**Decision Number:** 10920  
**Decision Date:** 2078/12/28 B.S. (11/04/2022 A.D.)  
**Final Decision:** Supreme Court of Nepal, Joint Bench  
**Pre-Decisions:** Revenue Tribunal, Kathmandu; Inland Revenue Department  
**Petitioner:** Inland Revenue Office, Lalitpur (on behalf of Chief Tax Officer Padam Kumar Shrestha)  
**Respondent:** Asia Pacific Communications Associates Nepal Pvt. Ltd., Anamnagar  
**Key Words:** Value Added Tax (VAT), Statute of Limitations, Tax Assessment, Value Added Tax Act, 2052 B.S.

**Key Points:**

1. Nepal’s tax system is based on the principle of self-declaration, where taxpayers are legally required to self-assess and remit their taxes to the concerned authority.
2. The tax office can only initiate an inquiry and determine tax liability if discrepancies are found in the tax returns submitted by the taxpayer.
3. When assessing tax, the burden of proving any discrepancy in the taxpayer's return lies with the tax officer.
4. The tax officer must complete the tax assessment within the time limit prescribed by law. Otherwise, the tax return submitted by the taxpayer is deemed final and legally accepted.
5. Section 20(4ka) of the Value Added Tax Act, 2052 B.S. grants a special power to the Inland Revenue Department to order a re-assessment of tax at any time if a taxpayer has evaded tax through fraudulent accounts, invoices, or other forged documents.
6. This special power is vested in the Inland Revenue Department, not the initial assessing tax office.

**Facts of the Case**  
❖ On 2067/03/17 B.S., the Large Taxpayers' Office, Hariharbhawan, based on a tax audit report, issued a preliminary tax assessment order to Asia Pacific Communications Associates Nepal Pvt. Ltd. for a total of Rs. 85,15,682, which included tax, penalties, additional fees, and interest, under Section 20(1) of the Value Added Tax Act, 2052 B.S. and Rule 29(1) of the Value Added Tax Rules, 2053 B.S.  
❖ The taxpayer was notified on the same date and given 15 days to submit any evidence to challenge or amend the assessment, failing which the amount would be collected in the government treasury.  
❖ On 2067/03/31 B.S., the taxpayer submitted a response to the Large Taxpayers' Office, arguing that the tax and penalty assessment was baseless and requesting its annulment.  
❖ On 2067/03/32 B.S., the Large Taxpayers' Office issued a final tax assessment order. It revised the assessed tax amount from Rs. 43,44,224 to Rs. 49,81,625, added a 20% penalty of Rs. 9,96,325 under Section 29(1ka), and noted that additional fees (10% annually under Section 19) and interest (15% annually under Section 26) would be automatically calculated by the computer system.  
❖ The taxpayer filed for an administrative review at the Inland Revenue Department on 2067/04/31 B.S., challenging the final assessment as being contrary to Section 20(1) of the VAT Act, 2052 B.S.  
❖ On 2067/05/31 B.S., the Inland Revenue Department upheld the decision of the tax office, stating that the taxpayer had evaded tax by claiming full input tax credit without proportional allocation and that, under Section 20(4ka) of the VAT Act, a tax assessment in cases of tax evasion is legally valid.  
❖ The taxpayer, Asia Pacific Communications Associates Nepal Pvt. Ltd., then filed an appeal at the Revenue Tribunal, Kathmandu, arguing that the tax assessment was time-barred, flawed, and illegal because the tax office had retroactively covered the entire 12-month fiscal year based on the final month to circumvent the statute of limitations under Section 20(4).  
❖ On 2070/02/21 B.S., the Revenue Tribunal, Kathmandu, overturned the decision of the Large Taxpayers' Office and the Inland Revenue Department, finding that the tax assessment was not conducted within the time limit prescribed by Section 20(4) of the VAT Act, 2052 B.S.  
❖ The Inland Revenue Office, Lalitpur, filed for revision in the Supreme Court, which was granted on 2074/04/04 B.S. under Section 8(d) of the Revenue Tribunal Act, 2031 B.S., as it involved an interpretative question of law concerning Sections 18 and 20(4) of the VAT Act, 2052 B.S.

**Petitioner's Contention (Inland Revenue Office, Lalitpur)**  
● The taxpayer engaged in both taxable and tax-exempt transactions in the fiscal year 2062/63 B.S. but unlawfully claimed input tax credit on purchases related to tax-exempt sales.  
● As per Section 17(3) of the VAT Act and Rule 40(3) and (4) of the VAT Rules, only a proportional amount of input tax credit corresponding to taxable sales is permissible.  
● The tax assessment was conducted for the entire fiscal year based on the final tax period (Ashadh 2063) and was therefore within the four-year time limit prescribed by Section 20(4) of the VAT Act.  
● Further, in cases of tax evasion through false documents, Section 20(4ka) of the Act allows for re-assessment at any time.  
● The decision of the Revenue Tribunal is flawed as it failed to consider these legal provisions and should be quashed, thereby upholding the final tax assessment order of the Large Taxpayers' Office and the subsequent decision of the Inland Revenue Department.

**Respondent's Contention (Asia Pacific Communications Associates Nepal Pvt. Ltd.)**  
● We (the taxpayer) filed our VAT returns monthly for the fiscal year 2062/63 B.S. as required by Section 18 of the VAT Act, a fact not in dispute.  
● According to Section 20(4) of the Act, the tax office must complete its assessment within four years from the date of filing the return. The tax office failed to do so for the returns filed from Shrawan 2062 to Jestha 2063 B.S.  
● The special provision in Section 20(4ka) for re-assessment in cases of fraud is not applicable here. Firstly, the initial tax assessment order from the Large Taxpayers' Office did not mention or establish any fraud, forgery, or use of false documents.  
● Secondly, this special power is vested in the Inland Revenue Department, which can only order a re-assessment, not use it as a justification in an administrative review of a time-barred assessment.  
● Therefore, the decision of the Revenue Tribunal, Kathmandu, which correctly overturned the time-barred assessment, is just and should be upheld.

**Legal Issues**

1. Was the final tax assessment order issued by the Large Taxpayers' Office, Hariharbhawan, made within the statute of limitations prescribed by Section 20(4) of the Value Added Tax Act, 2052 B.S.?
2. Who can exercise the power granted under Section 20(4ka) of the Value Added Tax Act, 2052 B.S. for re-assessing tax at any time, and under what circumstances?

**Judgment**  
● Under Nepal's tax laws, the system is based on self-declaration, where the taxpayer self-assesses and pays tax. The tax office can only conduct a further assessment if there are discrepancies. The burden of proving such discrepancies rests with the tax officer, and any assessment must be completed within the legally stipulated time limit. Otherwise, the taxpayer's filed return is considered final.  
● Section 18 of the Value Added Tax Act, 2052 B.S. requires taxpayers to file their tax returns on a monthly basis. Consequently, the four-year statute of limitations for tax assessment, as provided in Section 20(4), begins to run from the date each monthly return is filed.  
● The petitioner (tax office) argued that the assessment for the entire fiscal year 2062/63 B.S., made on 2067/03/17 B.S., was timely because it was within four years of the final tax period (Ashadh 2063). However, this argument is legally untenable. The time limit for the months of Shrawan 2062 through Jestha 2063 had already expired by the time of the assessment. The law does not permit consolidating an entire fiscal year and assessing it based on the deadline of the final month. The tax office is obligated to assess each tax period within its respective four-year window.  
● The court then considered the second legal issue regarding the special power under Section 20(4ka), which allows the *Department* to order a re-assessment at any time in cases of tax evasion through fraud or forgery. This is an exceptional and special power granted to the Inland Revenue Department, not the initial assessing office (the Large Taxpayers' Office).  
● In this case, the initial assessment by the Large Taxpayers' Office did not invoke Section 20(4ka) or present any evidence of fraud or forgery. The issue was raised for the first time by the Inland Revenue Department during the administrative review to justify the time-barred assessment. This is an improper application of the law. The Department's role under this section is to *order* a re-assessment upon discovery of fraud, not to retroactively validate a legally flawed assessment made by a lower office.  
● An official vested with public authority cannot encroach upon the jurisdiction of another or misuse a special provision of law to cover for a failure to act within the general legal framework. Allowing the Department to invoke Section 20(4ka) in this manner would undermine the principle of the statute of limitations and create uncertainty in the tax system.  
● Since the tax assessment was not conducted within the four-year period mandated by Section 20(4) of the VAT Act, 2052 B.S., and the conditions for invoking the special power under Section 20(4ka) were not met, the assessment was illegal.

Thus, the decision of the Revenue Tribunal, Kathmandu, dated 2070/02/21 B.S., which overturned the decisions of the Large Taxpayers' Office and the Inland Revenue Department, is found to be consistent with the law and is hereby upheld. The appeal of the Inland Revenue Office, Lalitpur is dismissed.

**Significance**

1. This decision reinforces the mandatory nature of the statute of limitations in tax law, providing certainty and finality to taxpayers.
2. It clarifies that the four-year time limit for VAT assessment under Section 20(4) of the VAT Act, 2052 B.S. runs for each tax period (monthly) from the date of filing the return.
3. The judgment establishes a clear distinction between the general power of assessment held by a tax office and the special, exceptional power of the Inland Revenue Department to order re-assessment in cases of fraud under Section 20(4ka).
4. It holds that the special power to re-assess for fraud cannot be used as a blanket justification to cure a time-barred assessment, especially when fraud was not the basis of the original assessment.
5. The burden of proof to demonstrate that an assessment is both timely and legally justified rests squarely on the tax administration. Public officials are expected to exercise their authority within the strict confines of the law.

**Source:**

1. Value Added Tax Act, 2052 B.S. [https://www.lawcommission.gov.np/en/archives/category/value-added-tax-act-2052-1996](https://www.google.com/url?sa=E&q=https%3A%2F%2Fwww.lawcommission.gov.np%2Fen%2Farchives%2Fcategory%2Fvalue-added-tax-act-2052-1996)
2. NKP, 2079, Inland Revenue Office, Lalitpur v. Asia Pacific Communications Associates Nepal Pvt. Ltd. (Decision No. 10920, Decided on 2078/12/28 B.S.); [https://nkp.gov.np/full\_detail/10091](https://www.google.com/url?sa=E&q=https%3A%2F%2Fnkp.gov.np%2Ffull_detail%2F10091)