

ALABAMA TAX TRIBUNAL

OUTOKUMPU STAINLESS USA, LLC, §
Taxpayer, § DOCKET NO. S. 19-844-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE, §
OUTOKUMPU STAINLESS USA, LLC, §
Taxpayer, § DOCKET NO. COUNTY 19-101-JP
v. §
MOBILE COUNTY, ALABAMA.

FINAL ORDER

These consolidated appeals involve denials by the Alabama Department of Revenue and Mobile County of the Taxpayer’s requests for sales tax refunds. Mobile County and the Alabama Department of Revenue have filed motions requesting that the Tax Tribunal impose sanctions against the Taxpayer because of the Taxpayer’s failure to comply with Tax Tribunal discovery orders. Oral argument on the motions was held on April 19, 2023. Whitney Compton represented the Taxpayer; Ken Webb represented the County; and David Avery represented the Revenue Department.

Facts and Procedural History

On December 1, 2022, the Tax Tribunal held an in-person status conference to discuss discovery submissions, among other things, with the parties’ representatives. On December 6, 2022, the Tax Tribunal entered a Scheduling Order setting forth the

following deadlines:

- The Taxpayer was directed to file a status report with the Tax Tribunal by January 6, 2023, to include a statement of (1) the issues that were initially raised in the Notice of Appeal; (2) the tax periods involved; (3) the issues that have been resolved; and (4) the issues that remain to be decided.
- By January 27, 2023, the tax agencies were directed to inform the Tax Tribunal if they agreed with the Taxpayer's status report. If they disagreed, they were to state their specific disagreements.
- The parties were expected to engage in informal discovery with respect to the items identified at the December 1, 2022, status conference, including, but not limited to, an Excel spreadsheet to be produced by the Taxpayer's representative. Those items were to be exchanged by January 6, 2023.
- Any formal discovery requests were to be submitted to the Tax Tribunal by February 6, 2023.
- Mobile County was allowed to file an Amended Answer, subject to any objection submitted by the Taxpayer, by February 6, 2023.
- The Taxpayer was allowed to file a reply or objection to any amended answer by March 6, 2023.
- The parties were directed to submit a stipulation of facts to the Tax Tribunal by April 6, 2023.
- The Taxpayer was directed to submit a brief addressing the legal issues by April 6, 2023.
- The Revenue Department and Mobile County were directed to submit a responsive brief addressing the legal issues by May 8, 2023.
- The trial of these cases was set for May 24, 2023.

Thereafter, Mobile County notified the Tax Tribunal that the Taxpayer failed to exchange the items identified at the December 1, 2022, scheduling conference by the January 6, 2023, deadline set in the Scheduling Order. The County stated that the informal discovery requested by the County and ordered by the Tax Tribunal was

“a pre-requisite to understanding the entirety of the [Taxpayer’s] refund claim.”

Therefore, the Tax Tribunal entered a Formal Discovery Order on February 1, 2023, directing the Taxpayer to submit to Mobile County by February 7, 2023, the following:

- the Excel spreadsheet relating to the timing of filings and specific amounts petitioned for refund related to electrodes; and
- photographs/video providing more detail related to the Taxpayer’s subject property to give Mobile County an understanding of the Taxpayer’s operations.

The February 1, 2023, order stated that any further formal discovery requests were to be submitted to the Tax Tribunal by February 15, 2023. Mobile County’s deadline to file an Amended Answer was extended until March 6, 2023, and the Taxpayer was allowed to file a reply or objection to any amended answer by April 6, 2023. All other deadlines set forth in the Scheduling Order of December 6, 2022, were unchanged by the February 2, 2023, Order.

On February 6, 2023, at the Taxpayer’s request, the Tax Tribunal entered an order granting the Taxpayer another extension of time (until February 13, 2023) to submit the items identified in the February 1, 2023, Formal Discovery Order.

Thereafter, the Revenue Department filed a Motion for Formal Discovery, requesting that the Taxpayer be ordered to produce various documentation or records to show that tax had been overpaid on the items in question. On February 7, 2023, the Tax Tribunal entered a Second Formal Discovery Order directing the Taxpayer to file with the Tax Tribunal its position concerning the Revenue Department’s Motion for Formal Discovery no later than February 13, 2023.

On February 22, 2023, the Tax Tribunal entered a Third Formal Discovery

Order, stating that the Taxpayer filed a Response to Second Formal Discovery Order and that the Taxpayer attached Schedule One for the Revenue Department's review. The Tax Tribunal's Third Formal Discovery Order also noted that Mobile County filed a Motion for Formal Discovery. The Tax Tribunal granted that motion, directing the Taxpayer to provide to the County, no later than March 14, 2023, the following:

- Excel spreadsheets (or similar format) detailing the description of the items in issue, the timing of filings, and specific amounts petitioned for refund relating to items in issue other than electrodes, which already had been the subject of more than one discovery order;
- Photographs and/or video providing more detail related to the Taxpayer's subject property to give the County an understanding of the Taxpayer's operations, which already had been the subject of more than one discovery order;
- Photographs of the items (or like items) requested to be refunded in the petitions including the refractories, thermocouples, rollers, and miscellaneous items; and
- Invoices from the vendor, product description documentation, product usage documentation, and any other backup information for items (not including electrodes) for which the Taxpayer petitions for refund.

The Tax Tribunal noted in the Third Formal Discovery Order that Mobile County also requested permission to inspect, photograph, and video the operations of the Taxpayer. The request for permission to photograph and video the Taxpayer's operations was denied. The request to inspect the Taxpayer's operations was granted. The parties were directed to confer with one another concerning a mutually-agreeable date and time for the inspection by March 31, 2023.

The Third Formal Discovery Order extended the deadlines (other than the trial date) set forth in the Scheduling Order of December 6, 2022, and the Formal

Discovery Order of February 1, 2023, as follows:

- Mobile County's deadline to file an Amended Answer was extended until April 7, 2023.
- The Taxpayer's deadline to file a reply or objection to any amended answer is due by April 21, 2023.
- The parties were directed to submit a stipulation of facts to the Tax Tribunal by May 5, 2023.
- The Taxpayer was directed to submit a brief addressing the legal issues by May 5, 2023.
- The Revenue Department and Mobile County were directed to submit responsive briefs addressing the legal issues by May 19, 2023.

On March 14, 2023, the Tax Tribunal entered an order granting the Taxpayer's request for an additional, temporary extension of time (until March 17, 2023) to comply with the Tax Tribunal's Third Formal Discovery Order. On March 30, 2023, Mobile County filed its Motion for Sanctions. On April 11, 2023, the Revenue Department also filed a motion requesting sanctions. Both motions were based on the Taxpayer's noncompliance with discovery orders of the Tax Tribunal. The motions were set for argument.

At the oral argument of the tax agencies' motions, Mobile County stated that the Taxpayer had failed to provide the items that the Taxpayer was ordered to produce, specifically, Excel spreadsheets (or similar format) detailing the description of the items in issue, the timing of filings, and specific amounts petitioned for refund relating to items in issue other than electrodes; photographs of the items (or like items) requested to be refunded in the petitions including the refractories, thermocouples, rollers, and miscellaneous items; and invoices from the vendor,

product description documentation, product usage documentation, and any other backup information for items (not including electrodes) for which the Taxpayer petitioned for refund. The Revenue Department reiterated that it had not received from the Taxpayer invoices from the vendor, product description documentation, product usage documentation, or any other backup information for items (not including electrodes) for which the Taxpayer petitioned for refund. The Taxpayer's representative admitted that the items which were ordered to be produced had not been produced by the deadlines which had been set, and extended multiple times, by the Tax Tribunal. And the representatives of the tax agencies argued that they were unable to prepare for trial on behalf of their clients without the information which the Taxpayer had been ordered to produce multiple times.

Ruling

Section 40-2B-2(j)(7) provides: "The Alabama Tax Tribunal may enforce its orders on discovery and other procedural issues, among other means, by deciding issues wholly or partly against the offending party." Ala. Admin. Code r. 887-X-1-.4(1) provides, in pertinent part: "The Tax Tribunal may ..., with or without a hearing, dismiss any appeal or grant appropriate relief to any party if a party fails to comply with any regulation or statute governing appeals before the Tax Tribunal, or with any preliminary order or opinion and preliminary order entered by the Tax Tribunal."

In this case, the Taxpayer's repeated failures to comply with the Tax Tribunal's discovery orders, despite having been granted multiple extensions, warrant a

judgment in favor of Mobile County and the Alabama Department of Revenue. Therefore, the denials of the Taxpayer's refund petitions by Mobile County and the Revenue Department are upheld. Judgment is entered accordingly.

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

Entered April 25, 2023.

/s/ Jeff Patterson _____

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:ac

cc: Whitney Compton, Esq.
Alison Wadhvani, Esq.
Kendrick E. Webb, Esq.
Mark Cowell, Esq.
David E. Avery, III, Esq.
Leslie D. Payne
Michael B. Portis