

Summary of SC94097, *Mumtaz Lalani v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Mary E. Nelson
Argued and submitted October 14, 2014; opinion issued December 9, 2014

Attorneys: Lalani was represented by Jeffrey S. Damerall of St. Louis, (314) 921-6600, and the director was represented by Solicitor General James R. Layton and Deputy General Counsel Andrew J. Hirth of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals the administrative hearing commission's decision finding him liable for paying taxes on the "first sale" of tobacco products in Missouri. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the commission's decision. The man is responsible for paying the taxes under the statutes because, by purchasing the tobacco products from a wholesaler and then reselling them to Missouri retailers, he made the "first sale" of the products. His argument that the statutes are unconstitutionally vague as applied to him lacks merit, and a facsimile sent to the man by an employee of the director of revenue cannot alter the man's statutorily mandated tax obligations.

Facts: Mumtaz Lalani bought tobacco products from a Missouri wholesaler and then sold them to Missouri retailers. He did not report these sales on his tax returns. Following an audit, the director of revenue determined that Lalani was responsible for the "first sale" of the tobacco products within the state and sent Lalani a tax lien in the amount of nearly \$42,900 in back taxes, penalties and interest. On review, the administrative hearing affirmed the director's decision. Lalani seeks this Court's review.

AFFIRMED.

Court en banc holds: The commission correctly determined that the director's determination of back taxes, penalties and interest against Lalani was proper. Lalani is responsible for paying the tax on the tobacco products. Section 149.160, RSMo, imposes a tax on the "first sale" of tobacco products within the state at the rate of 10 percent of the manufacturer's invoice price, before discounts or other deals, and requires the taxes to be paid by the person making the "first sale" within the state. The section 149.011, RSMo, definition of "first sale within the state" includes the first sale of a tobacco product by a wholesaler to a person who intends to sell such tobacco products to a person at retail within Missouri. Under the plain language of this statute, Lalani made the first sale because he purchased the tobacco products from a wholesaler and then resold them to Missouri retailers and is responsible for paying the 10-percent tax. Lalani's argument that sections 149.011 and 149.160 are unconstitutionally vague as applied to him lacks merit. His alleged lack of knowledge of the invoice price on which the tax is based is an issue of due diligence and accounting, not a constitutional infirmity in the statute. The director of revenue is not estopped (prohibited) from collecting the tax from Lalani. Even if a facsimile sent by one of the director's employees to Lalani was ambiguous or misleading, the communication cannot alter Lalani's statutorily mandated tax obligations.