



**FIJI TAX TRIBUNAL**

# Interlocutory Decision

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**Title of Matter:** A NADI FACTORY (Applicant)  
V  
FIJI REVENUE AND CUSTOMS SERVICES (Respondent)

**Section:** Section 82 *Tax Administration Act 2009*

**Subject:** Request for Leave to File Materials Out of Time

**Matter Number(s):** VAT Action No 10 of 2017

**Appearances:** Mr P Kumar, MIQ Lawyers for the Applicant  
Mr E Eterika, FRCS Legal Unit for the Respondent

**Date of Hearing:** 21 March 2019

**Before:** Mr Andrew J See, Resident Magistrate

**Date of Decision:** 21 March 2019

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**KEYWORDS:** Leave for filing materials out of time; Order 3, Rule 9 *Magistrates Court Rules 1945*.

## **Background**

[1] The Applicant Taxpayer has filed an application for review in this Tribunal on 20 December 2017. The matter has been delayed by the inordinate time it has taken for the parties to file various documents, including the Section 83 Documents (17 January 2018) and the Statement of Agreed Facts (28 June 2018).

[2] Directions were issued by the Tribunal on 5 July 2018, requesting that the Applicant file an Outline of Submissions and any Affidavit Material it intended to reply upon, by no later than 30

July 2018. On 12 September 2018, when the matter was called on for review, the Applicant sought an extension of time to 26 September 2018, in order to comply with the directions for the filing of materials. That is, the Applicant was requesting that it be given leave to file material 58 days later than the prescribed time for filing. Permission was granted for the Applicant to do so.

- [3] On 8 November 2018 when the matter was called back on for review and to ascertain compliance, there was no appearance for the Taxpayer. The matter was therefore relisted on 12 November 2018. When the matter came back on before this Tribunal, the Applicant was required to provide legal submissions as to why leave should be granted to extend the time for filing, given the earlier history of the conduct of the parties. The parties were given time for the filing of Affidavit material and it was indicated that a decision would be issued on the papers.

### **Affidavits Filed on behalf of the Parties**

- [4] It is noted at Paragraph 8 of the Affidavit of Patrick Kumar dated 31 January 2019, that it states:

*That (on) or about 12<sup>th</sup> November 2018, we attended the Court and advise the Court that we have Submissions with us and that we intend to file the submissions and serve on the Respondent. Additionally, we advised the Court that the Applicant has now located some of the invoices and evidence and that now we are ready for the trial.*

- [5] There are in effect two issues contained within this extract that are worth commenting upon. The first deals with the question of delay. So in effect we have a situation, that a party who had been in default of 58 days, was seeking a further 14 days to comply. That didn't happen and in fact a further 50 days passed, from 12 September to 12 November 2018, before the Applicant did file. In all, the submissions were filed 108 days later than the original Directions Order.
- [6] It is noted within the Affidavit, that the deponent attributes some of the delay for non compliance up and until 26 September 2018, coming about because of the lack of documentation made available by the Taxpayer to its solicitors and the Tribunal has no reason to doubt the accuracy of that account.
- [7] The Respondent similarly filed an Affidavit in Reply of Edward Anthony Eterika and within that , largely challenged the timeliness of the filing of materials, despite the extension, as being an abuse of process and a demonstration of a disregard for the expeditious functioning of the Tribunal activity.

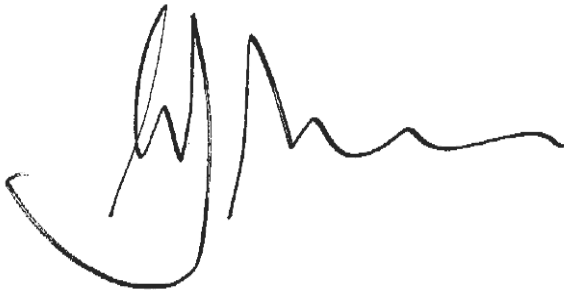
### **Conclusions**

- [8] The Tribunal is prepared to grant leave to allow for the filing of materials. Whilst it would easily be a case where a more stern approach could be taken, at the end of the day it will be the Taxpayer and not its lawyers, that will suffer, should the matter be either struck out or decided without reliance on such materials.
- [9] Having regard to the general considerations to be given in such matters, such as the length of delay, the reasons for delay and the prejudice incurred to the other party, the Tribunal will allow for the filing of the materials outside of the extended period otherwise granted.

[10] The Respondent has no doubt been required to incur costs as a result of the need to respond to this interlocutory step and on that basis I shall summarily assess costs to be paid to the Respondent, in the amount of \$1,500.00.

**DECISION**

[11] For the above reasons, the application of the Taxpayer is dismissed. The matter will be relisted in Suva on 7 May 2019 at 9.00am, for the scheduling of a hearing date.



**Mr Andrew J See  
Resident Magistrate**