IN THE TAX COURT OF FIJI
AT SUVA

Review Action No. 01 of 2018

IN THE MATTER of Sections 17 and 82 of the Tax Administration Act No. 50 of 2009.

AND

IN THE MATTER of an application for review by Medica Pacifica South Pacific Limited

BETWEEN : MEDICA PACIFICA SOUTH PACIFIC LIMITED

APPLICANT

AND : FIJI REVENUE AND CUSTOMS SERVICE

RESPONDENT

CORAM : The Hon. Mr. Justice David Alfred

COUNSEL : Ms L. Prasad, Mr S. Fatiaki with her, for the Applicant

: Mr R. Singh, Mr E. Eterika with him, for the Respondent

Date of Hearing : 28 February 2019

Date of Judgment : 29 March 2019

JUDGMENT

1. This is the Applicant's Application for Review seeking the following orders:
   (1) To set aside the decision of the Respondent (Revenue) dated 29 January 2018 (Objection Decision) wholly disallowing the objection by the Applicant to the Amended Value Added Tax (VAT) notices of assessments for the taxable period from 2012 - 2015.
   (2) That the Revenue refund with interest the VAT amount of $157,967.35 paid by the Applicant.

2. The grounds of the Application are as follows:
   (1) The Objection Decision wrongly held that the objection was out of time when the Applicant had made timely objections on several occasions and had several discussions and correspondence with the Revenue audit team.
   (2) The Objection Decision was erroneous because:
      (i) The Revenue failed to properly consider the terms of the MOU between the Government of Australia and the Government of Fiji and the Subsidiary Arrangement under the MOU (SA).
      (ii) The supply by the Applicant was exempt from VAT and this was provided in clause 6 of the SA.
   (3) The Objection Decision did not properly consider the Applicant's Objection.
   (4) The Revenue failed to provide proper reasons for the Objection Decision and therefore pursuant to section 83(1) (b) of the Tax Administration Act (TAA) it should serve on the Applicant a statement of its reasons for it.

3. The Statement of Agreed Facts (SAF) dated 31 July 2018 states, inter alia, the following:
   (1) The Applicant paid the Revenue, VAT of $157,967.35, the breakdown is as follows:
      (i) Original assessment (2016) - $175,184.52
      (ii) Credit note - $17,480.28 for incorrect assessment
      (iii) On 7 February 2017 the Revenue issued notice of amended VAT assessments to the Applicant.
      (iv) The Applicant and the Revenue's officers had discussions and correspondence.

(v) A final meeting was held on 27 November 2017 when the Revenue Team members advised the Applicant to lodge a formal objection.

(vi) On 5 December 2017 the Applicant through its solicitors lodged an objection to the notice.

4. On 19 June 2018 the Tax Tribunal ordered this matter to be referred to the Tax Court.

5. Before the hearing commenced, Mr Singh said the Applicant did not make an application to the CEO of the Revenue for an extension. No penalties were levied. If the Applicant is entitled to a refund, it should get it from the Ministry of Economy.

6. The hearing commenced with the Applicant calling its first witness, Bhoo Prasad Maharaj Jnr Gautam (PW1). He is currently residing in New Zealand and has 18 years experience in the medical and health care sector, primarily in the sale and distribution of medical products. The Applicant was established in August 2008 to supply medical products into Fiji. According to clause 12(1)(a) of the MOU, the Government of Fiji was liable for all taxes. He said the Applicant had no document from the Ministry of Economy (Ministry) confirming it was exempt from VAT. FHSSP, an Australian body pays VAT directly to the Ministry and all claims and assessments are managed by the Ministry. FHSSP is liable to pay VAT directly to the Ministry. He confirmed 6 February 2017 was the date of the assessment and the objection was lodged on 5 December 2017. He was aware that they should have lodged on objection earlier.

7. Under cross-examination, PW1 said it was not made clear to him that he had to object within 60 days. He was aware of the VAT due to the Revenue and it was written there that objections within 60 days. They sent the Revenue an email requesting a meeting. They never requested for an extension of the period.

8. PW1 said the parties to the SA are the Ministry of Health and AusAid. The Applicant had no written agreement as such with AusAid. The Ministry of Finance are to budget and finance all tax exemptions and not Revenue. Tab 12 says VAT reimbursements go through the Ministry of Economy. He said the Ministry of Finance should have financed all tax exemptions.

9. With that the Plaintiff closed its case. The Defendant had no witnesses. So the Plaintiff's Counsel submitted.

10. Ms Prasad said she agreed an objection should be raised within 60 days. Only on 27 November 2017 did the Revenue team members advise the Applicant to lodge an objection which it acted on. There was no requirement that the Ministry of Finance should give a letter to the Applicant that it was VAT exempt because Clause 6.2 provides the Ministry of Finance is liable for all budget and exemption. The VAT payment issue is between the FHSSP and the Ministry of Economy.

11. Mr Singh then submitted. He said the 60 days period to make a formal objection in the approved form is legislative - s.16(3) of the TAA. It was only on 5 December 2017 that the Appellant lodged a proper objection. This is 10 months later. There were communication but the objection process is still governed by Law. PW1 confirmed no application was made to the CEO, Revenue for an extension. S.16(8) TAA makes the tax decision valid and binding and there was been no arguments about any defect, error or omission. It was on this basis the Revenue disallowed the objection. The Applicant is a registered person who says the supply is exempted under the MOU. Mr Singh said the Applicant's supply is not in schedule 1 and not in schedule 2. This means the supply is taxable and the Applicant must charge VAT on the supply. S.40(1) VAT Act imposes an obligation on a registered person to pay the tax. Here it is the Applicant.

12. With regard to the MOU, he said it is trite law that legislation overrides any agreement. The Revenue has to abide by the interpretation of Law which imposes an obligation to collect the tax and pay it to the Revenue. Any refund has to come from the Ministry of Economy and not from the Revenue. Therefore the Applicant should pursue this matter with the Ministry of Economy. The MOU is not a written law and the Revenue is not obliged to follow it, and to follow it is unconstitutional - s.139(2) of the Constitution.

13. Ms Prasad in her reply said if that were true then all the government bodies involved have acted unconstitutionally.

14. At the conclusion of the arguments, I said I would take time for consideration. Having done so, I shall now deliver my decision.

15. The pivotal issue is s.16 of the TAA which reads:

"Objection to Tax Decision

16.- (1) A person dissatisfied with a tax decision may lodge an objection to the decision with the CEO-

(a) In the case of a tax decision that is a tax assessment, within 60 consecutive days of service of the notice of the decision; or

(3) An objection must be lodged in the approved form stating fully and in detail the grounds upon which the person objecting relies to support the objection and the approved form shall be signed by the taxpayer and tax agent.

(4) A person may apply, in writing, to the CEO for an extension of time to lodge an objection and the CEO may, if satisfied there is reasonable cause, grant an application under this section and must serve notice of the decision on the applicant.

(8) If no objection to a tax decision is lodged within the time for objecting under subsection (1) or, when such time is extended by the CEO, within the extended time, the tax decision is treated as valid and binding upon the taxpayer subject to any defect, error, or omission that may have been made in the tax decision or in any proceeding relating to the tax decision required by a tax law."

16. From the evidence before this court and SAF item 8 the Applicant only lodged through its solicitors, an objection on 5 December 2017. This is shown clearly by its solicitor's said letter where in para 2, they state "Following several discussions and correspondence with the FRCS Audit team, we now write to raise an objection on the assessment done ..." In my opinion the significant word here is "now". But "now" is nearly 10 months after the service of the assessment concerned. If further confirmation were needed, this came from the evidence of PW1, Bhoo, who confirmed 6 February 2017 was the assessment and that the objection was lodged on 5 December 2017. He was aware that they should have lodged an objection earlier and they never requested an extension of the period.

17. Ms Prasad submitted that the Revenue officers were agents of the CEO Revenue and only on 27 November 2017 did they advise the Applicant to lodge an objection. If I may say so with respect the Revenue officers are not under any obligation to provide advice to a tax payer on the period within which the law requires them to do any act.

18. Further Ms Prasad must surely be aware that right from the start, the Revenue had in page 2 of its Notice of Amended Assessment dated 6 February 2017 alerted/advised the Applicant that objection against this assessment must

reach the Revenue "within sixty (60) days of the date of service or mailing of the assessment."

19. Thus in accordance with the maxim of public policy "Ignorance of the law which everybody is supposed to know does not excuse."

20. S.16(8) of the TAA states if no objection to a tax decision is lodged within the time for objecting under sub-s.(1) (60 days) or when the time is extended within the extended time it "is treated as valid and binding upon the taxpayer." In my view this must mean it is final which the Concise Oxford English Dictionary, 12th edn, defines as "allowing no further doubt or dispute."

21. At the end of the day, the Applicant's failure to object within 60 days of the decision (s.16 (1) and (8))and its failure to apply in writing for an extension of time to lodge an objection has proved fatal to this Application.

22. In the result, I hereby dismiss the Application for Review filed on 21 February 2018 and order each party to bear their own costs of these proceedings.

Delivered at Suva this **29th** day of **March, 2019.**

David Alfred
JUDGE
High Court of Fiji