

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 87-154

BLUE MOUNTAIN INDUSTRIES
20 Blue Mountain Avenue
Blue Mountain, AL 36201,

§

§

Taxpayer.

§

ORDER

This hearing concerns a petition for refund of sales tax filed by Blue Mountain industries ('Taxpayer') for the period January 1, 1983 through December 31, 1985. A hearing was conducted in the matter on July 23, 1987. The Taxpayer was represented at said hearing by Mr. T. A. Rothwell and Mr. Dave Sundstrom. Department assistant counsel Ron Bowden appeared on behalf of the Department.

Based on the evidence submitted by the parties at the hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The issue in dispute is whether netting sold by the Taxpayer to Petrou Fisheries, Inc. during the period in question should be exempted from sales tax under the provisions of Code of Ala. 1975, §40-23-4(13), which reads as follows:

(13) Gross proceeds of the sale or sales of materials, equipment, and machinery which enter into and become a component part of ships, vessels or barges of more than 50 tons burden, constructed or built within this state.

The pertinent facts are undisputed. During the period in

dispute, the Taxpayer sold netting to Petrou Fisheries, Inc. The netting was subsequently used aboard fishing boats in the waters off of Louisiana.

The nets were spread by small boats (17,000 pounds), and were hauled in by a larger vessel, which the parties agree is over 50 tons burden. The Taxpayer concedes that the vessels on which the subject nets were used were not constructed within Alabama.

The Taxpayer's argument is that it should not have to pay the tax in issue because pursuant to an audit of the Taxpayer in 1979, the Department determined that the Taxpayer's sales to Petrou Fisheries were exempt. Accordingly, the Taxpayer relied on the Department's determination and did not collect tax from Petrou Fisheries on all subsequent transactions.

The Department concedes that the netting became a component part of a vessel of over 50 tons burden, and also that the Department's audit in 1979 excluded from taxation all of the Taxpayer's sales to Petrou. However, the Department's position is that the exemption is inapplicable because the vessels in question were not constructed in Alabama. Further, the Department argues that the State cannot be estopped from collecting tax as a result of incorrect advice or information given by a Department employee.

CONCLUSIONS OF LAW

The exemption provided by §40-23-4(13) applies to the sale of materials which become a component part of vessels of over 50 tons burden, which are built within Alabama. The Department concedes

that the netting in question qualifies for the exemption, except for the fact that the vessels on which the netting was used were not constructed in Alabama.¹ There is no dispute that the vessels were constructed outside of Alabama. The statute clearly requires that the vessels must be built in Alabama for the exemption to apply. Accordingly, the subject sales did not come within the purview of the exemption section and therefore are taxable.

The Taxpayer's estoppel argument must also be rejected. In State v. Maddox Tractor & Equipment Co., 69 So.2d 426, the Alabama Supreme Court held that the Revenue Department cannot be prevented due to prior inconsistent advice or actions from collecting a tax that is otherwise due.

The above considered, the Department's denial of the refund in issue is hereby upheld.

Done this 28th day of July, 1987.

BILL THOMPSON
Chief Administrative Law Judge

¹In State v. Sprinkle Net Shop, Inc., 351 So.2d 608 (1977) the Court of Civil Appeals held that nets and related equipment sold for use on shrimp boats of over 50 tons burden were exempt as component parts under §40-23-4(13). It should be noted, however, that the Court in that case strongly implied that the exemption may be limited to only materials and equipment used in the original construction of the vessel.

