

DEM must certify that the facility meets the requirements of G.L. 1956 § 44-18-30(15) in order for Mitkem to claim the exemption.

On July 24, 2000, DEM denied Mitkem's request for certification stating that it had never evaluated or had opportunity to evaluate property and supplies acquired by an independent analytical laboratory under R.I.G.L. §44-18-30(15) and that it historically interpreted R.I.G.L. 1956 § 44-18-30(15) as being intended to provide tax relief for equipment that is required or regulated by permit.

On October 20, 2000, Mitkem requested that DEM reconsider its initial denial of certification. DEM denied Mitkem's request for reconsideration on April 2, 2001.

On May 1, 2001, Mitkem filed a complaint in this Court appealing DEM's decision of April 2, 2001.

Jurisdiction

Section 42-35-15(a) provides "that any person who has exhausted all administrative remedies available within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter." A contested case is "a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an agency after an opportunity for a hearing." R.I.G.L. 1956 § 42-35-1(c). No hearing was held. While arguably this Court possesses jurisdiction to review DEM's decision, if it constitutes a final order, there is no evidence in the record or findings of fact to review.

In its letter to defendant of April 25, 2000, Mitkem requested a determination pursuant to R.I.G.L. §44-18-30(15) that the tangible personal property and supplies listed on "Exhibit A" attached thereto were acquired for incorporation into or used and consumed in the operation by the corporation

of its testing laboratory in Warwick, R.I. during the period commencing March 4, 1994 through December 31, 1999 and qualified for the sales and use tax exemption provided by R.I.G.L. §44-18-30(15). Mitkem stated that it would ‘not go into detail describing the testing activities the corporation conducts . . . since it was obvious from the discussions during the meeting that you . . . are very familiar with the work done . . . and the role those testing activities play in aiding the control of air and water pollution in this state.’ Mitkem went on to represent that “the assets in question were incorporated into or used and consumed at the facility in connection with the testing activities conducted at that location, that the primary purpose of the testing activities . . . has been and continues to be to aid in the control of the pollution or contamination of the water or air of the state, and that approximately 70% of the testing . . . during this period related to sites located in Rhode Island and contiguous states.” Further, Mitkem represented that approximately 30% of the work performed at the facility related to remediation, 70% related to investigation and less than 1% of the work related to abatement,” which totals more than 100%.

According to Mitkem, the property listed on “Exhibit A” cost approximately \$1,391,662 and the supplies consumed cost approximately \$1,969,007 and included bottles, chemicals, lab glassware and gases.

Exhibit A listed equipment without invoices, dates of purchase, cost, specific function or use. There were no specifics provided on supplies consumed.

The Defendant in its response of July 24, 2000 stated, inter alia, that “we have never evaluated, or had opportunity to evaluate property and supplies acquired by an independent analytical laboratory under this statute. Historically, the requests evaluated and certified by DEM under this program have been for purchases made by manufacturers for equipment directly added to their operations for

purposes of pollution control.” DEM did not challenge or question plaintiff’s representations or seek to evaluate Mitkem’s property and supplies.

R.I.G.L. §45-35-15(g) provides, inter alia, “the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may . . . remand the case for further proceedings”

Other than the representations of Mitkem, there is no evidence in the record or findings of fact by the agency on such essential issues as: (1) was or is Mitkem a water or air pollution control facility; (2) what personal property or supplies were acquired for incorporation into or used and consumed in the operation of Mitkem; (3) when acquired; (4) what use was made of the property and supplies; (5) when was the property used and consumed; (6) how did this aid in the control of the pollution or contamination of the water or air of the state; (7) what was the purpose of the operation of Mitkem for each year it seeks certification; (8) was the property or supplies acquired for incorporation into or used and consumed in the operation of Mitkem. This list is not meant to be exclusive or all inclusive but rather illustrative only, bearing in mind that statutes that “. . . purport to exempt property from taxation are to be strictly construed against the taxpayer, and in favor of the public, unless by their terms they disclose a clear intention to grant an exemption.” Dart Industries v. Clark, 696 A.2d 306 (R.I. 1997) (citing American Hoescht Corporation v. Norberg, 462 A.2d 369, 371 (R.I. 1983)). The burden of proof is on the taxpayer to prove that it is entitled to the exemption claimed. Rhode Island Lithograph Corporation v. Clark, 519 A.2d 589 (R.I. 1987).

Because the record is devoid of any evidence or findings of fact, this case is remanded to the agency for further proceedings; to take evidence, make findings of fact, conclusions of law, and a decision in accordance therewith. Thereafter, plaintiff may seek further review by this Court.

Counsel shall submit an appropriate order for entry after notice.