

IN THE TAX COURT OF THE HIGH COURT OF FIJI
AT SUVA

Tax Court Appeal No: HBT 08 of 2015

IN THE MATTER of an Appeal
on a Value Added Tax Matter

BETWEEN : MARIE JIONE

Applicant

AND : CHIEF EXECUTIVE OFFICER, FIJI REVENUE AND
CUSTOMS AUTHORITY

Respondent

Coram : The Hon. Mr Justice David Alfred

Appearance : Mr Fuata Jione, the husband of, for the Applicant
Ms R. Malani for the Respondent

Date of Hearing : 8 August 2016

Date of Judgment : 10 March 2017

JUDGMENT

1. This matter necessitates the Court providing the following prelude to this judgment.
2. It is noted that the Tax Tribunal by its Order on 24 November 2015 ordered this matter to be referred to this Tax Court.

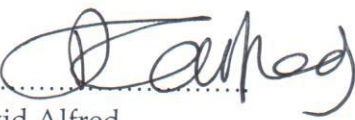
3. Earlier the Tax Tribunal by its Decision dated 23 January 2014 found that no Value Added Tax (VAT) was paid by the Applicant at the time of sale of a property and on that basis the Respondent (Revenue) was correct in reissuing an Amended Notice of Assessment to rectify that situation. The Application for Review of the Revenue's decision was accordingly dismissed. The Applicant did not appeal against the Decision.
4. The instant appeal stems from the Applicant's reply dated 9 February 2015 to the Revenue's audit findings of the same date. In her response the Applicant states a number of objections to the findings.
5. The Revenue in its Objection Finalisation dated 6 May 2015 carefully considered the above objections, and if I may say so, in a lucid and succinct manner gave their reasons for partially disallowing the objections. These are appended below.
 - (1) The VAT ledger had been reconciled and the outstanding was \$4,623.22.
 - (2) The reconciliation of the amended assessments was revised and this showed no overpayment but an outstanding balance of \$273.22 currently due.
 - (3) The Tribunal's decision on 23 January 2014 found that no VAT had been paid at the time of sale and Revenue was correct to reissue an Amended Notice of Assessment.
6. The said Objection Finalisation had partially disallowed the said objections in line with s. 16 (6) of the Tax Administration Decree 2009 (TAD). This is the objection decision made by the Revenue's CEO after considering the objection. It is against this decision that the Applicant has appealed to this Court.
7. The Notice of Appeal states that the grounds of appeal are as stated in the Applicant's objection letter dated 9 February 2015 and filed with Revenue on 16 February 2015 (see para 4 above). As these are within the ken of both parties, there is no need to reproduce them here.

8. At the hearing, the Applicant's husband / representative (Applicant) said that the Applicant did not file an appeal against the Ruling of the Tax Tribunal which required the s. 15 VAT to be paid by the recipient (Applicant). She was disputing the outcome of the audit and her main objection was that although she had filed an amended return, the VAT had not been returned to her. She accepts the Sale and Purchase Agreement (SPA) did not include VAT. She was asking for the following:
 - (1) VAT taken back by Revenue is to be refunded to her.
 - (2) Revenue should reimburse her the legal fees paid and expenses incurred by her.
 - (3) Interest at the rate of 12.5% per annum on the amount refunded.
9. The Counsel for Revenue in her submission said their auditors had looked at the matter and their objection finalisation is dated 16 October 2015. Under the amended assessment only \$1,657.50 is to be refunded to the Applicant as this was the only tax invoice supplied. The balance of \$25,000 is the Revenue's and cannot be refunded because Revenue is relying on the decision of the Tax Tribunal. The purchase price was \$240,000 and since the SPA was VAT exclusive, the Applicant cannot claim VAT and the Revenue cannot refund that to the Applicant.
10. The Applicant replied, asking that if the appeal were successful that she be allowed all her costs and refunds.
11. At the conclusion of the arguments, I informed I would take time to consider my decision. Having done so. I now proceed to deliver my judgment.
12. I am of the considered opinion that the Applicant's case appears to be rebased material which are either res judicata (by the Tribunal's Decision) or extraneous matters, relating to extraneous parties that are outside the province of this Court. Having carefully considered the oral submissions and the documentary evidence before the Court, I am unable to discern any basis for the Applicant to seek the setting aside of the Objection Finalisation or to seek any payment / refund from the Revenue.

13. In the result the Application is dismissed with no order as to costs.

Delivered at Suva this 10th day of March, 2017.




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David Alfred
JUDGE of the High Court of Fiji.