

IN THE SUPREME COURT OF BELIZE, A. D. 2018

APPEAL NO. 1 OF 2018

BETWEEN:

(MATUS MEDICAL SUPPLIES LTD.

CLAIMANT

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(AND

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(COMMISSIONER OF GENERAL SALES TAX

FIRST DEFENDANT

(GENERAL SALES TAX APPEAL BOARD

SECOND DEFENDANT

(ATTORNEY GENERAL

THIRD DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Edwin Flowers, SC, for the Appellant

Ms. Briana Williams, Crown Counsel in the Attorney General's Ministry for the Defendants

R U L I N G

1. This is an Appeal against the decision of the General Sales Tax Appeal Board which confirmed an assessment of General Sales Tax by the Commissioner

based on an audit of the Claimant Company, Matus Medical Supplies Ltd., for the period January 1st, 2010 to December 31st, 2013. The Claimant has been a registered trader under the General Sales Tax Act No. 49 of 2005 since April 25th, 2006. General Sales Tax personnel conducted an onsite audit of the company's books and records which resulted in findings that the Claimant did not agree with. Upon appeal by the Claimant to the General Sales Tax Appeal Board, the Board confirmed the findings of the Commissioner of General Sales Tax. The Claimant has now appealed to this court on the following grounds:

- i) The Board erred in law by upholding the Commissioner's reliance on Regulation 25(1)(a)(i) of the General Sales Tax Regulations to deny the Appellant's claim for input tax credits for legitimate expenses incurred despite the provisions of section 32 of the Act.
- ii) The Board erred in law by upholding the actions of the Commissioner in rejecting all the Appellant's claim for input taxes despite the provisions of section 33(4) and 36(3) of the Act.

- iii) The Board erred in law by upholding the Commissioner's position when she did not establish that the Appellant's filing was inaccurate and she relied on section 42(6) of the Act and said that the burden of proof was on the Appellant and disregarded section 35(4) of the Act.

Legal Submissions on behalf of the Appellant

- 2. Mr. Flowers, SC, submits on behalf of the Appellant that while the Commissioner, and later the Board, disallowed the Appellant's claim for tax credits in the sum of \$42,487.01, the Appellant's claim was supported by 2,226 invoices which the Commissioner had rejected. Learned Counsel says that the main contention of the Appellant is the Board's disallowance of Tax Credits set out in paragraph 11 of its decision, and this is argued under Grounds 1 and 2 of this appeal. Section 33(4)(a) of the Act specifically exempts these invoices from being disallowed by the Commissioner:

"33(4) The documentation required for the purpose of subsection (3)

is:

(a) In the case of taxable acquisition, the tax invoice issued by the supplier for the supply, except where the supply was a

low value supply for which the supplier was not required to issue a tax invoice.”

Mr. Flowers SC also relies on section 36(3) of the Act which states:

36(3) “ A tax invoice is not required to be issued for a taxable supply if the price of the supply is less than fifty dollars, unless required by the recipient.”

The Board, like the Commissioner of GST, in reaching its findings relied on section 42(6) of the Act and said that the Appellant has failed to prove, on a balance of probabilities, as required by the Act that the assessment in respect of input tax disallowed was excessive. Mr. Flowers, SC, submits that both the Commissioner and the Board took this view without having any consideration for section 35(4) of the Act which states as follows:

“Subject to the provisions contained in Division 6 of this part, the amount specified in a GST return as being the amount of Tax payable, or the amount of refund due, in respect of a tax period shall be conclusively deemed, for the purposes of this Act, to be correct.”

The Commissioner and by extension the Appeal Board also relied on GST Regulation 25(1)(a)(i) which states as follows:

“If any of the information required on a tax invoice is missing, it shall not be a valid tax invoice and the recipient of the supply shall have no legal entitlement to reclaim the tax.”

Mr. Flowers, SC, submits that Regulation 25 is in contravention of Section 32(1) of the GST Act which addresses input taxes. He notes that there are no references to the Appellant’s ability to claim input taxes:

S. 32 “ If all the supplies made by a taxable person during a tax period are taxable supplies, the person shall be allowed input tax credits for the purpose of Section 31 for all of the input tax paid or payable by the person on acquisitions or importations made by the person during that period.”

Mr. Flowers, SC, further argues that neither the Commissioner nor the Board has the authority under the Act, nor its regulations, to deny a claim for input tax credits for legitimate expenses incurred in furtherance of, or for purposes of the business, based only on the defective nature of the invoice. It is therefore clear that the Minister, through Regulation 25(1)(a)(i) seeks to do that which the Act does not do, and has effectively issued a Regulation which is in contravention of the Act.

Legal Submissions on behalf of the Respondent

3. Ms. Briana Williams submits on behalf of the Respondent that the Board did not err in upholding the Commissioner's reliance on Regulation 25(1)(a)(i) of the GST Regulations despite the provisions of section 32. The contention is that the definition of "*input tax credit*" is properly provided for in the interpretation section of the General Sales Tax Act, and it is clearly stated that this means credit for input tax as allowed under section 32 and under any other provision in the Act and Regulations. Therefore, section 25 of the Regulations speaks to the evidence needed in order to claim input tax credit.

Ms. Williams submits that all the necessary information must be included and the section is very clear and straightforward. In addition, Learned Counsel submits that the interpretation section of the Act does not provide for the use of receipts as tax invoices for the purposes of GST assessment.

Both the Commissioner of General Sales Tax and the Board's decision spoke to the fact that the Appellant did not provide proper invoices, but attempted to use receipts instead when the Act does not allow for the use of receipts.

In relation to the second ground of appeal, it is submitted that s.33 addresses the limitations on input tax credits and illustrates that not everything claimed will be accepted for the purposes of input tax credits. It is submitted that for

an item to be considered as input tax credit, it must fall under the categories listed in section 33 even if it is of low value, and it must also be a legitimate expense in furtherance of the tax payer's business.

Concerning the third ground of appeal, Ms. Williams submits that the Board did not err in law by upholding the Commissioner's reliance on section 42(6) and disregarding section 35(4) of the Act. It is argued that section 35 relates to the payment or refund of tax upon filing a GST return. Section 35 has nothing to do with a tax payer seeking a review of assessment. Section 42(6) is in relation to the review of an assessment by the Commissioner of GST. Ms. Williams submits that these are two entirely different situations provided for under the Act. Section 35 makes provision for the requisite GST return under the Act, and section 42 provides for when a taxpayer is disputing or objecting to an assessment made under section 39(1) of the Act. In addition, section 35(4) clearly states "**subject to Division 6**" which under the original Act No. 49 of 2005 is section 39 and 40 of the current Act. Learned Counsel points out that under the current GST Act, sections 39 and 40 no longer fall under Division 6 as the title Division 6 was completely removed. These were changes made to the GST Act during the 2011 consolidation process of all the Laws of Belize; section 39 of the Act gives the

Commissioner the powers to assess a tax payer for specific failures, which is exactly what occurred in the instant case. Section 42 therefore applied, including subsection 6.

In conclusion, Ms. Williams submits that the Board's decision was sound, fair, and based on the provisions of the GST Act and Regulations. It is also emphasized that the composition of the Appeal Board is important to note in that it is composed of an attorney, an accountant and a public officer, and that the Board is therefore a fit and proper body to come to the decision that they made. The Appeal is therefore misconceived and should be dismissed with costs to the Respondent.

Ruling

4. In addressing these grounds of appeal, it is helpful to set out relevant sections of the Interpretation Section of the GST Act which define certain terms that are central to the determination of these issues.

“GST” or “General Sales Tax” means the tax imposed under this Act, and includes any amount to the extent that it is treated as GST for the purposes of this Act, including interest or a penalty payable under this Act, and the absence of a specific reference to the inclusion of such amounts in a particular

provision should not be taken to imply that they are not included in the GST referred to in that section.

“Input tax credit” means a credit for input tax allowed under section 32 of this Act, or under any other provision of this Act or the Regulations.

“Input tax”,

“(a) in relation to an acquisition of goods or services by a person, means the GST imposed on the supply to that person of those goods and services; and

(b) in relation to an import of goods by a person, means the GST imposed on that import, and includes any amount that is treated as input tax under this Act or the Regulations.”

Section 32 reads as follows:

“32(1) If all of the supplies made by a taxable person during a tax period are taxable supplies, the person shall be allowed input tax credits for the purposes of Section 31 of this Act, for all of the input tax paid or payable by the person on acquisitions or importations made by the person during that period.

(2) If none of the supplies made by a taxable person during a tax period are taxable supplies, the person shall be allowed input tax credits for such proportion, if any, as the Commissioner may consider to be fair and reasonable of the input tax paid or payable by the person on acquisitions or importations made by the person during the period.”

Having considered the submissions for and against this appeal, I must state that I agree with the submissions made on behalf of the Respondent. Section 42 of the statute clearly places on the Applicant the burden of proving that the assessment of General Sales Tax by the Commissioner is excessive. Section 36 of the GST Act defines a tax invoice as follows:-

*“36(1) A registered person making a taxable supply to another taxable person **shall**, at the time of the supply, give the recipient a **tax invoice** in respect of the supply in accordance with subsection (2) of this section.*

*(2) A tax invoice issued under subsection (1) of the section shall be issued in **the form and manner prescribed by the Commissioner** and **shall include the following information** unless otherwise specified by regulations,*

- (a) the words 'tax invoice' shown conspicuously thereon;*
- (b) an identifying serial number and the date on which the tax invoice was given;*
- (c) the name, address and TIN of the supplier;*
- (d) the name, address and TIN of the recipient;*
- (e) a description of the goods or services supplied, including the quantity of goods or the number of services supplied;*
- (f) the price of the supply;*
- (g) the rate of tax applicable to the supply and the amount of GST included in the price of the supply."*

Rule 13 of the GST Regulations 2006 replicates section 36(2) of the GST Act.

"13(1) Tax invoices issued to registered persons shall include the following:-

- a) The words 'tax invoice' shown conspicuously thereon;*
- b) An identifying serial number and the date on which the tax invoice was given;*
- c) The name, address and TIN of the supplier;*
- d) The name, address and TIN of the recipient;*

e) A description of the goods or services supplied, including the quantity of goods or the number of services supplied;

f) The price of the supply excluding the GST;

g) The rate of tax applicable to the supply and the amount of GST included in the price of the supply.

*2) Tax invoices shall be prepared with an original and two copies. **The original copy will be kept by the buyer for his own use and the first copy will be kept by him for the tax administration while the second copy will be kept by the seller for his accounting records. The first copy must be marked 'tax control' and the second copy 'copy only'. Only the original will entitle the buyer to a tax credit.***

Section 25 of the GST Regulations 2006 which reads as follows:

“25(1) The following shall, inter alia, be regarded as evidence for the purpose of claiming input tax:-

(a) Tax Invoices

(i) If any of the information required on a tax invoice is missing, it shall not be a valid tax invoice and the recipient of the supply shall have no legal entitlement to reclaim the tax.

(ii) *A person must, in his own interest, obtain and retain tax invoices since without them he may not be able to reclaim GST which would have been charged to him.”*

Both the parent Act and the subsidiary legislation set out in detail the importance of tax invoices, not receipts, as the basis on which assessment of GST will be made. The importance of persons adhering to the requirements as set out in the Act and the Regulations is underscored by the fact that failure to do so amounts to an offence under s.36(6) rendering that person liable upon summary conviction to a fine of not less than \$3000 up to \$5000, or to imprisonment for up to a year, or to both fine and imprisonment. I note from the record of the Board’s Decision No. 1 of 2018 that one of the reasons given by the Board for upholding the Commissioner’s decision is that the General Sales Tax Department is tasked with auditing the records of the taxpayer in order to ascertain whether that taxpayer is evading payment of revenue. I also note with interest that the Appellant in this instance, according to the findings of the Board, tried to use *“tax receipts which were not in accordance with the Act, input credits which were claimed on fuel receipts for vehicles which included personal vehicles, input tax credits claimed on purchases for replacement parts and maintenance of the said*

vehicles, credits for maintenance of the properties for both the offices and personal residences with no way of differentiating which was used for residential and which for business, input tax on tax receipts for purchase of grocery and food items from supermarkets and restaurants in Belize City, input tax on sales invoices from the Appellant's retail outlet (Good Care Pharmacy), input tax credits on Top Up for cell phone usage, and input tax credits claimed on items purchased in Chetumal, Mexico for clothing and food."

I refer to these matters because they help to elucidate the basis on which the Board found, rightly in my respectful view, that the Appellant had failed to discharge the burden of proving that the Commissioner's assessment of GST was excessive and unreasonable.

I agree with Ms. Williams' interpretation that there is no incongruity between the Act and the Regulations as argued by Mr. Flowers, SC. It is clear that section 35 of the Act addresses the situation where a taxpayer is seeking a refund of monies due after GST is duly paid to the Commissioner of GST. Section 42(6) speaks to the specific situation where a taxpayer is dissatisfied with the assessment of GST made by the Commissioner and sets out the

steps to be taken by the aggrieved taxpayer in order for the assessment to be reviewed. With respect, I must state that I find there is no merit in any of the grounds of appeal advanced by the Appellant. The Appeal is therefore dismissed. Costs awarded to the Respondent to be paid by the Appellant to be agreed or assessed.

Dated this Thursday, 13th of February, 2020

**Michelle Arana
Supreme Court Judge**