

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 0091 OF 2006
(High Court Civil Appeal No. 15 of 2005)

BETWEEN:

GURDIAL SINGH BROTHERS LIMITED

Appellant

AND :

THE COMMISSIONER OF INLAND REVENUE

Respondent

Coram: John E. Byrne - Justice of Appeal
D. Pathik - Justice of Appeal
I. Mataitoga - Justice of Appeal

Counsel: Vijay Maharaj & A. Bale for the Appellant
Ms. F. Gavidu & S. Tagicaki for the Respondent

Date of Hearing: 29th August 2007
Date of Judgment: 5th November 2007

JUDGMENT OF PATHIK JA

[1] The carefully reasoned judgment of my learned brother Byrne JA has been read by me. For the reasons he has given, I agree with the conclusions reached by him. However, I would like to add some brief observations of my own.

[2] The issue before Coventry J, the trial Judge was: ‘**can the value added tax tribunal grant a stay of recovery of taxes pending its adjudication upon an appeal**’. He ruled in the negative.

[3] It is my view that the whole question turns upon the meaning properly to be given to the word '**similar**' in **section 51** of the Value Added Tax Decree 1991. The word 'similar' does not mean 'identical' (**Parker CJ in Regina v Leicester Licencing Justices, Ex parte Bisson** 1968 1 W.L.R 729 at 733). Hence I hold that the '*powers and authority*' vested in the Tribunal are not 'identical' to '*those vested in the judge of the High Court*'.

[4] **Section 53** provides:

“the Chief Justice shall have the power to make rules of the Tribunal generally for regulating any matters relating to the practice and procedure of the said Tribunal.....”

[5] Pursuant thereto the Chief Justice made '**Value Added Tax Tribunal Rules**'. The specific power given to the Tribunal under **Regulation 5** is:

“The Tribunal may sit for the hearing of an appeal or for the hearing of any interlocutory application incidental to an appeal,”

[6] **Regulation 11** provides for attendance of 'witnesses' and 'subpoena'. Then in **Regulations 12(3)** it is provided:

“Subject to the provisions of the Decree or to these Rules, the ordinary practice and the Rules of the High Court shall apply, with necessary modifications in relation to an appeal under these Rules.”

[7] The above are the only provisions relating to practice and procedure in so far as they are relevant to this appeal.

[8] It will be observed that the Decree and the Rules do not, **in direct terms** or specifically, give the power, to 'stay proceedings'.

- [9] It has always been the prerogative of the High Court, a superior Court to supervise inferior court or tribunal. And in this case had it been the intention in the Decree or in the Rules to give the power to 'stay' it would have been specifically given in express words to the Tribunal.
- [10] It is my view, in the context of this case, bearing in mind that it is a tax case, that I ought to **limit** the definition of 'similar' thereby excluding the Tribunal from exercising the power of stay. Thus distinguishing this case from **Pacific Transport Limited v The Land Transport Authority and Sunbeam Transport Ltd.** HBC No. 126 of 2004 which concerned the Tribunal established under the Land Transport Act.
- [11] This Court summed up the import behind the setting up of the Tribunal when it stated:

"It is our judgment that the substance and tenor of the relevant sections in the establishment of a Court for the hearing and determination of appeals against the disallowance by the Commissioner of objections to assessments of income tax are the regulation of the practice and procedure of the Court." [The Commissioner of Inland Revenue v Richard Sydney Smith & Laurence Maxwell Rolls 27 FLR 40 at 47].

- [12] In the interpretation of s53 I find the following passage from the judgment of Coleridge J in **The King against The Poor Law Commissioners for England and Wales** 6 AD. & E.6 at 3 pertinent and I have borne this in mind:-

"It is, in my opinion, so important for the Court, in construing modern statutes, to act upon the principle of giving full effect to their language, and of declining to mould that language, in order to meet either an alleged convenience, or an alleged equity, upon doubtful evidence

of intention, that nothing will induce me to withdraw a case from the operation of a section which is within its words but clear and unambiguous evidence that so to do is to fulfil the general intent of the statute, and also that to adhere to the literal interpretation is to decide inconsistently with other and over-ruling provisions of the same statute. When the evidence amounts to this, the Court may properly act upon it, for, the object of all rules of construction being to ascertain the meaning of the language used, and it being unreasonable to impute to the Legislature inconsistent intents upon the same general subject matter, what it has clearly said in one part must be the best evidence of what it has intended to say in the other: and, if the clear language be in accordance with the plain policy and purview of the whole statute, there is the strongest reason for believing that the interpretation of a particular part inconsistently with that is a wrong interpretation. The Court must apply in such a case the same rules which it would use in construing the limitations of a deed: it must look at the whole context, and endeavour to give effect to all the provisions, enlarging or restraining, if need be, for that purpose, the literal interpretation of any particular part” (emphasis is mine).

- [13] In construing any statutory provision (here the Decree) Lord Reid in the House of Lords in the case of *Cramas Properties Ltd v Connaught Fur Trimmings, Ltd* 1965 2 All. E.R 382 at 385 said:

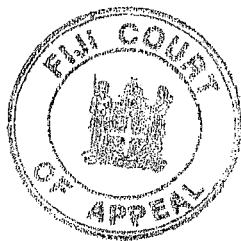
“one must always remember that the object in construing any statutory provision is to discover the intention of Parliament and that there is an even stronger presumption that Parliament does not intend an unreasonable or irrational result. Of course we must go by the words of the Act of 1954 and, if they are capable only of one meaning, then we must take that meaning however irrational the result; but if they are capable of two meanings, one of which leads to a reasonable result while the other does not, there must in my opinion be very strong reasons to drive us to accept the latter meaning.”
(emphasis added).

- [14] Further in the exercise of statutory construction Lord Guest in **Cramas Properties Ltd.** (supra) at 387 said:

“Where a statute has used words which prima facie have an unambiguous meaning it is not, in my view, legitimate to extract a forced and unnatural meaning from a consideration of other provisions in the same statute, particularly where the result of such a construction is to lead to difficulties of the interpretation of the secondary meaning.”

“It is equally legitimate to start either from the words themselves by asking what they naturally mean or from the context, by asking what this paragraph is seeking to do”. (Lord Wilberforce ibid at 388).

- [15] In interpreting the meaning of the word ‘similar’ I have considered these statements and for the reasons given I uphold the ruling of the trial judge on the issue before him.
- [16] In the circumstances I would dismiss the appeal with costs.



D. Pathik

D. Pathik

Justice of Appeal