

**IN THE STATUTORY TRIBUNAL, FIJI ISLANDS**  
**SITTING AS THE TAX TRIBUNAL**

Miscellaneous Action [Tax] No 02 of 2013

**BETWEEN:**           COMPANY D

**Applicant**

**AND:**                 FIJI REVENUE & CUSTOMS AUTHORITY

**Respondent**

**Appearances:**     Mr K, the Managing Director of Company D

Ms T Rayawa, FRCA Legal Office, for the Respondent

**Date of Hearing:**    Tuesday 29 October 2013

**Date of Decision:** Wednesday 13 November 2013

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**DECISION**

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**Background**

1. The Applicant Company D has by Notice of Motion, sought orders for an extension of time to be granted, for the making of an application for review against an Objection Decision of the Respondent, dated 10 May 2013.
2. The request is made in accordance with Section 82 (3) of the *Tax Administration Decree 2009*.

3. The relevant factual details relied upon by the Applicant are as follows:
- The Taxpayer Company D was incorporated on 29 December 1998.
  - The Company has its registered office in Ba, Viti Levu and has operated a service station from various locations since that time.
  - In 2011, the Respondent undertook an integrated audit into the affairs of Company D, that gave rise to the issuing of several Amended Assessments for the Taxable Periods 2007 to 2009.<sup>1</sup>
  - On 12 March 2013, the Taxpayer wrote to the Respondent objecting to the Amended Assessments.
  - On 9 May 2013<sup>2</sup>, the Respondent advised the Taxpayer that its objection had been partially allowed and that should it wish to appeal against this decision, that it could do so by lodging an application for review to the Tax Tribunal within 30 days.
  - On 27 August 2013, the Taxpayer lodged its Notice of Motion seeking an extension of time for the lodging of such application. The application is some 75 days outside of the required 30 day requirement as provided for within Section 82(2)(c) of the *Tax Administration Decree* 2009.

### Key Considerations

4. In *Taxpayer K v Fiji Revenue & Customs Authority*<sup>3</sup> and *Company L v Fiji Revenue & Customs Authority*<sup>4</sup>, this Tribunal set out the approach to be adopted in cases of this type.

5. In *Taxpayer K*, the Tribunal stated:

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<sup>1</sup> Mailed to the Taxpayer on 6 November 2012.

<sup>2</sup> I note that in the material the parties seem to be referring to an Objection Decision dated 10 May 2013, but the Annexure marked NB5 to the Affidavit of Mr Navitalai Biukoto appears to be dated 9 May 2013.

<sup>3</sup> [2013] FJTT 10

<sup>4</sup> [2013]FJTT 12

*“In considering whether or not to exercise the discretion of the Tribunal in allowing an extension of time in which an application for review can be made, I have had regard to the following factors:*

- *the reason for the delay;*
- *the length of the delay;*
- *any action taken by the Applicant to dispute the Objection Decision;*
- *possible impact and prejudice to the Respondent; and*
- *the apparent merits of the application.*

*Such an approach is consistent with that of his Honour and President of the Supreme Court, Chief Justice Gates in NLTB v Ahmed Khan and Anor,<sup>5</sup> where the principles to be applied in the exercise of judicial discretion, are set out.*

## **Analysis of Issues**

### Reason for Delay

6. Within the Submissions of the Taxpayer at Paragraph 25,<sup>6</sup> it states:

*I was not aware that the Tax Tribunal is a different entity which deals with grievances such as mine. Being ignorant of this fact... I wrote to the Respondent’s Commissioner on the 9<sup>th</sup> June 2013, appealing to the ‘Objection Finalization Letter’ of 9<sup>th</sup> May 2013.*

7. At Paragraph 26 of the Affidavit of Mr K, Managing Director of Company D, he also states:

*The applicant being Authorised Officer of the company have been undergoing “Grave Financial “and hardship due to Devastating floods and Natural Disasters in the recent years”*

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<sup>5</sup> CBV0002.2013

<sup>6</sup> As filed on 6 November 2013.

### Length of Delay

8. Section 82 of the *Tax Administration Decree 2009* provides:

*(1) A person dissatisfied with a reviewable decision may apply to the Tax Tribunal for review of the decision.*

*(2) An application under subsection (1) must —*

*(a) be in the approved form;*

*(b) include a statement of the reasons for the application;*

*(c) be lodged with the Tax Tribunal within 30 consecutive days after the applicant has been served with notice of the reviewable decision; and*

*(d) be accompanied by the prescribed fee.*

9. The request for extension comes some approximately 75 days after the ordinary time limitation imposed by Section 82(2) of the *Tax Administration Decree 2009*.

### Action Taken to Dispute Objection Decision

10. It is clear that the Applicant was continuing to dispute the position that had been adopted by the Respondent. So much is clear in the letter that was written on 9 June 2013 to the Respondent.

11. The Taxpayer has provided no further evidence though of any pursuit of these issues, beyond that initial correspondence.

### Impact to Respondent

12. While the Taxpayer argues that there is little impact arising out of the delay, the Respondent on the other hand, has failed to respond to that claim. The requirement of the time limit nonetheless has been clearly put into place to provide some certainty and to give closure to the Respondent as part of the Assessment process.

13. As previously stated in *Taxpayer L*,<sup>7</sup> “the entire taxation system could run to a stop, if there were simply no parameters to the rights and entitlements of all parties, within financial or taxation year cycles”.

#### Apparent Merits of the Application

14. In *Datt v Datt*<sup>8</sup>, Calinchini AP stated:

*When the length of the delay is extreme and the explanations for it are wholly unsatisfactory, it is still necessary, in exercising the discretion given to the Court, to assess the chances of the proposed appeal succeeding.*

15. The case of the Taxpayer is that he had already lodged VAT returns for the periods in dispute, April 2007 and July 2009. He claims to have paid taxes in those periods. Yet, within the Statement of Tax Account<sup>9</sup> provided by the Respondent to the Tribunal, there is certainly no evidence of any payments made coinciding with those periods.

16. On 13 March 2013, the Taxpayer lodged VAT Returns for the periods April 2007 and July 2009. Within those returns, the Taxpayer sought to make tax input claims of \$25,795.78 and \$30,035.10 respectively.

17. The unfortunate position of the Taxpayer is that by virtue of Section 39(6) of the *Value Added Tax Decree 1991*,

*no input claim shall be allowed under this subsection after the expiration of the period of three years after the end of the taxable period*

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<sup>7</sup> Op cit at [11]

<sup>8</sup> [2013]FJCA 58 at [13]

<sup>9</sup> See Supplementary Materials provided by the Respondent to the Tribunal dated 12 November 2013.

18. As the taxable period in each case has expired, the result and more importantly the likelihood of the Taxpayer's success is very limited.

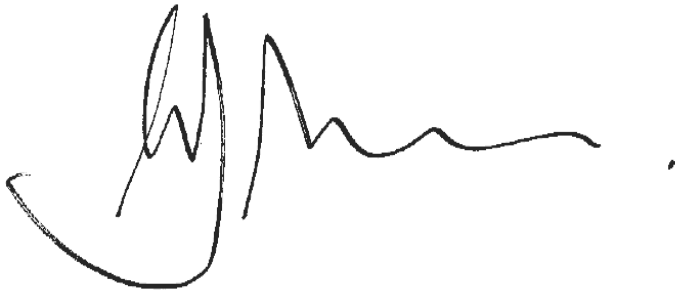
### **Conclusion**

19. Having regard to the above principles and considerations, I am not satisfied that this is a case where the extension of time should be granted.

20. The statutory position that shapes the payment of taxation under the *Value Added Tax Decree* 1991 provides no discretion to disturb the three year time limitation set out within Section 39(6) of the Decree.

21. The reason for the delay, also does not justify the exercise of the discretion, nor the significant time lag in bringing an application for review to this Tribunal.

22. The application for an extension of time is refused.

A handwritten signature in black ink, appearing to read 'A. J. See', with a large, sweeping flourish on the left side.

**Mr Andrew J See**  
**Resident Magistrate**

**13/11/2013**