

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

Civil Appeal No. ABU 0091/06

BETWEEN:

GURDIAL SINGH BROTHERS LIMITED

Appellant

AND

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. Gavidi & S. Tagicaki for the Respondent**

Date of Hearing: 29 August 2007

Date of Judgment: 5th November 2007

JUDGMENT OF MATAITOGA JA

1. This is an appeal from a judgment of Coventry J in the High Court, who was asked by the parties to answer this question:

"Can the Value Added Tax Tribunal [the tribunal] grant a stay of recovery of taxes pending its adjudication upon an appeal?"

2. The learned Judge answered the question in the negative and I agree with him in that conclusion. Before I set out my own reasons for doing so, I should say that I have read both the judgments of by brothers Byrne JA and Pathik JA and I agree with their conclusions.
3. During the hearing of the appeal the principal focus of the submission by counsel for the appellant, was on whether the word '*similar*' in section 51(4) of the Decree confers on the tribunal the '*same*' powers of the High Court in issuing injunctive relief against parties before it. I adopt the reasoning and the conclusion in the judgment of Pathik JA in this case.
4. The other basis on which I would uphold the judgment of Coventry J in the High Court is that jurisdiction of the High Court under the Decree and under section 120 of the Constitution does not extend to powers to issue stay orders against the Commissioner not to recover taxes while an appeal is pending before the tribunal.
5. The jurisdiction of the High Court in matters relating to VAT assessments and objections was discussed by the Court of Appeal in ***FIRCA v NZPTCL, Civil Appeal No: ABU 085/2004S [NZPTCL Case]***. This court on the powers of the High Court stated the following:

"[37] The learned judge appears to take that [i.e. section 120(1) to (3) of the constitution] as meaning effectively no limit to the jurisdiction of the High Court over matter filed before it. That is not correct for two reasons. The first is that the proceedings must relate to justiciable matter and second that its jurisdiction in some matters, especially appeals from bodies other than subordinate courts, is granted only by statute without which there is no jurisdiction. In the latter, the court's jurisdiction is limited by the terms of the statute granting it.

[41] If an objector is dissatisfied with the decision of the tribunal, he has 28 days to give written notice of his wish to appeal to the high Court. ***The decree gives the High Court jurisdiction to hear such appeals but is the only jurisdiction granted by Decree and only arises when the other remedies have been pursued and completed.***

[42] The High Court has original jurisdiction to hear, by way of judicial review, any objection to the manner in which the various bodies under the VAT Decree perform their duties. Equally it is given original jurisdiction by section 120(2) to hear any matter arising under the constitution or its interpretation.

[43]***The jurisdiction given to the High Court by the Decree is to hear appeals from decisions of the tribunal. It is a statutory power***

and not covered by the jurisdiction to hear appeals from subordinate courts under section 120(3) of the Constitution."

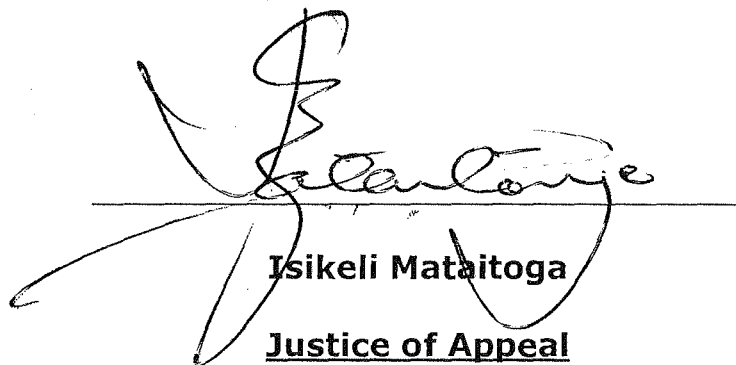
6. It will be obvious from the above view of this court in the ***NZPTCL case*** that at the point when the tribunal purported to issue a stay order against the Commissioner, it can only do so if there were specific powers granted to it under the Decree or it was exercising a "similar" power that the High Court may have lawfully exercised in similar situation.
7. It is clear from a review of the Decree and the tribunal rules promulgated by the Chief Justice under section 53 of the Decree that the tribunal is not empowered to issue stay orders against the Commissioner in the circumstances in dispute here. In other words, the tribunal's own enabling legislation does not give it that power to issue a stay order against the Commissioner.
8. Is there 'similar' power in the High Court to issue stay orders against the Commissioner to recover taxes pending an appeal in the tribunal. The short answer to this is: the High Court does not have that power.
9. This court in the ***NZPTCL Case*** [supra] has set out clearly that the jurisdiction of the High Court in VAT matters arise only in three situations, namely,
 - i) Jurisdiction to hear appeals from the decision of the tribunal – this is granted by the Decree;

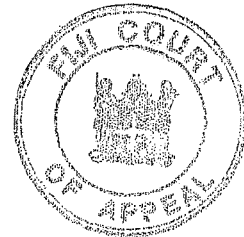
ii) Judicial Review action with regard to any objection to the manner in which any of the bodies under the Decree may have performed their duties;

iii) Under section 120(2) of the Constitution for any constitutional issues or interpretation.

10. On the basis of the above, I would answer the issues for determination in this appeal in the negative. I would uphold the judgment of Coventry J in the High Court.

14. On the issue of costs of appeal to this court, I adopt the orders made by Byrne JA in this matter.


Isikeli Mataitoga
Justice of Appeal



AT SUVA
5th November 2007.