

ALABAMA TAX TRIBUNAL

SSAB ALABAMA, INC., §
§
Taxpayer, § DOCKET NO. S. 19-1182-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

**ORDER OVERRULING TAXPAYER’S
APPLICATION FOR REHEARING**

SSAB Alabama, Inc. (the Taxpayer), filed petitions with the Alabama Department of Revenue requesting refunds of utility tax that had been paid “for electricity used in an electrothermal manufacturing process and natural gas used to chemically convert a raw material prior to an electrothermal manufacturing operation.” The refund petitions were denied, and the Taxpayer appealed those denials to the Alabama Tax Tribunal.

The Taxpayer asserted in its Notice of Appeal that its refund claims “were for the same uses of electricity and natural gas and were determined with data from the same meters as the refund claims that were the subject of the Final Order of the Mobile County Circuit Court in CV-2018-900167 issued May 31, 2018 ...” Thus, the Taxpayer argued that the doctrines of res judicata and collateral estoppel apply in this Tax Tribunal appeal so as to reverse the Revenue Department’s denials of the refund petitions.

Following briefing and oral argument, the Tax Tribunal issued its Opinion and

Preliminary Order Regarding the Doctrines of Res Judicata and Collateral Estoppel on September 8, 2021. The Tax Tribunal ruled that the doctrine of res judicata was inapplicable because the tax periods at issue differ from the periods that were at issue in the Mobile Circuit Court action. The Tax Tribunal also ruled that the doctrine of collateral estoppel was inapplicable because the issues before the Tax Tribunal in this appeal were not “‘actually litigated’ before the Mobile Circuit Court.” Opinion and Preliminary Order, page 4.

Pursuant to Ala. Admin. Code r. 887-X-1-7, the Taxpayer has applied for rehearing with the Tax Tribunal concerning its ruling on collateral estoppel, but not concerning the ruling on res judicata. In its application, the Taxpayer quotes from the Mobile Circuit Court order, and argues the following, in part:

“The [Circuit] Court finds that there are no material, disputed issues of fact or law remaining between the parties, and therefore **ORDERS, ADJUDGES, and DECREES** as follows...” (emphasis added). The [Revenue] Department acknowledged that the refunds were proper and due to be paid. The Court adjudged (adjudicated) that there were no more remaining material, disputed issues of fact or law remaining between the parties. That is to say, since there were no more remaining disputed issues, there was nothing left to litigate. The phrases “fully adjudicated” and fully litigated are synonymous terms. In *Lange v. Hammer* 157 Ala. 322, 324 (1908) the Supreme Court stated: A plea of res judicata must show that the former controversy was between the same parties about the same subject matter and that the adjudication was upon the merits...” This identical language is found in the case of *Goodman v. McMillan* 61 So. 2d 55, 61 (Ala. 1952). SSAB submits, respectfully, that this was not a consent judgment but was in fact an adjudication on the merits, as a result of the Department’s recital of the facts.

Taxpayer’s Application for Rehearing, p. 2 (footnote omitted).

As quoted, the Taxpayer equates the term “adjudged” with the term

“adjudicated” and equates the phrase “fully adjudicated” with the phrase “fully litigated.” The Taxpayer then quotes from the 1908 Alabama case of *Lange v. Hammer*. However, the portion of *Lange* quoted by the Taxpayer concerns res judicata, not collateral estoppel. And the Taxpayer cites no other authority in support of its application for rehearing, except for a reference to *Goodman v. McMillan* which apparently quotes the *Lange* passage verbatim.

Also, the Taxpayer disagrees with the Tax Tribunal’s characterization of the circuit court order as a consent judgment. But, as noted in the Tax Tribunal’s Opinion and Preliminary Order, page 5, the Taxpayer admitted the point in its Brief Concerning Collateral Estoppel, as follows: “It is important to note that this Final Order [of the circuit court] was entered with the consent of the Department. In fact, the Department assisted in the drafting of this order.” Taxpayer’s Brief, page 3. And as further noted in the Opinion and Preliminary Order, a consent judgment is defined as “[a] judgment, the provisions and terms of which are settled and agreed to by the parties to the action.” *Black’s Law Dictionary*, 5th Ed., p. 756. The Final Order of the Mobile Circuit Court fits squarely within that definition.

The Taxpayer continues:

The question SSAB wishes to raise is: ‘To what exactly did the parties consent?’ In answering this question SSAB states; nothing. In its order the Tribunal found that the Final Order was entered: ‘... with the consent of the Department.’ The Department’s consent was to the language and form of the order. It is common practice for courts to request a party to draft an order and for the adverse party to review the draft. Finally, SSAB submits that there is an important distinction between an agreement and a consent judgment. In this matter the Department agreed (was satisfied), based upon the evidence submitted by SSAB, that

the refund was proper and due to be paid. As a result the Court adjudicated that there were no remaining material issues and facts and as a result ordered the judgment.

Taxpayer's Application for Rehearing, pages 3-4.

The Taxpayer's statement "that there is an important distinction between an agreement and a consent judgment" ignores the Black's Law Dictionary definition quoted by the Tax Tribunal that a consent judgment is "[a] judgment, the provisions and terms of which are **settled and agreed to by the parties** to the action." (emphasis added)

Finally, the answer to the question raised by the Taxpayer is that the Revenue Department consented to the Taxpayer's claim for refunds of utility tax for certain periods and for certain amounts. According to the circuit court Final Order, which apparently was drafted by the Taxpayer, the Revenue Department consented to the refunds after reviewing the Taxpayer's records. Thus, further proceedings before the circuit court were "moot, unnecessary, and would be a waste of judicial resources, as there are no material disputed issues of fact." In short, the relevant issues that are before the Tax Tribunal were not "actually litigated" in circuit court.

The Taxpayer has not shown that the Tax Tribunal's Opinion and Preliminary Order Regarding the Doctrines of Res Judicata and Collateral Estoppel was incorrect as a matter of law or fact. Therefore, the Taxpayer's Application for Rehearing is overruled.

It is so ordered.

The Tax Tribunal will set this case for trial in due course. In the meantime, the

parties are reminded of Ala. Admin. Code r. 887-X-1-.13, which mandates that parties “shall stipulate all relevant and non-privileged facts to the fullest extent practicable and to which complete or qualified agreement can or fairly should be reached.”

Entered May 9, 2022.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

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