

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-10772
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APRIL 25, 2011
JOHN LEY
CLERK

D. C. Docket No. 08-00655-CV-UWC-S

CSX TRANSPORTATION, INC.,

Plaintiff-Appellant,

versus

ALABAMA DEPARTMENT OF REVENUE,
TIM RUSSELL, Commissioner of
the Alabama Department of Revenue,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(April 25, 2011)

ON REMAND FROM THE UNITED STATES SUPREME COURT

Before BARKETT, HILL and BLACK, Circuit Judges.

PER CURIAM:

CSX Transportation, Inc. (“CSXT”) appealed the dismissal of its suit against the Alabama Department of Revenue seeking to enjoin Alabama from assessing, levying and/or collecting taxes on diesel fuel purchases and use by CSXT. The district court dismissed CSXT’s case based on Norfolk S. Ry. Co. v. Ala. Dep’t of Revenue, 550 F.3d 1306 (11th Cir. 2008), in which this Court considered an identical challenge to Alabama’s sales and use tax on railroad diesel fuel, and ruled in favor of the Alabama Department of Revenue. We affirmed, finding that we were bound by our prior precedent in Norfolk. CSX Transp., Inc. v. Ala. Dep’t of Revenue, 350 F. App’x 318 (11th Cir. 2009).

The Supreme Court then granted CSXT’s petition for writ of certiorari and reversed the judgment. CSX Transp., Inc. v. Ala. Dep’t of Revenue, 562 U.S. ___, 131 S. Ct. 1101 (2011). The Court overruled our prior decision in Norfolk, and held that CSXT “may challenge Alabama’s sales and use taxes as ‘taxes that discriminate against rail carriers’ under [49 U.S.C. § 11501(b)(4)].” Id. at 1114 (alterations omitted). The Court declined to address whether CSXT should prevail on its challenge, and remanded CSXT’s appeal for further proceedings consistent with its opinion. Id.

In light of the Supreme Court’s decision, we vacate our prior opinion in this case, CSX Transp., Inc. v. Ala. Dep’t of Revenue, 350 F. App’x 318 (11th Cir.

2009), vacate the district court's December 18, 2008 order dissolving the preliminary injunction and dismissing CSXT's case, and remand to the district court for further proceedings consistent with the Supreme Court's opinion.

**PRIOR DECISION VACATED; DISTRICT COURT ORDER
VACATED, and REMANDED.**