

No. A19A2004

In the
Court of Appeals of Georgia

MOOSA COMPANY, LLC,
Appellant,

v.

GEORGIA DEPARTMENT OF REVENUE and DAVID M. CURRY, Commissioner
of Georgia Department of Revenue,
Appellees.

On Appeal from the Fulton County Superior Court,
Superior Court Case No. 2018CV312091

BRIEF OF APPELLEES

Christopher M. Carr	112505
<i>Attorney General</i>	
W. Wright Banks	036156
<i>Deputy Attorney General</i>	
Alex F. Sponseller	672848
<i>Sr. Assistant Attorney General</i>	
Mackenzie J. Emerson	172939
<i>Assistant Attorney General</i>	

Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-3334
memerson@law.ga.gov
Counsel for Appellees

Table of Contents

Table of Authorities.....iii-iv

Introduction 1

Background 4

Argument 5

I. The superior court did not disregard the plain language of
O.C.G.A. § 48-2-59..... 5

II. Rules of statutory construction show that the tribunal was not
intended to hear tobacco excise tax appeals..... 9

III. The Tribunal’s jurisdiction is limited to certain tax disputes
which do not include tobacco excise tax appeals. 12

Conclusion..... 14

Certificate of Service..... 15

TABLE OF AUTHORITIES

Cases

Page(s)

Allen v. Wright,
282 Ga. 9 (2007)..... 10

Barber v. Riley,
2014-1 Ga. Tax Tribunal 6

In the Interest of Doe,
319 Ga. App. 574 (2013) 11

Gill v. Prehistoric Ponds, Inc.,
280 Ga. App. 629 (2006) 11

Hamilton v. Renewed Hope,
277 Ga. 465 (2003)..... 12

Hooks v. Cobb Ctr. Pawn & Jewelry Brokers,
241 Ga. App. 305 (1999) 8

Hospital Auth. v. State Health Planning Agency,
211 Ga. App. 407 (1993) 8

Mathis v. Cannon,
276 Ga. 16 (2002)..... 6

Statutes

O.C.G.A. § 48-2-182, 6, 12

O.C.G.A. § 48-2-18(c) 6, 10

O.C.G.A. § 48-2-352, 6, 12

O.C.G.A. § 48-2-35(c)(1)(D)(4)..... 6, 10

O.C.G.A. § 48-2-592, 5, 6, 12

O.C.G.A. § 48-2-59(a)1, 5, 6, 10

O.C.G.A. § 48-3-12, 6, 10, 12

O.C.G.A. § 48-5-5192, 6, 12

O.C.G.A. § 48-5-519(b) 6, 10

O.C.G.A. § 48-6-72, 6, 12

O.C.G.A. § 48-6-7(b)(1)..... 7, 10

O.C.G.A. § 48-6-76 2, 6

O.C.G.A. § 48-6-76(e)(1)..... 7, 10

O.C.G.A. § 48-6-78 2

O.C.G.A. § 48-7-31 2, 6

O.C.G.A. § 48-7-31(d)(2)(C)..... 7, 10

O.C.G.A. § 48-11-1*passim*

O.C.G.A. § 48-11-18*passim*

O.C.G.A. § 48-11-18(b)*passim*

O.C.G.A. § 48-11-30*passim*

O.C.G.A. § 50-13A-2..... 12

O.C.G.A. § 50-13A-3..... 12

O.C.G.A. § 50-13A-9..... 13

O.C.G.A. § 50-13A-9(a)*passim*

O.C.G.A. § 50-13A-14..... 9

Other Authorities

GA. COMP. R. & REGS. R. 560-8-6-.03 8

INTRODUCTION

The sole issue before this Court is whether the Georgia Tax Tribunal has jurisdiction to hear tobacco excise tax appeals.

Appellant Moosa Company, LLC (“Moosa”) petitioned the Georgia Tax Tribunal to hear its appeal of an assessment for unpaid tobacco excise tax imposed by the Department of Revenue (“Department”). R. 33-47. The Tribunal dismissed Moosa’s petition because the Tribunal found it lacked jurisdiction to hear appeals from tobacco excise tax assessments under Chapter 11 of the Georgia Revenue Code. R. 129-133. The Fulton County Superior Court then upheld that dismissal on the same basis. R. 139-141.

Moosa now appeals the superior court’s ruling. Although Moosa raises three “errors” by the superior court, it essentially makes one argument—that because the Tribunal’s jurisdictional statute in O.C.G.A. § 50-13A-9(a) cites O.C.G.A. § 48-2-59(a), which authorizes appeals from “any order, ruling, or finding of the [C]ommissioner,” that this means the Tribunal must hear Moosa’s tobacco excise tax appeal. However, Moosa has misinterpreted the statute granting the Tax Tribunal subject matter jurisdiction.

The Tax Tribunal's jurisdiction is prescribed by O.C.G.A. § 50-13A-9(a), which provides:

[o]n and after January 1, 2013, any person may petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76 and subparagraph (d)(2)(C) of Code Section 48-7-31.¹

The tobacco excise taxes that are the subject of this appeal were assessed pursuant to the Commissioner's authority in Chapter 11 of Title 48. Appeals of tobacco excise taxes are not within the jurisdiction of the Tribunal.

First, tobacco excise tax appeals are governed by a specific statute that provides that "any person aggrieved because of any final action or decision of the commissioner, after hearing, may appeal from the decision *to the superior court* of the county in which the appellant resides." O.C.G.A. § 48-11-18(b) (emphasis supplied). This specific statute does not allow tobacco excise tax taxpayers to appeal to the Tribunal. Moosa urges this Court to begin its analysis in the incorrect place: with a reference to a general statute (O.C.G.A. § 48-2-59) rather than the statute that controls this specific situation (O.C.G.A. § 48-11-18). While

¹ This code section also provides for jurisdiction in the Tax Tribunal over certain specified declaratory judgment actions, not relevant in this case. *Id.*

O.C.G.A. § 48-2-59 authorizes the Tribunal to hear appeals from “any order, ruling, or finding of the [C]ommissioner,” the specific Tribunal jurisdictional and tobacco excise tax statutes direct all tobacco excise tax appeals solely to the superior court. O.C.G.A. §§ 48-11-18(b); 50-13A-9(a). This specific statute thus controls over the general statute.

Second, appeals from tobacco excise tax assessments and final orders are not among those expressly identified in O.C.G.A. § 50-13A-9(a) as within the Tax Tribunal’s jurisdiction. Without such an express inclusion in O.C.G.A. § 50-13A-9(a), the Tax Tribunal lacks subject matter jurisdiction. O.C.G.A. § 50-13A-9(a).

Third, it would make little sense for the Tribunal to hear tobacco excise tax appeals since taxpayers contesting tobacco excise taxes are already entitled to a hearing before an administrative hearing officer within the Department of Revenue and then an appeal of the executive order to superior court. O.C.G.A. § 48-11-18. Hence, under Moosa’s construction, a taxpayer contesting a tobacco excise tax assessment would be entitled to two administrative hearings in both the Department and the Tribunal, two separate appeals to the superior courts, and then two separate appeals to higher courts. The tobacco excise

appeals statute does not condone such a result. The Tribunal's jurisdiction clearly does not encompass tobacco excise tax appeals. The superior court should be affirmed.

BACKGROUND

On February 1, 2017, the Department issued an Official Assessment and Demand for Payment (Letter ID number L0108672992) to Moosa pursuant to Chapter 11 of Title 48 of the Georgia Code for unpaid tobacco excise taxes in the amount of \$441,084.51. R. 42-43. Moosa then filed a protest with the Department requesting a hearing with the Department's administrative hearing officer. An administrative hearing between Moosa and the Department was held on July 19, 2017. On June 25, 2018, the hearing officer issued an executive order affirming the Assessment. R. 44-45. Moosa then filed a motion for reconsideration with the hearing officer, which was denied on August 1, 2018. R. 148.

In the meantime, on July 25, 2018, Moosa filed a petition in the Tribunal protesting the original assessment and the executive order. R. 33-47. The Department filed a motion to dismiss for lack of subject matter jurisdiction. R. 53-63. The Tribunal granted the motion and dismissed the petition on October 16, 2018. R. 129-133. Moosa then filed a petition for judicial review

with the Fulton County Superior Court. R. 7-11. After briefing, the court entered a final order upholding the decision of the Tribunal. R. 139-141. Moosa then filed an application for discretionary appeal, which this Court granted. R. 4. Moosa then filed its notice of appeal and brought this case before this Court. R. 1-2.

ARGUMENT

I. The superior court did not disregard the plain language of O.C.G.A. § 48-2-59.

Moosa first argues that the superior court erred by disregarding the plain language of O.C.G.A. § 48-2-59(a), which says that “any order, ruling, or finding of the commissioner may” be appealed to the Tribunal. Brief of Appellant at 5. Moosa contends that because the assessment is a finding of the Commissioner, and the executive order is an order of the Commissioner, the Tribunal thus has jurisdiction to hear its appeal. *Id.* at 10. Moosa’s argument fails for several reasons.

First, Moosa itself ignores the plain language of O.C.G.A. § 48-2-59(a), which also specifically says that appeals under this provision to the Tribunal must be “in accordance with Chapter 13A of Title 50.” Thus, while O.C.G.A. § 48-2-59(a) does authorize appeals from orders of the Commissioner, it goes on to specify that

any appeal *must* be in accordance with the statutes which set forth the Tribunal's limited jurisdiction. Hence, construing both statutes together clearly shows that the Tribunal is not authorized to hear appeals regarding tobacco excise taxes. *See, e.g., Mathis v. Cannon*, 276 Ga. 16, 26 (2002) (“[A] statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject matter, briefly called statutes ‘in pari materia,’ are construed together.”); *Barber v. Riley*, 2014-1 Ga. Tax Tribunal (January 23, 2014), at pp. 2-3 (holding that the Tax Tribunal does not have jurisdiction over an individual's ad valorem property tax assessment because such assessments are not expressly identified in O.C.G.A. § 50-13A-9(a) as matters over which the Tax Tribunal has jurisdiction).

Second, Moosa also ignores the plain language of the limited jurisdiction set forth in O.C.G.A. § 50-13A-9(a). That code section allows any person to “petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76 and subparagraph (d)(2)(C) of Code Section 48-7-31.” All of these identified code sections expressly provide for the Tribunal's jurisdiction within the substantive revenue statutes themselves. *See* O.C.G.A. §§ 48-2-18(c) (appeals from property tax assessments issued to utilities); 48-2-35(c)(1)(D)(4) (appeals from

denial of refund claims); 48-3-1 (appeals contesting state tax executions); 48-5-519(b) (appeals of railroad equipment property tax assessments); 48-2-59(a) (appeals of tax assessments generally); 48-6-7(b)(1) (appeals seeking refunds of real estate transfer taxes); 48-6-76(e)(1) (appeals seeking refunds of intangible recording taxes); and 48-7-31(d)(2)(C) (appeals related to a specific allocation or apportionment formula). Because tobacco excise tax appeals are not included in the limited grants of jurisdiction in O.C.G.A. § 50-13A-9(a), the Tribunal does not have jurisdiction to hear such appeals.

Third, Chapter 11 of Title 48 governs tobacco excise taxes, but also contains no provision for appealing tobacco matters to the Tribunal. *See* O.C.G.A. §§ 48-11-1 to 48-11-30. Rather, the statute authorizes appeals of tobacco tax and licensing matters only to a Department hearing officer, followed by review in the superior court of the county in which the appellant resides. *See* O.C.G.A. § 48-11-18(b) (stating that “any person aggrieved because of any final action or decision of the commissioner, after hearing, may appeal from the decision to the superior court of the county in which the appellant resides”). It is a long-standing canon of statutory construction that “a specific statute will prevail over a general statute, absent any indication of a contrary

legislative intent, to resolve any inconsistency between them.” See *Hooks v. Cobb Ctr. Pawn & Jewelry Brokers*, 241 Ga. App. 305, 309 (1999); *Hospital Auth. v. State Health Planning Agency*, 211 Ga. App. 407 (1993). The specific statute governing the procedure for appealing taxes on tobacco products expressly directs appeals of final actions or decisions of the Commissioner solely to the superior court in which the appellant resides. O.C.G.A. § 48-11-18(b). This specific statute requires that before an appeal of tobacco matters can be heard in the superior court, the taxpayer must timely request a hearing before the Commissioner or his authorized agent within ten days of the Commissioner’s action. *Id.*; see also GA. COMP. R. & REGS. R. 560-8-6-.03 (directing appeals of the Commissioner’s alcohol and tobacco decisions to the superior courts “after an administrative hearing has been conducted.”). Because O.C.G.A. § 48-11-18 governs the appeal process for tobacco excise tax cases and does not reference any appeal to the Tribunal, the Tribunal lacks jurisdiction to hear tobacco excise tax appeals.

Fourth, allowing a tobacco excise taxpayer to appeal to the Tribunal after receiving an administrative hearing would be redundant since both the administrative hearing and the Tribunal afford the taxpayer evidentiary hearings, not just appellate rights.

Compare O.C.G.A. §§ 48-11-18 *with* 50-13A-14. If this Court adopts Moosa's interpretation, an appellant would receive an evidentiary hearing before a hearing officer, and then a second evidentiary hearing before the Tribunal. This would result in up to six levels of appeal (hearing officer, Commissioner, Tribunal, Superior Court, Court of Appeals, Supreme Court). A more reasonable reading is that provided by O.C.G.A. § 48-11-18, which allows tobacco excise taxpayers only one evidentiary hearing before a hearing officer, followed by an appeal to the superior court. This interpretation does not allow an aggrieved taxpayer to take a second bite at the apple in the Tribunal before resuming the appellate process. In this way, it also provides tobacco excise tax taxpayers a similar number of appellate opportunities as payers of other types of taxes. Accordingly, for these reasons, Moosa's arguments fail and the superior court should be affirmed.

II. Rules of statutory construction show that the tribunal was not intended to hear tobacco excise tax appeals.

Moosa next argues that because the Tax Tribunal has concurrent jurisdiction with superior courts, that this means the Tribunal can also hear tobacco excise tax appeals because such appeals are also heard in superior court. Brief of Appellant at 10, 14. Moosa is simply incorrect.

First, when it created the Tribunal and granted it limited jurisdiction in O.C.G.A. § 50-13A-9(a), the General Assembly also added language specifically allowing a taxpayer to bring certain types of tax appeals into the Tribunal. *See* O.C.G.A. §§ 48-2-18(c) (appeals from property tax assessments issued to utilities); 48-2-35(c)(1)(D)(4) (appeals from denial of refund claims); 48-3-1 (appeals contesting state tax executions); 48-5-519(b) (appeals of railroad equipment property tax assessments); 48-2-59(a) (appeals of tax assessments generally); 48-6-7(b)(1) (appeals seeking refunds of real estate transfer taxes); 48-6-76(e)(1) (appeals seeking refunds of intangible recording taxes); and 48-7-31(d)(2)(C) (appeals related to a specific allocation or apportionment formula). It did not, however, insert such language into the statute governing the procedure for tobacco excise tax appeals. O.C.G.A. § 48-11-18.

When read together with the explicit grant of jurisdiction to the Tribunal in each statute cited in O.C.G.A. § 50-13A-9(a), the absence of such a grant of jurisdiction in O.C.G.A. § 48-11-18(b) indicates that the General Assembly did not intend to extend the Tribunal's jurisdiction to tobacco excise tax appeals. *See Allen v. Wright*, 282 Ga. 9, 13 (2007) ("Georgia law provides that the express mention of one thing in an Act or statute implies the

exclusion of all other things,” in accordance with the two principles of statutory construction: “*Expressum facit cessare tacitum*” (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded) and, “*Expressio unius est exclusio alterius*” (“The express mention of one thing implies the exclusion of another”) (citations omitted); *In the Interest of Doe*, 319 Ga. App. 574, 576 (2013) (the legislature’s failure to specify in one statute something that it had clearly specified in a related statute, was evidence of its intent to affirmatively exclude it from the former); *Gill v. Prehistoric Ponds, Inc.*, 280 Ga. App. 629, 633 (2006) (same).

Second, Chapter 11 governs taxes on tobacco products, but contains no provision for appealing tobacco matters to the Tribunal. *See* O.C.G.A. §§ 48-11-1 to 48-11-30. Rather, the statute authorizes appeals of tobacco tax and licensing matters only to a Department hearing officer, followed by review in the superior court of the county in which the appellant resides. *See* O.C.G.A. § 48-11-18(b). The superior court thus correctly “harmonized” O.C.G.A. § 48-2-59 with O.C.G.A. § 48-11-18. Because O.C.G.A. § 48-11-18 does not reference either O.C.G.A. § 48-2-59 or the Tribunal statutes, it does not permit the Tribunal to hear tobacco excise tax appeals.

Third, that the General Assembly amended other substantive tax statutes including O.C.G.A. §§ 48-2-18, 48-2-35, 48-3-1, 48-5-519, 48-2-59, 48-6-7, and 48-6-78 to expressly reference appeals before the Tribunal, while omitting any such reference in Chapter 11, indicates that the Tribunal's jurisdiction does not include Chapter 11 appeals for tobacco excise tax assessments. *See Hamilton v. Renewed Hope*, 277 Ga. 465, 467 (2003) ("The General Assembly is presumed to enact laws with full knowledge of the condition of the law and with reference to it"). Accordingly, Moosa's arguments are misplaced and the superior court should be affirmed.

III. The Tribunal's jurisdiction is limited to certain tax disputes which do not include tobacco excise tax appeals.

Finally, Moosa argues that because the Tribunal's jurisdictional statute is not limited to certain types of tax disputes like income tax and sales tax, that this means that tobacco excise taxes should be included. Brief of Appellant at 17. Moosa is again incorrect.

The Tribunal is not a court of general jurisdiction, but a specialized administrative court within the State's executive branch that is administratively attached to the State Office of Administrative Hearings ("OSAH") and is designed to efficiently

resolve tax disputes. *See, e.g.*, O.C.G.A. §§ 50-13A-2 (“The General Assembly finds that there is a need for an independent specialized agency separate and apart from the Department of Revenue to resolve disputes between the department and taxpayers in an efficient and cost-effective manner.”); 50-13A-3 (“[T]he Georgia Tax Tribunal . . . shall be an independent and autonomous division within [OSAH] operating under the sole direction of the chief tribunal judge.”). As discussed above, the General Assembly has not expressly granted the Tribunal jurisdiction over tobacco excise tax appeals. O.C.G.A. § 50-13A-9. Rather, the specific statute governing tobacco tax appeals mandates that such appeals be brought in superior court and that statute makes no mention of the Tax Tribunal. O.C.G.A. § 48-11-18. The statute governing tobacco excise tax appeals and the statute establishing the Tribunal and its jurisdiction are clear. The Tribunal lacks the jurisdiction to hear Chapter 11 appeals. Therefore, Moosa was not entitled to appeal its case to the Tribunal. The superior court should be affirmed.

CONCLUSION

For the reasons set out above, the ruling below should be affirmed.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted.

/s/ Mackenzie J. Emerson
Christopher M. Carr 112505
Attorney General
W. Wright Banks 036156
Deputy Attorney General
Alex F. Sponseller 672848
Sr. Assistant Attorney General
Mackenzie J. Emerson 172939
Assistant Attorney General

Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-3334
memerson@law.ga.gov
Counsel for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on June 12th, 2019, I served Appellee's Brief by mailing a copy of each, contemporaneously with or before filing, to be delivered by the United States Postal Service, addressed as follows:

Jarrett E. Martin, Esq.
Baxter Thompson, Esq.
Thompson Singer
3151 Maple Drive, NE
Atlanta, Georgia 30305

/s/ Mackenzie J. Emerson
Mackenzie J. Emerson
Assistant Attorney General