



## FIJI TAX TRIBUNAL

# Decision

<b>Title of Matter:</b>	<b>A NADI FACTORY V FIJI REVENUE AND CUSTOMS SERVICES</b>	<b>(Applicant)  (Respondent)</b>
<b>Section:</b>	<b>Section 82 <i>Tax Administration Act 2009</i></b>	
<b>Subject:</b>	<b>Application for review of tax decision</b>	
<b>Matter Number(s):</b>	<b>VAT Action No 10 of 2017</b>	
<b>Appearances:</b>	<b>Mr P Kumar, Patrick Kumar Lawyers for the Applicant Messrs E Eterika and R Singh, FRCS Legal Unit for the Respondent</b>	
<b>Date of Hearing:</b>	<b>5 December 2019</b>	
<b>Before:</b>	<b>Mr Andrew J See, Resident Magistrate</b>	
<b>Date of Decision:</b>	<b>5 December 2019</b>	

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**KEYWORDS: Manufactured and falsely produced documents; Section 21(b) *Tax Administration Act 2009* Onus of proof in proceedings.**

### Background

[1] The Applicant Taxpayer filed an application for review in this Tribunal on 20 December 2017. As was previously noted in an Interlocutory Decision dated 21 March 2019. The matter had been delayed by the inordinate time it had 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). The fact that the Applicant thereafter delayed its filing of documents, merely compounded the problem.

[2] At the commencement of today's proceedings, the Respondent raised the issue that the Taxpayer had not to this point in time, complied with the earlier Order issued on 21 March 2019, that it pay costs summarily assessed in the amount of \$1,500.00 within 21 days. Whilst the non-compliance with the Order, may on one view be regarded as not being of direct relevance to the substantive application at hand, on another, it is demonstrative of conduct that could be seen as an ongoing pattern of behaviour, that illustrates a disregard for the laws of this land. The fact that no company officers were in attendance at the hearing and authority to represent was given to a member of an accounting practice that itself is under investigation for fraudulent conduct, provides the Tribunal with no great confidence whatsoever, that the Taxpayer and its representatives were coming to these proceedings with clean hands.

[3] The other issue that needed to be clarified at the outset, related to what was the state of affairs in regard to the Amended Assessment No 1, dated 15 May 2017, the subject of this dispute. That is, had the Taxpayer made good the tax debt owed to the Respondent by virtue of the reissuing of the Assessment Notice<sup>1</sup>.

#### **The Nature of the Dispute Between the Parties**

[4] This is as case where the Taxpayer disputes an assessment of the amount of valued added tax that it was to remit to the Respondent for the tax period January to December 2015. At the relevant time, the taxable activity of the Taxpayer was that associated with the operation of a children's indoor play centre, operating out of the Port Denarau, Nadi, marina. Whilst the Respondent advised that the original tax returns the subject of this dispute, were being held by the Director of Public Prosecutions on the basis that they were part of a criminal investigation, the crux of the issue is that the Taxpayer had initially claimed tax input credits of \$32,468.20 (that is, reliant on a schedule of costs it says it incurred as costs of sales) that was later moderated to the amount of \$4,808.10, following an audit undertaken by the Revenue Service.

[5] The disallowance of \$27,660.10 of costs of sales, comes about when supporting invoices provided by the Taxpayer to the Respondent, were found to be either fraudulently manufactured, missing, or not coinciding with the relevant financial year period. To better understand the nature of the issue in dispute, the Respondent identified within its *Bundle of Documents*, the breakdown of VAT inputs disallowed (See Tab 6). So that the exercise could be conducted efficiently, the Tribunal asked that the Respondent illustrate why some of the various invoices were disallowed. The following examples were provided: in the case of Bilo Café & Wifi Lounge, there were no invoices provided by the Taxpayer; in the case of the costs claimed against Challenge Engineering, the invoices provided coincided with the wrong financial year period; and most importantly, in the case of Jet Set Hardware, here it was alleged that the invoices were fabricated and had not been issued by the supplier.

#### **Falsification of Business Records for Purposes of Avoiding Taxation**

[6] Given the seriousness of the allegations levelled against the Taxpayer and having regard to the fact that the lawyers for the Respondent had advised that the accountant was the subject of criminal investigations pertaining to similar matters, the Tribunal wished to determine whether or not, the Respondent could substantiate its allegation. That is, if it was the case that the invoices in the case of Jet Set Hardware were falsified, that the Tribunal would be disinclined to entertain a full hearing of all matters, for the simple reason that the conduct of the Taxpayer and its advisors, would be deemed fraudulent. In this regard, the Respondent was asked to locate the business owner of Jet Set Hardware, Mr Parsu Ram in order that the claim that the invoices provided by the Taxpayer were not issued by his business, could be verified.

[7] Mr Ram participated in the hearing by way of a Viber internet protocol video call, where he was 'patched in' through a smart phone. In the first instance, Mr Ram was asked to confirm and identify the investigating officer Mr Naleen Nath, Senior Assessor Objection Review Team, who had met with him approximately 12 months earlier, to ascertain whether or not the invoices that had been submitted by the Taxpayer, were legitimate or not. Mr Ram identified Mr Nath and when provided with copies of the relevant invoices (See Tab 4 of the Respondent's Bundle of Documents), stated emphatically that the invoices were not issued by his business, nor did they bear his signature. Given

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<sup>1</sup> It is understood the debt included the overpayment of \$15,330.81 (Assessment 28 June 2016) and \$17,862.97 arising out of the Amended Assessment dated 15 May 2017.

that Mr Ram was so clear as to his position, the Tribunal was reasonably satisfied that the invoices were falsified. Yet, as Mr Kumar rightly pointed out, in fairness to his client, its Director should be contacted so as to be given the opportunity to support or reject the claim made.

### **The Evidence of the Director in relation to the invoices of Jet Set Hardware**

[8] The Director, Ms B, was contacted by her legal representative and made herself available by telephone from Australia. Ms B said at the time of the call that she was convalescing in hospital having been involved in a motor vehicle accident. The company director was also sent through Viber, photographs of the invoices contained within Tab 4E<sup>2</sup>. Ms B's initial response to those invoices, which the Tribunal believes is determinative of her true state of mind, was that she "(didn't) recall ever seeing (the) invoices".

[9] Ms B told the Tribunal in relation to Invoices 55695 and 57740 in the amounts of \$7,530.00 and \$6,585.00, that the signature was not hers<sup>3</sup>. She also stated:

*When going through some of those items I don't see how they would relate to (A Nadi Factory)*

[10] Ms B stated that whilst she recalls dealing with the business owner from JetSet Hardware, a long time ago, that she didn't recall receiving two invoices. Later, Mr Kumar asked the Director was the signature that of a former director Ms K W, to which she replied:

*No, because it says on that invoice (B.....)... that invoice says Kristy, but it is not my signature. .... but they are definitely not my signatures.*

[11] In relation to the Objection Letter sent to the Respondent dated 31 October 2017, Mr Eterika, asked if Ms B could be shown that document, in order to ascertain whether or not, it was her signature. It should also be noted, that given Ms B claims to have been overseas at that time and that the document was received by the Revenue Service two days later, was somewhat suggestive of the fact that she could not have signed that document, if it was the case that the original document had been provided and it had not otherwise been forwarded by air to Fiji to facilitate that arrangement<sup>4</sup>.

[12] Later, when the Tribunal repeated to the Director of the Taxpayer the basis for why the Objection was disallowed and the significance of the issue of her signature and the invoices that had been submitted, Ms B then was provided with a further opportunity to look at the invoices. After several minutes the company Director stated that the first invoice contained her signature and the second, was that of her then Manager. Ms B claimed that she could not properly see the signatures earlier. The Tribunal challenged the revised claim made by Ms B, particularly in light of the fact that she had claimed not to understand why some of the goods would have been acquired.

### **Analysis of Issues**

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<sup>2</sup> These were sent by way of Viber to Ms B by her legal representative.

<sup>3</sup> Refer Transcript of Proceedings ZOOM0015MP3

<sup>4</sup> The Tribunal is not convinced that the signature on that document is that of Ms B.

[13] The threshold issue that the Tribunal wishes to establish, relates to whether or not the Taxpayer in conjunction with its accountant has manufactured tax invoices and wilfully provided false information to the Revenue Service, in a bid to both avoid the paying of tax and so as to defraud the Government of Fiji. In relation to Invoice 55695, that Ms B later claimed to have signed, the Tribunal does not accept that this is the case. The recording of these proceedings, makes quite clear that Ms B could readily identify her surname on that invoice when she stated:

*No, because it says on that invoice (B.....)... that invoice says Kristy, but it is not my signature. .... but they are definitely not my signatures.*

[14] When Ms B had initially denied any knowledge of the invoices, she had seen her surname on the first invoice and said that was not her signature. That surname only appears as a signature. Ms B could have only been referring to her signature when she first denied that it was hers. That is, she clearly read out her surname as appearing in that document. Ms B had identified the signature at that point and said that it was not hers. If the company Director could not have properly seen the signature at that time, how was it that she could read her own surname on that document? That was the signature.

[15] More fundamentally though, when one examines and contrasts the two invoices that the Taxpayer provided and which Mr Parsu Ram has said were not his, they share common characteristics that lead to the very strong impression that one or both of them have been manufactured. Specifically in this regard, compare and contrast the items listed within the Item Descriptions of those two invoices. Located in exactly the same order within each of those invoices are the following items:-

- Mop Bucket
- Box floor cleaner
- Box Window Cleaner
- Ready Made 7ft door
- 10 Litre Interior White Paint Dulux
- Fan x Larger

[16] The Tribunal is of the view, that the second invoice (No 57740) was created by its author typing over the first. The same title capitalisation of the six common items is suggestive of the fact that the second invoice was 'typed over' and altered to some extent so as not to look identical to the first.

[17] Given the statements made by Mr Ram, that the invoices were not his and the initial response to the documents by Ms B, coupled with the common features as identified, the Tribunal accepts that the documents have been manufactured for fraudulent purposes. To further make the point clear, compare and contrast the purported date received of the goods in question, relating to each of the invoices. The first invoice bears the received date as 2 July 2015 and the second, on 2 September 2015. Now look at the number "2" where it both appears. That handwriting, at least of those dates and possibly more, appear to be the same. The number 2 has all of the same characteristics, yet the goods are purportedly received by two different people.

## **Conclusion**

[18] The Tribunal is satisfied that at least in the case of the invoices purportedly issued by JetSet Hardware that one and possibly both documents have been falsified, for the reasons alluded to above.

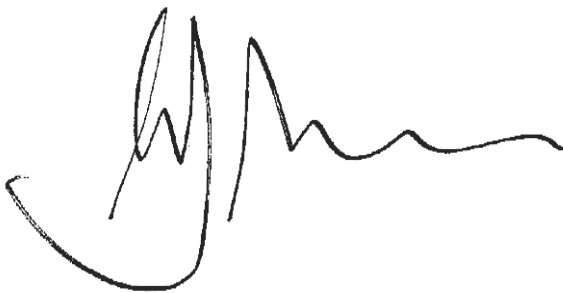
Whilst the Respondent's Bundle of Documents did not provide a summary of the other reasons for disallowance of the various invoices claimed by the Taxpayer, the initial overview provided by Mr Eterika demonstrates that the documents cannot be relied upon as substantiation for costs of sales, when they do not relate to the relevant VAT period or are missing.

[19] The Tribunal is not willing to undertake a more comprehensive analysis of each and every invoice, when it is quite evident that the Applicant has conducted itself dishonestly. A simple comparison of invoices within the Respondent's Bundle, shows that the purported signature of the Director Ms B, is substantially different in several of the invoices of the different suppliers. A case in point are the signatures for goods received by a Nadi Foodmarket, which unremarkably is also the subject of separate proceedings, where similar conduct is being alleged. The fact that there is a common solicitor to all of these taxpayers is also very concerning. In the present case, the only proposed witnesses to be called by the Taxpayer were its accountant and his employee. The fact that the accountant is the subject of criminal investigations in relation to this and other taxpayers, does nothing to alter the impression of the Tribunal, that the application for review should be dismissed. The Tribunal has no intention of putting the Respondent to the unnecessary further costs associated with the case, when it is clear that the Applicant's conduct is infected by fraudulent behaviour. For that reason the application for review is dismissed and the Respondent is free to make an application for costs. Should at some later time, the Taxpayer wish to make a revised application having paid its outstanding costs order and the Director Ms B appear personally to give evidence and attest to and verify the documentation relied upon, then the Tribunal would entertain a further review application being made.

#### **DECISION**

[20] It is the decision of this Tribunal that:-

- (i) The application for review is dismissed;
- (ii) The Respondent is at liberty to make application for costs within 28 days.



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