

JUAN HERNANDEZ
CARIBBEAN SHIPPING, INC.
P.O. BOX 626
BAYOU LA BATRE, AL 36509,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 05-708

FINAL ORDER

Caribbean Shipping, Inc. ("Petitioner") petitioned the Department for a sales tax exemption certificate. The Department denied the petition. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on November 21, 2005 in Mobile, Alabama. The Petitioner's representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

The Petitioner exports ship parts and supplies to Honduras from the Port of Bayou LaBatre, Alabama. The Petitioner applied for a sales tax exemption certificate. The Department denied the application because the Petitioner did not export its goods from the Port of Mobile, as required by Code of Ala. 1975, §40-23-39(a). The Petitioner appealed.

Section 40-23-39(a) provides for a refund of sales tax paid on goods purchased in Alabama that are exported to a foreign county. The provision also requires, however, that that "when ocean transportation is required and scheduled service to the desired port overseas is available through the Port of Mobile, the Port of Mobile is used for shipment." Dept. Reg. 810-6-3-.76(2) also requires that items must be shipped through the Port of Mobile in order for the exemption to apply.

The Petitioner claims in its appeal letter that the “Port of Bayou La Batre, Alabama, *is within* Mobile County, and according to the U.S. Dept of Commerce Census Bureau it is considered a port for export purposes. In fact, our dock space is leased from the City of Bayou La Batre, and considered as ‘State Docks.’”

Bayou LaBatre is in Mobile County, and may be a port for export purposes.¹ However, §40-23-39 specifies that the tax paid on exported goods can only be refunded if the goods are exported overseas from the Port of Mobile; provided, that service to the desired port overseas is available through the Port of Mobile. The burden was on the Petitioner to prove that it is entitled to the exemption certificate, i.e., the export of its purchases is not available through the Port of Mobile. It failed to do so. Consequently, the Department’s refusal to issue the exemption certificate is affirmed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 7, 2005.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Port of Bayou LaBatre is not, however, a part of the Alabama State Docks public port system, although that is irrelevant to the issue in dispute.