Alabama Department of Revenue v. CSX Transportation, Inc., No. 13-553

The Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act") prohibits States from imposing any "tax that discriminates against a rail carrier." 49 U.S.C. § 11501(b)(4). Today, in Alabama Department of Revenue v. CSX Transportation, Inc., No. 13-553, the Supreme Court held that a State may potentially violate this prohibition by taxing fuel purchases made by a rail carrier while exempting similar purchases made by its competitors. The Court further clarified that a tax is discriminatory only if the State cannot sufficiently justify differences in treatment between similarly situated taxpayers.

CSX, an interstate rail carrier, is subject to Alabama's sales tax for its purchases of diesel fuel. Under separate statutory provisions, CSX's competitors in the State—motor and water carriers—are exempt from paying the sales tax for their diesel-fuel purchases. Motor carriers pay an alternative fuel-excise tax on diesel, but water carriers pay neither the sales tax nor the excise tax. CSX sought to enjoin Alabama officers from collecting sales tax on its diesel-fuel purchases, claiming that the State's tax treatment violated § 11501(b)(4).

After the lower courts rejected CSX's claim, the case reached the Supreme Court for the first time. The Court reversed, holding that a tax "discriminates" under subsection (b)(4) when it treats "groups [that] are similarly situated" differently without sufficient "justification for the difference in treatment." CSX Transp. v. Ala. Dept. of Revenue, 562 U.S. 277, 287 (2011). On remand, the Eleventh Circuit held that CSX could establish discrimination by showing that Alabama treated rail carriers differently from their competitors. The Eleventh Circuit rejected Alabama's argument that its sales-tax exemption did not unlawfully discriminate against rail carriers because motor carriers (but not rail carriers) had to pay an excise tax on their fuel.

Today, the Supreme Court again reversed and remanded. The Court upheld the Eleventh Circuit's conclusion that CSX's competitors, including motor carriers and water carriers, were an appropriate comparison class for its discrimination claim. The proper comparison class, the Court explained, depends on the theory of discrimination alleged in the claim and must consist of individuals situated similarly to the claimant.

The Court also held, however, that the Eleventh Circuit had erred in refusing to consider whether Alabama could justify its exemption of motor carriers from the sales tax because motor carriers, and not rail carriers, are subject to the excise tax. The Court held that a comparable tax levied on a competitor may justify exempting that competitor from a general tax applicable to a rail carrier. Thus, the Court remanded the case for the Eleventh Circuit to decide whether the excise tax is "the rough equivalent" of the sales tax imposed on CSX. Recognizing that water carriers are exempt from both the state tax and the excise tax, the Court also remanded for the Eleventh Circuit to examine the State's other proffered justifications for exempting water carriers from the sales tax.

Justice Thomas, joined by Justice Ginsburg, dissented. The dissenters believed that a State's tax-exemption scheme does not violate § 11501(b)(4) unless it "target[s] or single[s] out railroads by comparison to general commercial and industrial taxpayers," not merely by comparison to similarly situated competitors.

Any questions about this case should be directed to Donald Falk (+1 650 331 2030) in our Palo Alto office.