IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of a case stated under section 170 of the Inland Revenue Act, No.10 of 2006 (as amended.)

C.A. TAX 07/2017

TAC/ VAT/ 023/2015

Herbal Holiday Resorts (Private) Limited
Ayurveda Walauwa,
Warahena,
Bentota.
APPELLANT

-Vs-

Commissioner General of Inland Revenue
Department of Inland Revenue,
Colombo 02.
RESPONDENT

BEFORE : **A.H.M.D. Nawaz, J (P/CA) &**
Sobhitha Rajakaruna, J.

COUNSEL : Riad Ameen with Pratheepa Balendrian for the Appellant.

Sumathi Dharmawardena SDSG with Sabrina Ahamed S.C. for the AG.

Argued on : 15.06.2020

Decided on : 24.11.2020

A.H.M.D. Nawaz, J. (P/CA)

The succinct issue that arises in this case is whether the registration of the institution known as Herbal Holiday Resorts Pvt. Ltd (the Appellant) must be effected under the Ayurveda Act, No. 13 of 1961 as amended (the Ayurveda Act) in order to become entitled to the benefit of a tax exemption under the Value Added Tax Act, No.14 of 2002 (the VAT Act). The tax exemption which is set out in paragraph (b) item (xii) of Part II of the First Schedule of the VAT Act goes as follows:

> *"All health care services provided by the medical institutions or professionally qualified persons providing such care"*

It is quite clear from the above that the supply of health care services is exempt from VAT. The exemption from VAT applies to the supply of all health care services provided by;

i. Medical institutions; or
ii. Professionally qualified persons providing such care.

The crux of the argument of the learned Senior Deputy Solicitor General was that no exemption from VAT liability could be granted when there is a finding that the Appellant had no registration under the Ayurveda Act. If I may put the question in another way I would summarize the argument as follows:

> *"Whether an exemption from VAT liability could not be granted if the institution is not registered under the Ayurveda Act?"*

The learned Counsel for the State contended that the Ayurvedic services provided by the Appellant were not registered under the Ayurveda Act and therefore the exemption could not be granted.

Before I proceed to assay these arguments let me advert to the determination of the Tax Appeals Commission dated 29.11.2016. The determination at page 6 deals with a question of law on which both counsel for the Appellant Company and the

Respondent Commissioner General of Inland Revenue made submissions before this court on the case stated. The material holding of the Tax Appeals Commission goes as follows:

> *"We are of the view that the registration with the Department of Ayurveda is a mandatory requirement and that would be the best evidence to prove the existence of a medical institution for VAT exemption. In this regard, we examined the registration certificates produced by the Appellant company. According to the certificates issued by the Department of Ayurveda the Appellant has been registered as a medical institution to provide Ayurvedic treatment under the Ayurveda Act, No. 13 of 1961 in 2015. Hence, it is evident that the taxable periods 2009/2010 and 2010/2011 were not covered by the said registration under the Department of Ayurveda."*

Thus a mandatory registration under the Ayurveda Act has been insisted upon by the Tax Appeals Commission in order to claim a VAT exemption under item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act.

I have to interpose here and observe that in terms of the VAT exemption provided for in item (xii) of paragraph (b) of Part II of the First Schedule to the VAT Act, the exempt supply of health care services must be by a medical institution or professionally qualified persons and in the instant case stated, the question whether the Appellant operates a medical institution that supplies health care has never been disputed by the Commissioner General of Inland Revenue before the Tax Appeals Commission. I would further add that the Tax Appeals Commission has not reached a finding on any evidence led before it that the Appellant has not maintained a medical institution.

I find that there was evidence before the Tax Appeals Commission that there were qualified Ayurvedic doctors in the holiday center run by the Appellant to attend to the guests who patronized the Ayurveda services. As was brought forth in the arguments before this court, no dispute has been raised either before the

Commissioner General of Inland Revenue or the Tax Appeals Commission regarding the qualifications of Ayurvedic doctors and the validity of their registration to practice Ayurveda.

Since there was no dispute or issue before either of the two tiers as to the status of the Appellant's services as a medical institution, it goes without saying that issue cannot arise before this court. It has to be remembered that the jurisdiction of the Court of Appeal in a case stated is to determine questions of law arising from questions of fact placed before the Tax Appeals Commission. Though there is no finding by the Tax Appeals Commission that the Appellant does not operate a medical institution, the Tax Appeals Commission has brought in what it calls a mandatory requirement of registration under the Ayurveda Act, as an ingredient or a requirement to be qualified to seek a VAT exemption.

Nowhere does one find registration as a mandatory requirement in the exempting provision namely, item (xii) of paragraph (b) of part II in the First Schedule of the Value Added Tax Act, No. 14 of 2002 as amended.

In a nutshell, the VAT exemption, as I have alluded to above, is available in the following situations:

i. all health care services provided by medical institutions; and
ii. health care services by professionally qualified persons.

Nowhere does the exempting provision in the VAT Act impose an express requirement of a registration under the Ayurveda Act, No. 13 of 1961. As I have clearly adverted to, there is no dispute as to the health care services provided by the medical institution. Whilst the exempting provision did not require a registration, the Tax Appeals Commission read into the VAT Act a mandatory requirement of registration when it went on to hold:

"Therefore, we are of the view that the registration with the Department of Ayurveda is a mandatory requirement....."

Though registration under the Ayurveda Act was not expressly provided for in the exempting provision, namely item (xii) of paragraph (b) of part II in the First Schedule of the Value Added Tax Act, No. 14 of 2002 as amended, the Tax Appeals Commission read the requirement as an implied stipulation into the provision. This appears to be contrary to precedents and rules of interpretation in fiscal statutes.

In the Indian case of ***Bechu Company v. Assistant Commissioner*** 2003 STC (132) 68 the validity of certain newly amended provisions of the Kerala General Sales Tax Act, 1963, were challenged. The said provisions treated brand name holders and trademark holders, who effected sale of manufactured goods under a brand name or a trade name, as a separate class for point of levy of tax under the Act. The provisions were challenged by trade mark holders and brand name holders who were not registered under the Trade and Merchandise Marks Act, 1958. The court held in this regard that to restrict the application of the Act to only those trade mark and brand name holders who were registered under the Trade Marks Act would amount to reading words into the taxing statute which was impermissible. In other words the court held that a requirement of registration could not be read into the Act. The use of the words brand name holders and trade mark holders would not be restricted to only registered brand holders and trade mark holders. It would include unregistered brand name holders and trade mark holders. The court observed:

"It is settled that interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

In *Film Exhibiters Guild v. State of Andhra Pradesh* AIR 1987 AP 110 the court had to consider whether the proprietor of a Cinema Theatre, on agreeing to pay entertainment tax under Section 5v of the Andhra Pradesh Entertainment Tax Act, 1939, was also liable to pay show-tax under Section 4-A of the Act (inserted by an amendment in 1984). The court held that since Section 4-A was clear in its mandate of imposing show tax on those who were covered under Section 5 it could not be interpreted in a manner that defeated the clear intention of the legislature to impose an additional tax. The court observed:

> *"A taxing statute, if it professes to impose a charge, its intention must be expressed in clear, unequivocal and unambiguous language. The court has to look at the language couched. A hunt into intention to find a charge is impermissible. No equitable construction of a charging section is to be applied. The charging section is to be construed strictly regardless of its consequences that may appear to the judicial mind to be. The burden is on the state to show that the subject is within the provisions of the Act. However, in construing the machinery provisions for assessment and collection of the tax to make the machinery workable* ***ut res valeat petius quam pereat****, that is, the court would avoid that construction which would fail to relieve the manifest purpose of the legislation on the presumption that the legislature would enact only for the purpose of bringing about an effective result. It is not the function of the court to hunt out ambiguities by strained and unnatural meaning, close reasoning is to be adapted; harmonious construction is to be adhered to; all the relevant provisions are to be read together to gather the intention from the language employed, its context, and give effect to the intention of the legislature. Ingenious attempt to avoid tax is to be thwarted."*

These cannons of interpretation are consonant with the articulations of Rowlatt, J. in *Cape Brandy Syndicate v. Inland Revenue Commissioners* (1921) 1 KB 64 (at page 71)/ 12 TC 358 at page 366:

> *"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax.* ***Nothing is to be read in, nothing is to be implied*** *and subsequent legislation, if it proceeded on an erroneous construction of previous legislation, cannot alter the previous legislation."*

This leading principle was affirmed by the English Court of Appeal in (1921) 2 KB 403. The learned Counsel for the Appellant has brought to the notice of this court the following English cases that have followed the principle enunciated in ***Cape Brandy Syndicate v. Inland Revenue Commissioners*** (supra)-to wit; ***Selection Trust Ltd. v. Devitt (Inspector of Taxes)*** [1945] 2 All ER 499 (HL) at 506-507; ***Amerada Hess Ltd. v. Inland Revenue Commissioners*** [2000] STC 397 at page 402; ***Jaggers (Trading at Shide Trees) v. Ellis (Inspector of Taxes)*** [1996] STC (SCD) 440 at page 444 and ***Johnson (Inspector of Taxes) v. The Prudential Assurances Co. Ltd.*** [1996] STC 647 at page 668.

In Sri Lanka the principle enunciated by Rowlatt, J. has been followed in ***Nanayakkara v. University of Peradeniya*** (1991) 1 Sri.LR 97; ***Trust Union Shipping Corporation v. Commissioner General of Inland Revenue*** (2003) 3 Sri.LR 43; ***The Manager, Bank of Ceylon, Hatton v. The Secretary Hatton Dickoya Urban Council*** (2005) 3 Sri.LR 1; and ***Vallibel Lanka (Pvt.) Limited v. Director General of Customs and three others*** (2008) 1 Sri.LR 219.

Sripavan, J. (President of the Court of Appeal) as His Lordship was then with the concurrence of Rohini Perera, J. echoed the consistent principle in ***Kalamazoo Systems Ltd v. The Commissioner General of Labour and 6 Others*** 2002 B.L.R 164 that nothing is to be read in and nothing is to be implied into fiscal legislation.

So the Tax Appeals Commission was in error when it introduced the requirement of a mandatory registration of medical institutions into item (xii) of paragraph (b) of part II in the First Schedule of the Value Added Tax Act, No. 14 of 2002 as amended and

for this reason I proceed to answer ***in the negative*** the following material question of law formulated for the opinion of this court:

> *Did the Tax Appeals Commission err in law in deciding that medical institutions providing Ayurveda Health Care service require a registration under the Ayurveda Act, No. 31 of 1961 in order to be entitled for exemption under item (xii) of paragraph (b) of part II in the First Schedule of the Value Added Tax Act, No. 14 of 2002 as amended ?*

In other words in order to secure the VAT exemption in the instant case, there is no mandatory requirement of a registration of the medical institution under the Ayurveda Act and in view of this holding, I need not go into another contention of the learned Senior Deputy Solicitor General that non registration under the Ayurveda Act exposes the medical institution to criminal prosecution. It is as plain as a pikestaff just as much an alleged illegality of income or profit will not extinguish tax liability, such an alleged taint in the supply of goods or services cannot deny exemption if the exemption has been unambiguously provided for in the fiscal statute. For purposes of VAT, it is either liable supply or exempt supply.

As regard registration, the attention of this court was drawn to section 10 (1) of the Ayurveda Act which reads as follows:

> *"No premises shall be used for the purposes of an ayurvedic hospital, ayurvedic pharmacy, ayurvedic dispensary or ayurvedic store, unless such premises are for the time being registered by the Commissioner as an ayurvedic hospital, ayurvedic pharmacy, ayurvedic dispensary or ayurvedic store, as the case may be, and the person carrying on such hospital, pharmacy, dispensary or store in such premises is for the time being registered by the Commissioner as the proprietor thereof."*

Section 10(1) above applies only to the following institutions, namely,

a) ayurvedic hospital;
b) ayurvedic pharmacy;
c) ayurvedic dispensary; and
d) ayurvedic store.

Thus it is clear that it is only when a person operates one of these four institutions without registration, an offense under section 10(1) of the Ayurveda Act is likely to be committed.

It has to be noted that the Department of Ayurveda has registered the Appellant as an "institute of Private Ayurvedic Service." The following certificates demonstrate this position:

a) Certificate dated 23.02.2011 to provide "Panchakarama" services with effect from 14.02.2100.

a) Certificate dated 31.10.2012 to provide "Ayurveda Panchakarama" services and Ayurveda massage services with effect from 14.02.2012.

b) Certificate dated 30.09.2015 to provide Ayurveda treatment, "Ayurveda Panchakarama" treatment and Ayurveda massage treatments with effect from 01.10.2015.

It is therefore evident that the Appellant does not fall under the aforesaid four categories which become liable for prosecution.

In any event a prospective prosecution for non registration under the Ayurveda Act will not deprive a medical institution of losing the tax exemption when it satisfies the threshold of a medical institution which provides health care services.

Accordingly I take the view that both the Commissioner General of Inland Revenue and the Tax Appeals Commission arrived at erroneous conclusions in regard to VAT exemption and this court reiterates that the question of law as regards the entitlement of the Appellant to VAT exemption for the relevant periods must be answered in its favour.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE COURT OF APPEAL