

IN THE HIGH COURT OF FIJI AT LAUTOKA

Action No. HBC101 of 2002L

FEE PAID
\$ 1400
R.R. 130917
O.N. 169 CD
<i>[Signature]</i>

BETWEEN PUNJAS LIMITED a duly incorporated company having its registered office at 63 Vitogo Parade, Lautoka

First Plaintiff

A N D PUNJA & SONS LIMITED a duly incorporated company having its registered office at 63 Vitogo Parade, Lautoka.

Second Plaintiff

A N D COMMISSIONER OF INLAND REVENUE

Defendant

ORDER

Dated and Entered the 30 August 2002 and 6 September 2002 Before Mr. Justice Byrne in Chambers

UPON READING the Originating Summons dated 25 March 2002 and the Affidavit of Phil Taylor sworn on 25 March 2002 in support

AND UPON HEARING Mr. K. Kumar Counsel for the Plaintiffs and Mr. A.V. Bale Counsel for the Defendant on 30 August 2002 when the Defendant consented to Orders Nos. 3 to 10 and 13 to 17 inclusive as appearing in the Originating Summons

AND UPON READING the further Summons dated 3 September 2002

AND UPON HEARING Mr. C. B. Young Counsel for the Plaintiffs and Mr. Anu Patel Counsel for the Defendant on 6

September 2002 when the Defendant consented to Orders Nos. 1, 2 and 11 inclusive also as appearing in the said Originating Summons

THIS COURT THEREFORE DECLARES THAT:

1. In exercising his powers of audit under s.44 and s.48 of the Value Added Tax Decree 1991 the Commissioner of Inland Revenue ("the Commissioner") failed to act in a fair and reasonable manner by adopting a broad "reasonableness" test (involving reconciliation of the aggregated revenue and expense items disclosed in the taxpayers annual financial statements with the input and output claims in its VAT returns without understanding the make up and assuming a VAT treatment and extrapolating one month's audit figures over 48 months to determine a discrepancy and using that discrepancy as the basis of an assessment) without making any or sufficient effort to perform a detailed procedures examination of the records kept by Punjas Limited and Punja & Sons Limited which records were available had the Commissioner requested for them.

2. There was no evidence that Punja & Sons Limited had knowingly and fraudulently failed to make a full and true disclosure of any material facts in terms of s.48(2) of the VAT Decree 1991 and therefore the Commissioner did not have powers to undertake a VAT audit for a period in excess of 6

years from the end of the taxable period immediately preceding the date of the reassessment notice i.e. 20 June 2001.

3. The Commissioner acted unreasonably and was wrong to reject the VAT input claimed by Punjas Limited (for management fees paid by it to Punja & Sons Limited) on the grounds that Punjas Limited did not hold a tax invoice from Punja & Sons Limited, and the Commissioner should accept the said VAT input claimed by Punjas Limited for the management fees paid as aforesaid.
4. The Commissioner acted unreasonably and was wrong to assess VAT in respect of the missing tax invoices, and all such assessments (including any and all subsequent amended assessments) are wholly set aside and liability of the Plaintiffs in respect thereof is expunged.
5. The activity undertaken by Punja & Sons Limited of operating an Insurance Division and in arranging insurance covers for the Punja Group of Companies through insurance brokers, Marsh Ltd (by being the insurer of those companies for claims of up to the relevant deductible amount; by processing claims of the various companies; by arranging remedial action; by paying the loss claimed and by undertaking day to day administrative duties incidental to such activity) for which activity Punja & Sons Limited has

charged insurance premium to those Companies is a supply of financial services under paragraphs 1(b) and 1(g) of the First Schedule and therefore an exempt supply under s.2 of the VAT Decree 1991, and is not a service fee attracting VAT as contended by the Commissioner.

6. The Commissioner is bound by and estopped from acting contrary to the advice and assurance given by its VAT auditor, during an earlier 1997 audit, to the Plaintiffs that for internal charging of management fees and lease rentals between the Companies (including Punjas Limited and Punja & Sons Limited) it was adequate if the transactions were routed through journals and that if that was done no tax invoice was required to be issued.
7. The Discrepancy Reports in respect of Punjas Limited and Punja & Sons Limited contained in the Commissioner's letter dated 6 March 2002 has such material errors that they are unreliable and wrong and cannot be the basis for Reassessment VAT notice under the VAT Decree 1991, and accordingly those reports and all assessments and reassessments issued in respect of or arising out of them are wholly set aside.
8. The payments made by Punjas Limited and Punja & Sons Limited for security services provided at the residence of directors and senior managers of

those Companies is a business expense of those Companies and is not an employee benefit, and the Commissioner shall so treat.

9. Where a VAT audit is done in May 2001 the Commissioner has no power to subsequently issue a VAT Reassessment Notice for a taxable period earlier than February 1996.

AND THE COURT FURTHER ORDERS THAT:

10. The Commissioner will pay to Punjas Limited the sum of \$202,143.26 in VAT refunds (due up to February 2002) and interest thereon compounded on a daily basis at the rate of 12.5% calculated from the respective due dates to the date of payment.
11. The Commissioner will pay to Punja & Sons Limited the sum of \$7,062.66 in VAT refunds (due up to February 2002) and interest thereon compounded on a daily basis at the rate of 12.5% calculated from the respective due dates to the date of payment.
12. The Commissioner his servants or agents or otherwise are restrained from exercising any powers vested in the Commissioner to recover from Punjas Limited \$1,176,225.89 or any part thereof being the amount of disputed VAT and

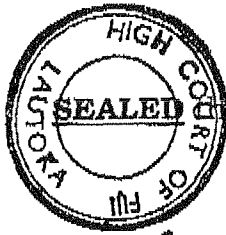
penalties in the Discrepancy Report contained in the letter dated 6 March 2002, as that report and any assessment or penalties arising therefrom are wholly set aside.

13. The Commissioner his servants or agents or otherwise are restrained from exercising any powers vested in the Commissioner to recover from Punja & Sons Limited \$429,978.11 or any part thereof being the amount of disputed VAT and penalties in the Discrepancy Report contained in the letter dated 6 March 2002, as that report and any assessment or penalties arising therefrom are wholly set aside.

14. The Commissioner his servants or agents or otherwise are restrained from withholding any VAT refunds due after 31 December 2001 or which are now or will hereafter become due to Punjas Limited and Punja & Sons Limited and the Commissioner and others as aforesaid are also restrained from applying any part of any such refund against existing or future VAT or income tax liability of either Company without an order of this Honorable Court, and any sum which has been so applied after 31 December 2001 is wholly set aside.

THAT AND THE COURT ALSO ORDERS:

15. The quantum of costs shall be determined by the Court on a date to be fixed unless agreed by the parties.



is 12th day of *September* 2002.

BY THE COURT

[Signature]
DEPUTY REGISTRAR

8

IN THE HIGH COURT OF FIJI
AT LAUTOKA

Action No. HBC101 of 2002L

BETWEEN PUNJAS LIMITED

First Plaintiff

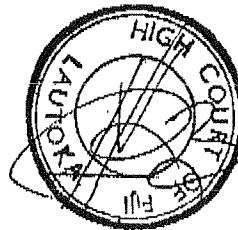
A N D PUNJA & SONS LIMITED

Second Plaintiff

A N D COMMISSIONER OF
INLAND REVENUE

Defendant

O R D E R



12 SEP 2002

YOUNG & ASSOCIATES
SOLICITORS
2 SAKU LANE
LAUTOKA