

FIJI TAX TRIBUNAL

Decision

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

Section: Section 82 *Tax Administration Act 2009*

Subject: Application for review of tax decision

Matter Number(s): VAT Action No 02 of 2018

Appearances: Mr P Kumar, Patrick Kumar Lawyers for the Applicant
Mr E Galo, FRCS Legal Unit for the Respondent

Date of Hearing: 16 July 2019; 18 March 2020; 5 May 2020.

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 5 May 2020

KEYWORDS: Value Added Tax Act 1991; Section 21(b) *Tax Administration Act 2009* Onus of proof in proceeding; Incomplete evidence.

[1] On 11 December 2019, this Tribunal issued an interim decision in this matter. At the heart of that decision was the view reached that an informed decision could not be made on the merits of the case, having regard to the strength of the material provided by the Applicant. Specifically, the Tribunal stated:

The Tribunal is not satisfied with the quality of the evidence that has been provided, nor the precision by which it has been presented. This is particularly the case, given that the Taxpayer seeks as part of its relief that “every Tax Invoice presented by (the Taxpayer) be revised and reconsidered”.

On the basis that the Tribunal is not satisfied with the evidence before it, the Taxpayer and his accountant will be recalled to give evidence. The Taxpayer must bring with him his reading glasses, so he can read the documents before the Tribunal. In addition, the Respondent shall be required to produce a table of the relevant invoices that have been disallowed, with a coinciding column identifying

why in each case, the invoice has been disallowed. That document shall be the starting point for the taking of further evidence in these proceedings.

In addition, the Taxpayer will be required to provide to the Respondent, the contact details of all persons responsible for the issuing of the invoices in dispute, in such cases where the Revenue Service alleges that those documents have been falsely issued. Some or all of those persons identified, may be required to give evidence to substantiate the authenticity of the invoices so produced. The matter will be relisted on 3 February 2020 in Lautoka for further review.

[2] The Respondent complied with the Tribunal's request on 24 December 2019, but thereafter the Applicant failed to do anything further.

[3] What transpired thereafter is that on 3 February 2020, the Applicant and its representative simply did not attend the report back - that is despite the fact that the Tribunal made a special effort to have the matter called on in the Western Region - in order that company representatives could be in attendance. Arising out of that non-attendance, a cost order was issued against the Applicant and the parties invited to make submissions why the matter should not be struck out, for the failure of the Applicant to take a next step. The Applicant was required to file submissions, including legal authorities by no later than 1 April 2020. Instead on 9 April 2020, the Applicant wrote by letter to the Senior Court Officer of the Tax Tribunal indicating amongst other things that "our client is not going to provide any further evidence to the Court therefore we request the Court to deliver the ruling based on the hearing conducted on 16 July 2019".

[4] As a result, the Tribunal convened a further review of the matter today. At that review, the Tribunal advised the Applicant that an application for review is not like a criminal proceedings and that subject to all of the principles and underpinnings of natural justice, that the Member is well entitled to request additional evidence be provided, particularly where there remains doubt as to the issues in dispute and the quality of the evidence that is before it. In response, Counsel for the Applicant has maintained its position that it is unwilling to assist the Tribunal any further and insists the Tribunal should issue its decision, reliant on the evidence adduced at hearing on 16 July 2019 and any subsequent submissions that were filed. Mr Qalo of Counsel submitted that the Revenue Service would leave the matter for the Tribunal to determine.

Conclusions

[5] As was made clear at the outset of proceedings, in cases of this type it is the Applicant who has the onus of establishing that the decision of the Respondent should be disturbed. At the heart of this matter is the authenticity of documents that have been relied on by the Taxpayer when making its claim for input credits. From the outset when this dispute first came about¹, the Respondent had asked the Taxpayer to provide better evidence including the details of the issuing suppliers to assist with verification purposes. Now at hearing, in the circumstances of this



¹ That is, prior to the application being brought to this Tribunal.

case and having regard to related matters where issues of fraudulent activity have been raised², the need to ensure the authenticity of the documents is a fairly basic requirement.

[6] The Taxpayer is unwilling to assist the Tribunal undertake its task and in the absence of that assistance, despite now being given three opportunities to do so, the outcome of proceedings shall have to be determined reliant on such conduct. The case of the Applicant against the above backdrop is not made out. The application is dismissed.

Decision

- (i) It is the decision of this Tribunal that the Application is dismissed.
- (ii) The Tribunal summarily assesses costs to be paid by the Applicant Taxpayer to the Respondent in the amount of \$3,000.00.



Mr Andrew J See
Resident Magistrate

² See *A Nadi Factory v Fiji Revenue & Customs Services* [2019] FJTT6; VAT Action No 10 of 2017 (5 December 2019).