp v Dept of Treasury*, 288 Mich App 334; 793 NW2d 246 (2010), as well as the six-part "incidental to service" test articulated in *Catalina Marketing Servs, Inc v Dep't of Treasury*, 470 Mich 13; 678 NW2d 619 (2004), are inapplicable. However, application of the test from *Catalina Marketing Servs* would support the conclusion that the transfer of tangible property here was not incidental to the provision of services. Rather, the very object of the transactions was the acquisition of manufactured parts. The buyers sought to acquire parts, petitioner was in the business of providing parts, and it manufactured those parts as part of a retail enterprise with a profit-making motive. While the manufacturing process obviously contributed value, petitioner was in the business of selling manufactured automobile parts, rather than providing the "service" of manufacture, in contrast, for example, to *Midwest Bus*, 288 Mich App at 348 (selling the service of rehabilitating buses).