

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 91 of 2013

**CRUISE SOLUTIONS LIMITED
DISCOVERY EXPEDITIONS LIMITED**

CLAIMANTS

AND

**COMMISSIONER OF GENERAL SALES TAX
ATTORNEY GENERAL**

**FIRST DEFENDANT
SECOND DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings

2014
29th May
12th June

Mr. Andrew Marshalleck, SC for the Claimants.
Ms. Treina Young for the Defendants.

JUDGMENT

1. This is a claim for constitutional redress brought by way of a fixed date claim form filed on the 14th February, 2013. The matter turns strictly on the

interpretation of a section of the General Sales Tax Act No. 49/2005 (hereinafter The Act).

2. **THE FACTS:**

(Which are not in issue) The Claimants are companies registered in Belize and engaged in the licensed tours operation business. The first named Claimant provides this service exclusively for cruise ship passengers visiting Belize, while the second named Claimant provides inter alia, the same service referred to above, intermittently. For performance of the said service both companies are engaged and paid directly by international cruise lines situated outside Belize. The Claimants, since the enactment of The Act, were informed by the Commissioner for General Sales Tax (hereinafter The Commissioner) that they were required to register in accordance with The Act. They duly complied in April 2006. Since then, they have been assessed and have paid General Sales Tax at the rate of 10 percent and following an amendment to The Act, at the rate of 12.5 percent on the said services rendered to the cruise ship passengers.

3. By notice of arrears dated the 12th January, 2009, sent to the first named Claimant's accountant, the Company's failure to file returns for January 2008, as well as July and October, 2008 was addressed by The Commissioner. Notices of Arrears dated 27th July, 2010 and 29th November, 2010 were subsequently sent to each Claimant respectively, outlining the amounts outstanding. On 5th January, 2011 a final Notice of Arrears was sent which warned that if there was failure to settle or make satisfactory arrangement to settle, legal action would be taken. Despite efforts on the part of the Department of General Sales Tax, the debts remained unpaid.

4. On the 22nd August, 2011 both Claimants were brought before the Magistrate's Court for enforcement of a judgment debt. The first named Claimant, by then, had a total of \$111,584.30 outstanding and was ordered to pay \$50,000 by 31st October, 2011 and the balance by monthly installments of \$2,000 until full payment. \$62,000 has been paid to date. The second named Claimant had the sum of \$152,412.60 outstanding and was ordered to pay \$50,000 by 30th September, 2011 and the balance in monthly installments of \$2,000 until full payment. To date \$75,000 has been paid. Applications for committal warrants were made in respect of both Claimants. The determination of these warrants has been stayed pending the outcome of this court matter.

5. **THE CLAIM:**

The Claimants have sought the following relief:

- (1) A declaration that by virtue of section 1 (6)(ii) and/or section 1(7) of the Second Schedule to The Act tour services provided by the Claimants directly to international cruise lines visiting Belize constitute zero rated supplies for the purposes of the Act;
- (2) A declaration that the Defendants have unlawfully assessed charged collected and/or recovered from the claimants General Sales Tax on the supply of tour services provided to international cruise lines visiting Belize;
- (3) A declaration that the assessment, charge, collection or recovery of General Sales Tax from the Claimants in respect of the supply of tour services to international cruise lines visiting Belize since enactment of The Act constitute the arbitrary deprivation and/or compulsory acquisition of property of the Claimants in breach of sections 3(d) and 17 of the Constitution of Belize;

- (4) An order for an account to be taken of all General Sales Tax unlawfully charged to and/or collected or recovered from the Claimants in respect of such tour services over the past six years;
- (5) An order for the repayment to the Claimants of the total sums found unlawfully assessed, charged, collected or recovered on the above account plus interest thereon;
- (6) An injunction restraining the First Defendant or her servants or agents or otherwise howsoever from assessing or charging the Claimants General Sales Tax on the supply of tour services directly to international cruise lines visiting Belize and/or seeking to enforce the collection and/or recover payment of any such General Sales Tax against the Claimants, its officers or agents, or any of them;
- (7) Such further or other relief as the Court considers just; and
- (8) Costs.

6. **THE ISSUES:**

Which, save one, were stated quite aptly by Counsel for the Claimants and have been reproduced here almost verbatim.

- (1) Whether on the true construction of section 1(6)(ii) and 1(7) of the Second Schedule of The Act the supply of tour services by the Claimants to passengers of Norwegian and Royal Caribbean Lines while visiting Belize pursuant to contracts with the cruise lines is zero rated so that the General Sales Tax payable in respect of any such supply is zero;
- (2) If so whether the assessment and recovery of General Sales Tax from the Claimants whether through court proceedings or otherwise assessed at rates other than zero were in breach of sections 3(d) and 17 of the Belize Constitution; and if so

- (3) Whether the Defendants are liable to account for and pay over to the Claimants the amount of General Sales Tax unlawfully assessed and recovered plus interest and costs.
- (4) Whether section 5 of the Limitation Act applies to claims for constitutional relief.

7. I take this opportunity to thank Counsel on both sides for their submissions, both oral and written and all assistance rendered in this matter.

8. **THE RELEVANT SECTIONS OF THE ACT:**

DEFINITION OF A SUPPLY OF GOODS OR SERVICES 5(1):

5. (1) A “supply of goods” means a sale, exchange, or other transfer of the right to dispose of goods as owner but does not include a supply of money.

(2) Anything that is not a supply of goods or money is a “supply of services,” including, without limitation.

(3)

(4)

IMPOSITION OF GST

8(1) A tax, to be known as “general sales tax” or “GST”, shall be charged in accordance with this Act on -

(a) taxable importations; and

(b) taxable supplies.

RATE OF TAX

9. The rate of GST applicable to a taxable supply or importation is –

(a) if the supply or import is zero-rated under the First Schedule, the Second Schedule or the Third Schedule, 0%; or

(b) in any other case, 10%. (amended by the General Sales Tax amendment Act No. 15 of 2010) 12.5%

INTERPRETATION

Section 2. (1) In this Act, unless the context requires otherwise, -

“export,” in relation to a supply of goods, means the goods are delivered to, or made available at, an address outside Belize, and for this purpose evidence that goods have been exported includes evidence of –

- (a) the consignment or delivery of the goods to an address outside Belize, or*
- (b) the delivery of the goods to the owner, charterer, or operator of a ship or aircraft engaged in international transport for the purpose of carrying the goods outside Belize;*

“goods” means any tangible property, whether real or personal, but does not include money;

“international transport” means the supply of the following types of services –

- (a) the services, other than ancillary transport services, of transporting passengers or goods by road, water, or air –*
 - (i) from a place outside Belize to another place outside Belize, including part of the transport that takes place in the territory of Belize;*
 - (ii) from a place outside Belize to a place in Belize; or*
 - (iii) from a place in Belize to a place outside Belize;*
- (b) the services, including ancillary transport services, of transporting goods from a place in Belize to another place in Belize to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or*
- (c) The services of insuring, arranging for the insurance of, or arranging for the transport of passengers or goods to which paragraphs (a), (b), or (c) apply;*

“supplier”, in relation to a supply of goods or services, means the person by whom the goods or services are supplied;

“zero-rated,” in relation to a supply or import, means –

- (a) A supply or import that is specified as zero-rated under the First Schedule, the Second Schedule or the Third Schedule to this Act, or the Regulations; or*
- (b) A supply of a right or option to receive a supply that will be zero-rated.*

SECOND SCHEDULE

ZERO-RATING: EXPORTED SERVICES

(1) The following taxable supplies are zero-rated supplies for the purposes of this Act –

SERVICES CONNECTED WITH EXPORTED GOODS

- 1. A supply of services directly in connection with land, or improvements to land, situated outside Belize.*
- 2. A supply of services directly in connection with goods situated outside Belize at the time the services are performed.*
- 3. A supply of services directly in connection with goods temporarily imported into Belize under the special regime for temporary imports specified in the Customs and Excise Duties Act, but only to the extent that the services are consumed outside Belize;*
- 4. A supply of services directly in connection with a container temporarily imported under the special regime for temporary imports specified in the Customs & Excise Duties Act.*
- 5. A supply of the services of repairing, maintaining, cleaning, renovating, modifying, or treating an aircraft or ship engaged in international transport.*
- 6. A supply of services that –*

- (i) Consist of the handling, pilotage, salvage, or towage of a ship or aircraft engaged in international transport; or
- (ii) Are provided directly in connection with the operation or management of a ship or aircraft engaged in international transport.

7. *A supply of services directly in connection with a supply referred to in item 1, 2, 5, or 6 in paragraph (1) of the First Schedule, or item 5 or 6 of this paragraph, including a supply that consists of arranging for, or is ancillary or incidental to, such supply.*

8.

SERVICES CONSUMED OUTSIDE BELIZE

9. *A supply of services that are physically performed outside Belize, if the services are of a kind that are effectively used or enjoyed at the time and place where they are performed.*

10. *A supply of services to a non-resident person who is outside Belize at the time the services are supplied, other than a supply of services –*

- (i) *directly in connection with land, or improvements to land, situated in Belize;*
- (ii) *directly in connection with goods situated in Belize at the time the services are performed;*
- (iii) *that consist of refraining from or tolerating an activity, a situation, or the doing of an act in Belize, if the restraint or toleration is effectively used or enjoyed in Belize.*

11, 12, 13

(3) *A supply of services is not zero-rated under item 10, 12, or 13 in paragraph (1) if the supply is a supply of a right or option to receive a supply of goods or services in Belize, unless the supply to be received would be zero-rated if it were made in Belize.*

9. STATUTORY INTERPRETATION:

Every person to whom an Act of Parliament applies is under a legal duty to comply with it. Once an Act is passed it is the duty of the courts to apply the

statute in the relevant case. Parliament's power depends on the enforcement of its statutes *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 AC 147. Difficulties in application arise where drafting errors or ambiguity exists in that statute. The court is then called upon to interpret that statute to determine what Parliament intended.

10. In 1877 Lord Blackman in *RiverWear Commissioners v. Adamson* [1877] 2 AC 743 said “it is to be borne in mind that the office of the judge is not to legislate, but to declare the expressed intention of the legislature even if that expressed intention appeared to the court to be injudicious; and I believe that it is not disputed that what Lord Wensleydale used to call the Golden Rule is right viz that we are to take the whole statute together and construe it all together, giving the words their ordinary significance unless when so applied they produce an inconsistency or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification and to justify the court in putting on them some other significance which though less proper is one which the court thinks the words will bear.”
11. Lord Reid further clarified this view when he stated in *Black Clawson International Ltd. v. Papierwerke Waldhof Aschaffenburg* [1975] AC 591: “We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what is said.”

12. This remains good and solid guidance even today and is applicable to the interpretation of any statute, be it a taxing statute or otherwise. I say guidance because the rules or canons of interpretation are not rules as such, they do not have binding force. They are our servants not our masters – *Maunsell v. Olins [1975] AC 373*.
13. The overriding objective of statutory construction is to effectuate statutory purpose and the starting point is the language itself, what is often referred to as the plain or literal rule. It requires the judge to give the word or phrase its natural, ordinary or dictionary meaning even if it appears to be contrary to the intentions of Parliament. If the language is clear, there is no need to look beyond the statute to ascertain the statute’s meaning. The court must presume first and foremost that the legislature says in a statute what it means and means in a statute what it says there. Therefore, when the words are unambiguous judicial inquiry is complete.
14. Lord Diplock in *Duport Steels Ltd. v. SIRS [1980] 1 ALL ER 529* similarly states: “Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning.” So now let us consider the issues raised and see how best the rules of interpretation can serve us.
15. **ISSUE (1) – SECTION 1(6)(ii) AND 1 (7) – TRUE CONSTRUCTION**
To my mind the phrase that seems to be primarily in issue is “operation or management of a ship.” If we accept that neither operation nor management of a ship is defined in the Act itself, our next inquiry is whether there is an accepted meaning in the area of law. The Defendants have submitted a

meaning for ‘management of a ship’ as outlined in the contract, carriage of goods by sea case of *Gosse Mellerd Ltd. v. Canadian Government; Merchant Marine Ltd; The Canadian Highlander [1928] ALL ER 97*. There the term ‘management of a ship’ referred to an act done for the safety of the ship and not primarily in connection with cargo. As was stated in *The Ferro [1873] P 38* the management of the ship “goes somewhat beyond - perhaps not much beyond - navigation, but far enough to take in this very class of acts which do not affect the sailing or movement of the vessel herself.”

16. The Claimants submit that this is a most limited interpretation of the phrase and is specific to contract clauses (which must be construed narrowly) and not necessarily to a tax statute. I am inclined to agree, especially when other cases during that same period seem to expand its meaning. In *Suzuki & Co. v. T Benyon & Co. 1926 95 LJKB 397 at 404* Lord Sumner stated that the word management as it related to a ship “is not a term of art, it has no precise legal meaning and its application depends on the facts as appreciated by persons experienced in dealing with steamers.” In *Foreman & Ellis Ltd. v. Federal Steam Navigation Co. Ltd. [1928] 2 KB* in considering the phrase ‘navigation and management of a ship’ Wright J accepted that navigation was applicable to the ship and management being the more general word should be read as ejusdem generis. Further, ‘the ship’ should receive the same connotation with each of the substantives on which it is dependent. The word management would therefore in his view cover many acts directly affecting the ship which could not well be covered by navigation.

17. If a definition, which equates management of a ship to navigation, is too restrictive and if we agree that ‘operation and management of a ship’ is certainly not a term of art, then we must also accept that those words are ordinary words which will take colour and content from the context in which they are used and derive meaning from the other words surrounding them, *noscitur sociis*. We, therefore, move steadfastly to the next best intrinsic aid which would be the dictionary, one of the least contentious places to look. For this purpose, the Oxford dictionary has been used and the context was allowed to guide the choice of definition from among the several offered. Management is defined as the process of dealing with or controlling things or people. Operation – the action or functioning or the fact of being active or in effect. Ship is defined as a large boat for transporting people or goods by sea. The court also chose to look at the Belize Port Authority Act Cap. 233, for the obvious reason. The section under inquiry deals with exported goods. Since goods are exported at the port the court felt safe in turning to that Act for assistance. Section 2 of that Act defines ship to include any ship, vessel, tug or boat of any kind whatsoever whether it is propelled by steam or otherwise or is towed.
18. Operation and management are grouped together, they provide clues on how broadly or narrowly they should reasonably be interpreted. ‘And’ is conjunctive so management gains content from operation. Additionally, they appear just before ‘the ship’. It seems to me that on an ordinary, plain reading it is simply the functioning and control of the ship. I therefore agree with counsel for the Claimants that management in this context goes beyond navigation. It is the view of this court that the operation and management would refer to the working, running, handling or performance

of the ship which would include the navigation, movement, docking, fueling, insurance, and registration of the ship, stocking of stores, operation of the equipment, technical support as well as the well being and administration of the crew and the ship. This list is by no means exhaustive, but you would have noticed that it all has to do with the ship itself. It has absolutely nothing to do with the business of the ship, as counsel for the Claimants seems to be asserting.

19. Business is defined in The Act at Section 3. A cruise ship service will easily and comfortably fit into 3 (1)(b) - an activity which involves or is intended to involve in whole or in part the supply of goods or services to another. This court is of the opinion that if the legislator intended to include the operation and management of the ship's business it would certainly have said so. It is clearly not ignorant of the meaning of the word business. But that is at first blush. Let us venture a little further to determine whether this interpretation causes any ambiguity within the context of the statute.

20. **THE SUB-HEADING: SERVICES CONNECTED WITH EXPORTED GOODS:**

Statutory language is not to be construed as mere surplusage. The basic principle is that the court must give effect, if possible to every clause and word of statute, avoiding, if it may, any construction which implies that the legislature was ignorant of the meaning of the language employed. Consequently, the court is not allowed to change or extend a statute by adding language which Parliament has not included. This court finds no ambiguity or difficulty with the sub-heading as it relates to the subsections. The subheading indicates that all the zero-rated services outlined beneath it

are connected to exported goods. I am unable to follow or accept Counsel for the Claimants' assertion, as attractive as it may be, that the ship itself is the exported good. More so when one considers the definition of export under section (2) of The Act:

..... The delivery of goods to the owner, charterer, operator of ship or aircraft engaged in international transport for the purpose of carrying the goods outside Belize.

21. The Claimants' interpretation becomes even more bizarre when a proper study of each subsection reveals that, indeed, they are all connected with exported goods as is to be expected. Take for example subsection 1, which originally caused this court some concern – a supply of services directly in connection with land, situated outside Belize. One can envisage a service such as an architect in Belize providing design services in respect of a building located overseas or an estate agent in Belize selling a house in England. Those would certainly be the supply of exported services connected with exported goods. Especially since the first schedule already shows that the supply of real property outside Belize is an exported good. Likewise, subsection 2 – a supply of services performed directly in connection with goods located outside Belize. A perfect example is where a local company provides repair services for a computer network system in the British Virgin Islands. It is unnecessary to go through each subsection here since they are not in issue.
22. Let us instead consider the section in contention. On a proper reading we

realize that the words ‘international transport’ properly connects the services provided to the ship to ‘exported goods.’ International Transport is defined in the interpretation section of The Act. It is the service of transporting passengers **or** goods, other than ancillary transport services, by road, water or air from a place outside Belize to another place outside Belize including the part of the transportation that takes place in the territory of Belize. It includes the service of transporting goods **or** passengers from a place outside Belize to a place in Belize or from a place in Belize to a place outside Belize. ‘**Or**’ is disjunctive and the specific use of ‘**or**’ ensures that the meaning of international transport could be either the special transport of passengers, or the special transport of goods.

23. Because the Subsection in question falls under a subheading entitled ‘Services Connected with Exported Goods’ we immediately know that International Transport is, here, limited to exported goods – passengers are excluded. International transport qualifies the ship and the subtitle exported goods limits that qualification. Therefore, a supply of services provided directly in connection with the operation and management of a ship engaged in the international transport of exported goods is zero rated. The legislature has plainly said what it means.

24. **IS SUBSECTION 1(6) (ii) WIDER THAN 1(5) or 1(6)(i)**

I agree with counsel for the Claimant that subsection 1(6) (ii), in order to have the meaning which the Defendants postulate, it must expand the list of services beyond those contemplated in subsections 1(5) and 1(6)(i). And it does. A few services which come to my limited mind are training and supplying crew, supplying insurance or arranging insurance for the ship

itself, management services offered to the ship, its owner or operator, preparing mapping guides or routes, supplying and transporting of fuel to the ship or food for the crew. Those services go directly to or are ancillary or incidental to the operation or management of the ship but they certainly fall outside subsection 1(5) and 1(6)(i).

25. Moreover, when we look at the content of subsections 1(1) (5) and 1 (6) (i), we realize that they both deal with the ship itself and not the business of the ship. Why then should (1)6(ii) be extended beyond the ship to include the business of the ship. I find such an extension would create ambiguity where none originally existed.

26. **OTHER ZERO-RATED EXPORTED SERVICES:**

In my humble estimation, when the sections under the subheading are taken as a comprehensive whole, with the separate parts being interpreted within their broader statutory context, the legislature's purpose is clearly expressed. The zero-rating under the Second Schedule, Section 1 Subsections 1-8 goes to services related to goods. It in no way touches or concerns passengers or services related to passengers nor does it touch any other business function of the ship. I find strength in this view since the zero-rated exported services that are unrelated to goods fall under subsection 9 – 13, bearing the sub heading 'Services Consumed Outside Belize'. That is where this court feels the Claimants should rightly try to place themselves, if they hope to have their service considered as zero-rated. Moreover, Counsel for the Claimants in his written submissions alluded to this when he said at paragraph 50 "When the foregoing is appreciated it is readily recognized that this provision of tour services to visiting cruise ship passengers is an external

trade in services (consumption abroad) and amounts to the exportation of tour services.”

27. It is made pellucidly clear at subsection 10 that the following is zero-rated:

*A supply of services to a non-resident person (**the Cruise Ship Co.**) who is outside Belize (**wherever situated**) at the time the services are supplied,*
(emphasis mine)

28. However, section 3 of the Second Schedule limits subsection 10:

A supply of services is not zero-rated under items 10, 12 or 13 in paragraph (1) if the supply is a supply of a right or option to receive a supply of goods or services in Belize, unless the supply to be received would be zero-rated if it were made in Belize.

29. The supply of tour guide services in Belize is not zero-rated the Claimants can find no shelter under subsection 1(10) either.

30. **THE BUSINESS THE CRUISE SHIP IS ENGAGED IN:**

The business of the cruise ship is the supply of international transport of passengers and that is exempt (not zero-rated) under section 26 of the Fourth Schedule of the Act. That Schedule deals with exempted supplies and that particular section is headed ‘Exported Services’. There is no additional section or subsection dealing with directly related, connected, ancillary or incidental services. In fact section 25, immediately above it states that:

A supply of domestic public transport of passengers on any regular scheduled flight, vehicle or vessel is an exempt supply if

(a)

(b) the supply is not provided by a tour operator or as part of a tour.

31. How much clearer can The Act be that the business that the Claimants conduct is neither zero-rated nor exempt. Having so found, the other issues, 2 to 4, understandably fall away. Judicial inquiry is complete.

32. **CONCLUSION:**

There is no doubt that the legislature has spoken plain and intelligible language. I find no reason to go beyond the simple interpretation, for that would take the words of The Act too far. The state must raise revenue and tax payers must pay their taxes, unless they are exempted or face the penalty of non-compliance. The Claimants in this matter are not exempted nor are the services they provide zero-rated. The Commissioner had clear authority of law in assessing and charging the Claimants a general sales tax.

33. It is ordered therefore:

1. The claim is dismissed.
2. Costs to the Defendants to be assessed if not agreed.

SONYA YOUNG
JUDGE OF THE SUPREME COURT

