

Summary of SC94209, *Ben Hur Steel Worx LLC v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Sreenivasa Rau
Dandamudi

Argued and submitted December 3, 2014; opinion issued January 13, 2015

Attorneys: Ben Hur was represented by Marc H. Ellinger, James B. Deutsch and Thomas R. Schwartz Jr. of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500; and the director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321, and Spencer A. Martin of the department of revenue in Jefferson City.

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 construction subcontractor seeks this Court's review of an administrative hearing commission finding it did not qualify for a tax exemption for materials it purchased for use in building steel frames for large-scale commercial structures. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the commission's decision. The plain and ordinary language of the statute governing the exemption sought, as well as the language of other exemptions specifically relating to construction, demonstrate the legislature did not intend to exempt the construction from sales and use tax.

Facts: Ben Hur Steel Worx LLC purchased from steel mills beams and other components it uses to fulfill its contracts to build steel frames for large-scale commercial buildings and structures. Ben Hur petitioned the director of revenue for nearly \$200,000 in sales and use tax refunds. The director denied the refund, and Ben Hur appealed to the administrative hearing commission. The commission affirmed the director's decision, concluding Ben Hur did not qualify for the tax exemption under section 144.054.2, RSMo. Ben Hur seeks this Court's review.

AFFIRMED.

Court en banc holds: Because Ben Hur is a subcontractor using steel construction materials in fulfilling its construction contracts – an activity not exempt under the plain and ordinary language of section 144.054.2 – it failed to qualify for the sales and use tax exemption. The exemption applies to materials used in “manufacturing,” “processing,” “compounding” or “producing.” This Court previously has held that the plain language of this statute applies only to large-scale industrial activities. Further, it is well-settled that contractors and subcontractors consume materials purchased and used in fulfilling construction contracts and, therefore, are liable for sales and use taxes. Ben Hur is involved in construction activities, not industrial activities. Neither the word “construction” nor any words associated with construction activities appear in section 144.054 – although the legislature has created several other sales tax exemptions with specific reference to construction activities. For example, section 144.062, RSMo, exempts materials purchased for “constructing, repairing or remodeling” tax-exempt entities such as certain healthcare organizations and educational institutions. Not only was Ben Hur aware of this exemption, but it also took advantage of the construction-oriented tax

exemption for projects for tax-exempt entities. Ben Hur's attempt to use section 144.054.2 as a way to seek tax reimbursement for materials purchased to fulfill construction contracts with non-exempt entities is contrary to the language and interpretation of section 144.054.2. Had the legislature intended the exemption in section 144.054.2 to apply to construction activities, it would have included construction terminology.