

**IN THE TAX COURT**  
**HIGH COURT OF FIJI AT SUVA**  
**(APPELLATE JURISDICTION)**

**Action No. HBT 3 of 2015**

(On appeal from the decision of the Tax Tribunal of Fiji at Suva on 18<sup>th</sup> May 2015 in Action No. 2 of 2014)

**BETWEEN** : **VEER SINGH VARMA T/A THE AIRPORT  
LODGE/APARTMENTS.**

**APPELLANT**

**AND** : **THE CHIEF EXECUTIVE OFFICER, FIJI REVENUE  
AND CUSTOMS AUTHORITY**

**RESPONDENT**

**Coram** : The Hon. Mr Justice David Alfred

**Counsel** : Mr. R. Krishna, Ms M. Vasiti with him, for the Appellant  
Ms. R. Malani, Mr E. Eterika with her, for the Respondent.

**Date of Hearing** : 5 June 2017  
**Date of Judgment** : 29 January 2018

**JUDGMENT**

1. This is the Appellant's Amended Notice of Appeal seeking the following orders:
  - (1) That the decision of the Tax Tribunal delivered on 18 May 2015 (the Decision) ordering the Application for Review dated 14 October 2015 be dismissed, be set aside.
  - (2) The Notices of Amended Assessment issued by the Respondent (Revenue) for the years 2011 to 2013 be set aside.
  - (3) That the Revenue refund the Appellant all sums recovered pursuant to the Notices of Amended Assessment.
  - (4) The Revenue's decision dated 20 March 2014 revoking the Appellant's VAT registration certificate issued on 14 June 2013 be set aside.
  - (5) Costs.
  
2. The grounds of the appeal are as follows:
  - (1) The Tribunal erred in law and fact in not considering the correct dispute before the Tribunal which was that the Appellant was challenging the Revenue's decision to change the Appellant's VAT registration date.
  
  - (2) The Tribunal erred in law and in fact in holding that it is hard to ascertain the custom and practice of the Revenue, when there was evidence before the Tribunal that:
    - (a) The Revenue's staff believed and advised the Appellant that the effective date of VAT registration could be backdated.
    - (b) The Appellant's VAT registration was backdated.
    - (c) Several hundred other taxpayers' VAT registration were backdated.
    - (d) The Revenue accepted that s.22(5) of the Value Added Tax Decree 1991 (VAT) gave the C.E.O. of the Revenue the ability to backdate a VAT registration.
  
  - (3) The Tribunal erred in law in holding a challenge (unfairness of the Revenue's decision) cannot be entertained by the Tribunal when the Tax Administration Decree 2009 (TAD) gives the Tribunal the right to exercise all the powers of the original decision maker, the C.E.O.

- (4) The Tribunal erred in law in holding that whether there had been a breach of contract, a breach of representation or an abuse of power, was not a matter that fell within the jurisdiction of the Tribunal when the TAD gives the Tribunal the right to exercise all the powers of the original decision maker, the Revenue C.E.O and these matters pertain to the fairness and legality of the C.E.O.'s decision.
  - (5) The Tribunal erred in law and in fact in not referring, the question of whether the Tribunal had jurisdiction to consider the ground raised, to the Tax Court pursuant to s.87(1) TAD.
  - (6) The Tribunal erred in law and fact in holding that the repeal of the former s.39(2)(c) of the VAT Decree removed the Appellant's ability to claim input credits when there were no taxable supplies.
  - (7) The Tribunal erred in law and in fact in holding that to backdate the commencement of registration to a date where there was no taxable supply was not within the contemplation of the law when s.22(5) of the VAT Decree gives the CEO the ability to backdate the VAT registration date and the CEO accepted that this was so.
3. The hearing commenced with the Appellant's Counsel submitting that it was about the interpretation of s.22 (4) and (5) of the VAT Decree. The Appellant registered for VAT in June 2013. The 1<sup>st</sup> July 2011 was the date of the start of its business. He said the Revenue wrongly interpreted the above sub-sections and said it could not backdate the registration. Counsel said there was an error in law and unfairness by the Revenue. The Appellant relied solely on error and unfairness. The claim for input credit has nothing to do with the registration. VAT is imposed on the registered person under s.15 Vat Decree. The objection does not purport to cancel the Appellant's registration. It only changes the date from which the Appellant is charged input tax. The decision is not in accordance

with Law. S.22(5) VAT Decree gives the Revenue right to backdate. The later decision of the Revenue should be set aside.

4. Counsel for the Revenue then submitted that they relied on the Decision that s.15 VAT Decree gives a right to charge VAT. The Appellant cannot hold the Revenue responsible for registration for VAT and cannot claim a refund going back 3 years to the date of commencement. S.22 (5)(a) VAT Decree gives the Revenue the right to determine the effective date of registration. By s.39 VAT Decree the input credit is only from the date of registration. It was silly to have 2 registration dates so the Revenue cancelled the first date and issued a new date. Under s.23 VAT Decree, the Revenue can cancel the registration and did not victimize the Appellant and caused no unfairness to him. A person has to be registered to claim input credit.
5. Counsel for the Appellant in his reply said s.39 VAT Decree does not mention the date of registration. The Appellant did not claim input credit before the effective date of registration.
6. At the conclusion of the hearing I said I would take time for consideration. Having done so I now deliver my judgment. I shall be using the terms "CEO", "Revenue" and "Commissioner" interchangeably to refer to the Respondent."
7. At the outset I shall state quite categorically I do not propose to repeat the meandering through many issues. Nor do I consider that these should be either canvassed or ventilated. To this Court, it is crystal clear from all the evidence before it that the pivotal issue is whether the Revenue CEO can change his mind and consequently change the date of VAT registration of the Appellant.
8. The Application for Review seeks the revision or setting aside of the Objection Decision demanding payment by the Appellant of \$99,248.98 (Disputed Sum) as reimbursement of the amount of VAT refunded by the Revenue in 2013.

9. The Tribunal states its general conclusions in paras 26-34 of the Decision, inter-alia, as follows:
- (i) The Appellant was granted a Notification of Registration but despite this the Revenue concluded that the Appellant should not have been able to claim input credits for a taxable activity when no registration was in place.
  - (ii) Whether the shifting position of the Revenue which demonstrated its unclear initial approach resulted in a breach of contract, a breach of representation or an abuse of power is not within the jurisdiction of the Tribunal to determine. The law had been applied and the Revenue had made a determination under the Decree.
  - (iii) The Appellant acted in good faith, but the amendments to the VAT Decree were prospective in effect. The Amended Assessments of 15 September 2014 for the relevant periods do not appear excessive. Accordingly the Application for Review was dismissed.
10. The Appellant in his letter dated 21 May 2014 to the Revenue, made his objections to the Revenue's cancellation of his VAT registration as follows:
- (1) He received the VAT registration notification signed by the C.E.O. stating his taxable activity started from 1 July 2011. Based on the wrong advice of the Revenue customer service he registered for VAT, as he was told the Revenue allows late VAT registration to be backdated by at least 2 years. If he had been advised he could not backdate his taxable activity then he would not have registered as it did not exceed \$100,000.
  - (2) Because of the negligence of the Revenue's Audit and Compliance Unit, refunds were made to him which the Revenue is now claiming back;
  - (3) There were discrepancy variations in the VAT statements he received from the Revenue.

The other complaints do not merit consideration by the Court.

11. The Revenue by its reply to the Appellant dated 23 September 2014 informed the latter that a registered person could only claim input credits from the date of VAT registration under s.39 of VAT Decree. However s.22(5)(a) provides that where any person applies to be registered and the Revenue is satisfied that he is eligible to be registered he shall be

a registered person with effect from such date as the Revenue may determine. Hence the Revenue had allowed the Appellant's input claims for 3 months prior to VAT registration.

12. I note from the Revenue's letter, dated 14 June 2013 to the Appellant that he had been registered under s.22 VAT Decree and was required to account for VAT on all taxable activities from 1 July 2011.
13. S.22(5)(a) VAT Decree provides that where any person applies to be registered – which is what the Appellant has done – that person shall be a registered person with effect from such date as the C.E.O may determine.
14. However, the Revenue by its letter dated 20 March 2014 to the Appellant revoked the VAT registration certificate issued on 14 June 2013.

Is the Revenue entitled to do this.

15. So I turn to the decision of the Fiji Court of Appeal in : *Punjas Limited And Punja And Sons Limited.....Appellants AND Commissioner of Inland Revenue.....Respondent Civil Appeal No. ABU 0099 of 2005s (10 November 2006)* At para [88] the Court said “(The Commissioner) cannot be encumbered by any previous position which he had taken up. He must be free to exercise his judgment and discharge his statutory functions as and when he thinks proper. In short, he is entitled to change his mind and take up a new position and disavow one that he has taken up previously”.
16. In the above case the Court of Appeal affirmed the High Court's decision to set aside a consent order. Moving from the greater to the lesser, I am constrained to hold that if a consent order of court entered into by the Revenue can be set aside on the application of the Revenue, how much more will this Court be obliged to allow the C.E.O to change his

mind and to change the date of the VAT registration. In the result the Appellant's challenge against the C.E.O.'s change of decision cannot stand.

17. Before I conclude I need to refer to the complaints by the Appellant of a breach of contract, a breach of representation or an abuse of power. These do not fall within the jurisdiction of the Tax Tribunal nor should this Tax Court entertain the same. This is purely and simply for the reason that those allegations are properly the province of the High Court sitting as such to consider in an application for judicial review of the C.E.O. decision. The Appellant has not taken that route.
18. In fine I shall uphold the Tribunal's Decision and dismiss the Amended Notice of Appeal. However in the circumstances of this matter, I shall order each party to bear his own costs both here and below.

Delivered at Suva this 29<sup>th</sup> day of January 2018.



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David Alfred

**JUDGE**

High Court of Fiji