

Opinion
no. 1184

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SECTION 11, EDITION
DISTRICT OF COLUMBIA
TAX DIVISION

TAX DIVISION

MAY 14 1979

FILED

CANTEEN CORPORATION,)
)
Petitioner)
)
v.)
)
DISTRICT OF COLUMBIA,)
)
Respondent)

Docket No. 2281

MEMORANDUM ORDER

This is an appeal from the assessment of personal property tax for Fiscal Years 1972, 1973 and 1974. The assessment is based upon the value of certain walk-in freezers and exhaust canopies which petitioner contends are not subject to the personal property tax for the reason that they constitute realty rather than personal property.

Most of the facts in this case were stipulated, and the Court briefly heard from one witness tendered by petitioner. Based upon that stipulation and that testimony together with the evidence presented, the Court makes the following findings of fact:

1. Petitioner, a Delaware Corporation licensed to do business in the District of Columbia, is engaged in the food service business. Its business operations include the distribution of food and beverage products, cigarettes and other items through its own vending machines; the operation of dining rooms, cafeterias and other manual food services for businesses and restaurants.

2. Pursuant to an Agreement with the John F. Kennedy Center for the Performing Arts, a bureau of the Smithsonian

Institution ("Center"), petitioner has operated since 1971 a food and refreshments facilities concession in the Center building. The primary facilities consist of two public restaurants and a cafeteria, all located on the top floor of the Center building, located in Washington, D. C. These restaurants are part of the overall facilities of the Center, which are open generally to the public including persons attending musical and theatrical performances in the Center, as well as visitors to the Center. There are three main public auditoria on the ground level of the Center: (a) the Concert Hall, with a seating capacity of 2,759; (b) the Opera House, with a seating capacity of 3,234; and (c) the Eisenhower Theater, with a seating capacity of 1,100. The substructure of the Center building contains a 3-level 1,600 car garage. The Center building and its perimeters occupy approximately 17 acres of ground space.

3. Under its Agreement with the Center, as amended, the petitioner was granted a concession and license to sell food and refreshments and to operate the Center's restaurant facilities for a basic period of ten years following the formal opening of the Kennedy Center in 1971, with an option to renew for an additional six year period. Under the Agreement, petitioner was given the right to assist the Center's architects who were responsible for design and planning of the Center building, with respect to the preparation of the plans and specifications for the installation and operation of the restaurant concession facilities. Petitioner's employees

and agents coordinated the design and planning of the restaurant facilities with the Center's architects, and all of petitioner's plans and drawings were subject to the final approval of the Center's architects and the Center.

4. Pursuant to its Agreement, petitioner agreed to pay the Center income or fees, which varied depending upon the amount of food and beverage sales resulting from its operation of the restaurant food concession.

5. Under the Agreement, as amended, petitioner agreed to expend and pay for various costs (up to \$1,500,000) of the equipment, furnishings and fixtures in the restaurant facilities, which costs included the walk-in freezers and exhaust canopies involved here.

The Agreement provided that if the Agreement is terminated for any reason prior to the expiration of the concession term the Center will purchase or cause to be purchased from petitioner the unamortized value of petitioner's actual capital investment in the concession facilities, based on a ten year straight line depreciation schedule, commencing from the first formal opening of the Center building to the public. Petitioner also agreed that in the event of termination it would assist in a smooth changeover to another concession operator with minimum inconvenience to the public and the Center.

6. In the Agreement, petitioner agreed that it would not modify or pledge or otherwise encumber any fixtures or equipment in the licensed space or for which it may at anytime thereafter install therein.

7. a. The three walk-in freezers involved were fabricated by Tafco, Inc., Pittsburgh, Pennsylvania, in accordance with a list of specifications furnished by petitioner. Petitioner paid the costs thereof in the amount of \$53,415, including delivery and installation and refrigeration hookup and installation costs of \$18,085. The walk-in freezers were custom built and specifically designed to fit the Center building lines and requirements of the restaurants. They were specially designed to fit around the building columns and follow the wall configurations. They varied in dimensions; the largest being 33'2" x 10'2". The height of each freezer was 8'6" so as to fit flush from floor to ceiling. The walk-in freezers were composed of insulated panels which are sandwiches of stainless steel on the two outer surfaces with foam insulation in between. The individual panels which fit around the columns had to be specially formed by hand. Because of the size of the walk-in freezers, the panels were shipped to the jobsite. The panels had locking devices and they were assembled and locked together at the site.

b. The floors in the restaurant facilities, because of their location above the performance areas on the lower floor, had a solid layer of approximately 2 inches thick insulation laid on top of the subslab, on top of which approximately 2-3 inches of concrete was poured. However, the areas in which the walk-in freezers were installed did not have the insulation and additional layer of concrete on top of the subslab. Rather, the flooring beneath the freezers was designed by the

Center's architects so as to receive the walk-in freezers directly on top of the structural subslab with the bottom of the freezers taking up the 4 to 5 inches difference between the subslab and the inside floor of the freezers themselves. After the freezers were installed in the recessed areas designed to receive them, the flooring in the restaurant around the freezers was tiled flush up to the outer edge of the floor of the freezers so that the tile floor outside the freezer and the steel floor inside the freezer were on the same level for easy entry through the freezer doors.

c. The refrigeration for the freezers was located on the upper level and was piped to the freezers through copper tubing. The power was provided in the walls for the walk-in freezers and also a separate power supply was provided on the upper level for the compressors, and one downstairs for the interior lights and the door heaters.

d. The ceiling around the upper perimeters of the walk-in freezers is a panelized system which was brought against and fastened thereto.

e. The function of the walk-in freezers was to store under refrigeration all perishable items such as meat, fish dairy products, etc., which were used by the cafeteria, dining rooms, and coffee shop and other facilities. The freezers were the only storage and central supply plant for the entire food service operation in the Center building.

f. Removal of the freezers would require disassembling the freezer panels, and breaking-up, removal and replacement of the tile floor and caulking around the freezers. Removal

of the freezers would leave open the recessed areas beneath them, which would have to be filled in with rigid insulation and concrete, as in the case of the surrounding areas of the flooring of the restaurant facilities. Without proper insulation the noise from the facility in operation could be objectionable to the performance in the auditoria in floor below. Because of the building wall and column configurations, and the requirements of the restaurant facilities, standard size freezers could not be properly utilized without leaving gaps in the walls.

g. The walk-in freezers were custom built and specifically designed and would have little, if any, value or use to petitioner or others if removed from the Center restaurant premises. The walk-in freezers are securely and permanently fixed and annexed to the building, and petitioner does not intend to remove them when petitioner vacates the premises. The freezers cannot be removed without material or substantial injury to the building and the restaurant facilities and the freezers. Their continued operation and use, as installed, is essential to and an integral part of the operation of the restaurant facilities and the Center itself.

8. a. Each of the seven exhaust canopies involved was fabricated of stainless steel by Cockle Ventilator Company, Wheeling, Illinois, to different size specifications of the petitioner and to meet the building configurations. Petitioner paid the costs thereof in the total amount of \$15,958, including installation costs of \$2,167. They were custom built and

specially designed with their size determined by wall configurations and the number and type of cooking units served. Their function is to gather and confine the smoke and fumes before they escape into the surrounding area. The canopies were installed above the batteries of cooking equipment in the kitchen and connected to the ceiling and overhead ductwork through which cooking fumes and odors were removed. The exhaust canopies were screwed to the walls in the rear, and supporting rods were hung from the structural slab overhead and fastened to the front of the canopies. They were also tied to the overhead exhaust ducts in the ceiling. The panelized ceiling was brought down and fastened to the perimeters of the canopies.

b. There are carbon dioxide fire protection systems located in the canopies and ductwork. The carbon dioxide tanks are located on the level above and carried down through the ductwork through piping to the canopies to nozzles located in the inside of the canopies. The nozzles generally were directed towards the grease extractors contained in the canopies. In the case of fire or intense heat a thermal lining on a bevel plate within the exhaust duct opening would close, which would trigger a microswitch at the carbon dioxide tank at the upper level opening all the valves and the tank would empty into the system. The gas would then flow down through the piping in the ductwork and spray out of the nozzle against the grease extractors and flood the exhaust canopies themselves as well as the ductwork. The exhaust canopies serve a necessary fire protection function and limit the amount of flame between

the configurations of the housing.

c. In order to remove the exhaust canopies, the ceiling round the perimeters of the units would have to be disassembled and thereafter replaced. The exhaust canopies would have to be disconnected from the supporting rods hung from the structural slab overhead and the canopies would have to be unscrewed from the walls.

d. The canopies would not fit in other facilities and modification would be more expensive than purchasing new ones therefor. The Center restaurant facilities could not operate properly without the exhaust canopies, and their use is required by the Fire Department. Standard size canopies would not fit and could not be used in their place.

e. The taxpayer also paid for the ductwork into which the canopies were connected, as well as the fire carbon dioxide protection system located on the upper level, in the ductwork and in the canopies. As in the case of the freezers and canopies, petitioner treated the fire protection system and the ductwork as part of the realty and did not report and pay personal property tax with respect thereto. Upon examination, the fire protection equipment and the ductwork were not treated as personal property for the purpose of District of Columbia personal property tax, and no additional personal property tax was assessed with respect thereto.

f. The exhaust canopies were custom built and specifically designed and would have little, if any, value or use to petitioners or others if removed from the Center restaurant

premises. The canopies are securely and permanently fixed and annexed to the ductwork and the building, and petitioner does not intend to remove them when petitioner vacates the premises. The canopies cannot be removed without material or substantial injury to the building and the restaurant facilities. Their continued operation and use, as installed, is essential to and an integral part of the operation of the restaurant facilities and the Center itself.

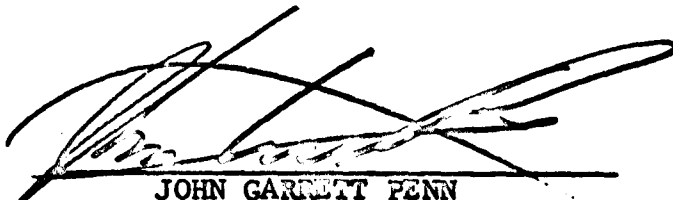
The evidence offered in this case satisfies the Court that the property in controversy became realty as a result of the peculiar circumstances of this case. The record indicates that the subject property was specifically designed for installment at the Kennedy Center, that it was annexed to the realty, that such property was customized for installment at the Center for use by the petitioner in three different restaurants operated at the Center. The property cannot be removed without material damage to the premises and such property cannot be used or installed elsewhere if removed. The evidence also reflects the intention of the petitioner not to remove that property from the premises if and when the petitioner vacates those premises. Taking all of those matters into consideration this Court concludes based upon the record that the property is not personal property for the purposes of the tax, and that petitioner is entitled to a refund of the taxes paid.

O R D E R

It is hereby

ORDERED that petitioner shall receive a refund of taxes paid for Fiscal Years 1972, 1973 and 1974 together with interest thereon, said interest to be paid from the date of payment October 21, 1974, together with interest as provided by law.

Date: May 11, 1979



JOHN GARRETT PENN
Judge

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Copies

to

and to

Mr. Kenneth Back
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H. Garfield
5/14/79