

In the United States Court of Federal Claims

Nos. 99-338T & 99-778T

Filed: May 20, 2002

AMMEX, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Excise tax; Sterile duty-free enterprise; Exportation; Cross-motions for summary judgment; Non-taxpayer standing

J. William Koegel, Jr., Washington, D.C., attorney of record for plaintiff.

William K. Drew, Washington, D.C., with whom was *Eileen J. O'Conner*, Assistant Attorney General, for defendant.

ERRATA

Reginald W. Gibson, *Senior Judge*:

The attached page 19 shall be substituted for the original page 19 of the opinion filed in this case on April 10, 2002. The original page 19, in the first full paragraph on that page, contained a mis-characterization of a statute as applied in the court's analysis. The errata replaces that paragraph in its entirety, notwithstanding, it does not affect the outcome of the analysis.

IT IS SO ORDERED.

Reginald W. Gibson, Senior Judge

Any other answer would stand reason on its head given the facts here and the context of a duty-free enterprise that presumably is permitted to sell motor fuel on an individual consumption basis. Law and logic bear out that the exportation begins with the consumer's purchase, and the fuel necessarily enters the stream of exportation at the moment it is placed into the fuel supply tank. ^{28/} Exportation then continues until the consumer crosses, in this case, the Canadian border.

Plaintiff thus satisfies the injury in fact element, where plaintiff is the "person" who purchased gasoline for resale to a second purchaser for export, and the exportation occurred before any other use. Here, clearly, there is a legally protected interest, *i.e.*, an injury in fact. Causation, the second element of standing, can be said to be fairly traceable to the defendant (under this special statutory provision) where there is record evidence that defendant taxed, or caused to be taxed, Ammex's suppliers in accordance with the operative statute which states that "[t]here is hereby imposed a tax...on – ... (ii) the removal of a taxable fuel from any terminal." 26 U.S.C. § 4081(a)(1)(A). Where there is an injury in fact, as here, and causation is fairly traceable to the defendant (by statute), there is the likelihood of redress.

Consequently, Ammex satisfies all of the elements of standing under the statute discussed hereunder with respect to its purchases of gasoline, thereby compelling this court to deny defendant the right to summary judgment as a matter of law on this standing issue.

PLAINTIFF'S CROSS-MOTION

Plaintiff sets forth a single question on cross-motion that raises factual issues that preclude this court from granting summary judgment in its favor. The question is: "Whether Ammex, an operator of a duty-free store that is authorized by the United States Customs Service to sell motor fuel on a duty-free basis for use outside the United States..., is due a refund of... excise taxes it paid [its suppliers] on the motor fuel that it purchased solely for export [which was] sold at Ammex's duty-free facility." Pl. Cross-Motion at 2.

The gravamen of plaintiff's question is rooted in genuine issues of material fact which by law require this court to deny plaintiff's cross-motion. Foremost of which is—

^{28/} See *Duty Free Shoppers, Ltd. v. Tax Commissioner*, 464 F. Supp. 730, 735 (D. Guam 1979) (citing *Department of Revenue of State of Washington v. Ass'n of Washington Stevedoring Companies*, 435 U.S. 734 (1978); *Kosydar v. Nat'l Cash Register Co.*, 417 U.S. 62 (1974)).

