

HIGH COURT OF SOLOMON ISLANDS

Case name: QQQ Holdings Ltd v Commissioner of Inland Revenue

Citation:

Date of decision: 12 April 2024

Parties: QQQ Holdings Limited v The Commissioner of Inland Revenue

Date of hearing: 1 September 2023, 17 October 2023

Court file number(s): 124 of 2021

Jurisdiction: Civil

Place of delivery:

Judge(s): Kouhota; PJ

On appeal from:

Order: 1. The Appellant is not liable to pay additional goods tax assessed for period covered by the deed 1st August 2016 to 31st December 2017.
2. Appellant is liable to pay the additional goods tax for the periods
(1) 01.08.17 to 31.07.18, the amount of \$2,737,647. 95
(2) 01.08.18 to 31. 12.18, the amount of \$2, 213,087. 00, less any goods tax the appellant had already paid for these periods
Parties to bear their own cost.
IRA.

Representation: Afeau P for the Appellant
Fakarii F for the Respondent

Catchwords:

Words and phrases:

Legislation cited: Goods Tax Act S 61, S 60, S 43, S 43 (1) , S 13

Cases cited:

IN THE HIGH COURT OF SOLOMON ISLANDS
CIVIL JURISDICTION

Civil Case No. 124 of 2021

BETWEEN

QQQ HOLDINGS LIMITED

Claimants

AND:

THE COMMISSIONER OF INLAND REVENUE

Respondent

Date of Hearing: 1 September 2023, 17 October 2023

Date of Ruling: 12 April 2024

Afeau P for the Appellant

Fakarii F for the Respondent

JUDGMENT

Kouhota PJ

This is an appeal by the Appellant pursuant to section 61 of the Goods Tax Act. The Appellant on 19/3/2021 filed a notice of Appeal against the Commissioner of Inland Revenue disallowing the Appellant's objection to Additional Goods Tax Assessment, conveyed by letter dated 18th January 2020.

The Appellant is a Company duly incorporated under the laws of Solomon Islands and is the Taxpayer for the purpose of this proceeding.

The Respondent is a statutory Office holder established under the Income Tax Act and is responsible for the administration and collection of various taxes due and payable under the various statutes including the Goods Tax Act.

The agreed facts relevant to agreed issues to be decide by the Court are set out herein;

1. On the 13th November 2018, the Respondent's Audit & Investigation Section of the Inland Revenue Division **(IRD)**

visited the Appellant's premises in China Town and handed over to them a Proposed Tax Assessments Letter for Goods Tax Audit for the period from January 2013 to December 2017.

2. The amounts of the Proposed Tax Assessments were:
 - a) Total Core Tax Shortfall was \$6, 390,921.00.
 - b) Late Payment Penalties was \$ 1, 278, 184.00.
 - c) Total Discrepancy or Outstanding was Tax \$ 7, 669, 105.00
3. After reviewing the Proposed Tax Assessments the Appellant did its own calculations which were submitted to the Respondent on 18th November 2018. According to their calculations the Outstanding Tax was \$ 325, 897, 70.
4. On 13th December 2018, the Respondent issued its final audit assessments. They came up with these assessments based on their audit findings which stated that :
 - a) The Total Core Tax Shortfall was \$ 3, 233, 853.00
 - b) With Late Payment Penalties of \$ 644, 771.00.
 - c) Totalling \$ 3,868, 623 as the Total Discrepancy or Outstanding Tax.
5. By letter dated 14th December 2018 the Appellant responded to the Respondent's audited assessments by accepting to pay the Core Tax assessment of \$ 3 223,850.00 and requesting that all the penalties to be waived by the Commissioner.
6. On 27th March 2019, a Deed of Settlement (the "Deed") was executed by the parties with the Commissioner waiving all the penalties and stipulating that in the Deed. Paragraph (d)

of the Deed sets out the agreed details of the agreed payment terms of the understanding tax for the period from 1st January 2013 to 31st December 2017 as follows:

- i. The Core Tax is -\$3,233,853.00
- ii. Penalties amount is \$622,082.00
- iii. Total Liabilities including penalties is - \$3,845,935.00
- iv. An upfront payment to be made is (done) - **\$343,853.00**
- v. The remaining balance is - \$3,502,082.00
- vi. All Penalties to be remitted - \$622,082.00
- vii. Outstanding Tax liability - **\$2, 880,000.00**
- viii. Tax liabilities to be repaid in 29 months of –
 - i In 28 months the monthly instalment payment will be - **\$100,000.00**
 - ii In last month instalment payment will be - **\$80,000.00**
 - iii The repayment period will commence from - **May 2019**
 - iv The last repayment period will be - **September 2021**
7. The Appellant complied and made all the required payments as stipulated in the Deed, making the final instalment payment in September 2021.
8. At the start of 2020 the Respondent undertook Goods Tax Review of the Appellant for the period from 1st August 2016 to 31st December 2017. The Appellant objected to such a

Review, especially for the period from 1st August 2016 to 31st December 2017 which was already covered by the Deed.

9. On 6th May 2020 the Respondent issued to the Appellant 3 Additional Goods Tax Assessments for the periods – from 1st August 2016 to 31st July 2017; from 1st August 2017 to 31st July 2018; and from 1st August 2018 to 31st December 2018 as follows:

Description of Goods (Tax Period)	Sales Value as Notified (Assessed)	Tax
(1) 01.08.16 to 31.07.17	\$ 21, 934, 014.60	\$3, 2.9, 102.19
(2) 01.08.17 to 31.07.18	\$ 18, 250, 986.35	\$ 2, 737, 647.95
(3) 01.08.18 to 31.12.18	\$ 14, 753, 913.43	\$ 2, 213, 087.01

10. The Appellant was given 60 days to object to the Additional Goods Tax Assessments under section 60 of the Act by lodging formal objection to the Commissioner.
11. The Appellant did not agree with the Assessments and lodged its Notices of Objection to each of the Assessment on 30th June 2020. The reasons for the Objections are stated in the Notices of Objection.
12. By letter dated 18th January 2020 (error) the Respondent notified the Appellant that its Objections were disallowed in full and consequently the Appellant lodged this Notice of Appeal on 19th March 2021.
13. The Appellant has paid the additional tax for the period from 1st August 2018 to 31st December 2021 so this period is no longer in dispute.

AGREED ISSUES

1. Whether or not the Deed is a binding agreement between the Appellant and the Respondent.

2. If the answer to 1 above is in the affirmative whether or not the Respondent's Additional Goods Tax Assessments for the period covered by the Deed (from 1st August 2016 to 31st December 2017) were done by the Respondent in breach of the Deed, and
3. If the answer to 2 above, is in the affirmative whether or not the Assessments are binding on the Appellant, and
4. If the answer to 3 above, is in the affirmative, whether or not the Assessments were calculated by the Respondent in accordance with the relevant applicable provisions of the Goods Tax Act.
5. In relation to the Additional Tax Assessments for the period from 1st of January 2018 to 31st July 2018 whether or not the Tax Assessments were calculated by the Respondent in accordance with the relevant applicable provisions of the Goods Tax Act.
6. Whether or not the Respondent signed the Deed as a result of misrepresentation by the Appellant and consequently the Deed was invalid and not binding on the Parties.

In considering the agreed issues for determination one must considered the provisions of the goods Tax Act relating to the issues in this matter.

Section 43 of the Goods Tax Act, give the power to the Commissioner to make further assessment of additional tax. Section 43 (1) states.

- (1) *"Where the Commissioner finds in any case that tax is payable by a person, the Commissioner may make an assessment in relation to the person.*
- (2) *Where, the sale value of goods has been altered under section 28 and other specific provisions of this Act, the Commissioner shall make an assessment in relation to those goods.*

(3) *Where-*

(a) *A person makes default in furnishing a return;*

(b) *The Commissioner is not satisfied with a return furnished by a person; or*

(c) *The Commissioner has reason to believe or suspect that a person (although not having furnished a return) is liable to pay goods tax,*

(4) As soon as conveniently may be after an assessment has been made, the Commissioner shall cause notice in writing of the assessment to be served on the person liable to pay the tax or further tax.

(5) The omission to give any such notice shall not invalidate the assessment made by the commissioner.

I will deal with agreed issue number 6 first because if the question is answered in the affirmative this should be the end of the matter and the Court need go no further. Issue number 6, is whether or not the Respondent signed the Deed as a result of misrepresentation by the Appellant and consequently the deed was invalid and not binding on the Parties. My own view of misrepresentation is when a person provide certain information to another which he knows if other person act on them he knows will be detrimental to the person acting on them.

I had consider the evidence and only found that the appellant fail to respondent to the Respondent's request for information about his goods tax. A mere failure by an appellant to comply with the request of the Respondent to provide evidence as requested by the Respondent, in my view does amount to misrepresentation. I therefore found that the Appellant made no misrepresentation to the Respondent. I find the deed is valid and binding on the parties.

There is nothing in the Goods Tax Act that authorised the Commissioner to enter into a deed of agreement in relation to assessment of goods tax but I think the Act also does not prohibit the Commissioner from entering into a deed in respect of payment of goods tax for a specific period so a deed may be entered into by the Commissioner as part of his administrative decision. However, any deed of agreement entered into by the Commissioner and a tax payer must ensure the deed does not contained clauses which are meant to oust the provisions of the Goods Tax Act as any such deed will be in conflict with the provisions of the Act and the Act will prevail.

In the present case I considered the deed contained no such clauses therefore the deed is binding on the parties.

In respect of agreed issue number 2 which asked if the answer to 1 above is in the affirmative whether or not the Respondent's Additional Goods Tax Assessments for the period covered by the Deed (from 1st August 2016 to 31st December 2017) were done by the Respondent in breach of the Deed, and whether the assessment is binding on the appellant. The answer is yes and the additional assessment is not binding on the appellant.

Section 43 of the Goods Tax Act allow the Commissioner to make assessment of additional tax payable but since the deed entered into by the parties specifically covered payment of tax previously assessed for a specific period 1st August 2016 to 31st December 2017 the parties are bound by that deed and so the Respondent can not demand any further payment for the period from the Appellant.

I consider issues 4 and 5 can be conveniently disposed of together as both issues were in relation the same question that is if the Respondent in his assessment correctly calculate the tax imposed. The answer to issues 4 and 5 can be found in the Act and based on the evidence before the Court.

Section 13 of the Good Tax Act says "Subject to and in accordance with the provisions of this Act, tax shall be levied upon.

(f) The sale value of goods imported into Solomon Islands by a tax payer and sold by him or applied to him for his own use.

(g) The sale value of goods imported into Solomon Islands and sold by a tax payer not been an importer of the goods.

These two provision clearly provide how the goods tax is to be assessed on goods imported into Solomon Islands and sold by the tax payer who imported the goods.

The question though is whether there was evidence that the Respondent had breached the provisions of the Act by using a wrong methodology in his assessment of the Appellant goods tax. The evidence shows that this issue was discussed by the parties in their correspondents. For instance, in his letter of 7th December 2020 to Counsel Afeau the Commissioner of Income Tax Mr Joseph Dokekana wrote "Your client has not provided the evidence of sales value of goods sold during the periods objected as I requested in my letter of 6th November. You had not provided how the additional assessment are based on flawed methodology and figures to support its claim."

I considered the evidence and found that the Appellant had not produced any evidence that the methodology used by the Respondent to calculate the goods tax for the Appellant was wrong. As such their allegation that the Respondent had made a wrong calculation is not supported by any evidence. In that respect the Court found the assessment of goods tax made on the Appellant is a correct assessment and were not done in breach of the provisions of the Goods Tax Act.

The Appeal is partly successful. The Court will make the following orders

Orders

1. The Appellant is not liable to pay additional goods tax assessed for period covered by the deed 1st August 2016 to 31st December 2017.
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Parties to bear their own cost.

IRA.

THE COURT
Justice Emmanuel Kouhota
Puisne Judge