

*Solvency Book*

IN THE REVENUE COURT

REVENUE COURT APPEAL NO: 2 OF 2002

IN RE THE GENERAL CONSUMPTION TAX ACT

BETWEEN	GEORGE TRADING LIMITED	APPELLANT
AND	THE COMMISSIONER TAXPAYER AUDIT AND ASSESSMENT DEPARTMENT (GENERAL CONSUMPTION TAX)	RESPONDENT

Mr. Herbert A. Hamilton for Appellant; Mrs. Yolande Lloyd-Small for Respondent;

Heard on May 28 and 30, July 10 and 23, and August 27, 2003.

**ANDERSON: J.**

This is an application by way of a summons to extend the time for the filing of an appeal in the Revenue Court, either against a decision of the Resident Magistrate for Kingston, or that of the Respondent Commissioner of Taxpayer Audit and Assessment, and was seeking an order in the following terms:-

“That the time limit for filing an appeal against the decision of:-

(a) the learned Magistrate for the Parish of Kingston, Mr. Owen Parkin, made in the Resident Magistrate’s Court holden at Kingston on the 29<sup>th</sup> day of August 2001 whereby the court ordered that the applicant pay the sum of Twenty Two Million, Eight Hundred and Twenty-Eight Thousand, Two Hundred and Forty-Nine Dollars and Ninety-Six Cents (\$22,828,249.96) to the Collector of Taxes;

(b) the respondent dated the 5<sup>th</sup> day of November 1998,  
be extended to 21 days from the date of this order.”

The application arises out of an assessment by the then Commissioner of the General Consumption Tax (in these proceedings now represented by his successor the Commissioner of Taxpayer Audit & Assessment Department) raised on the 13<sup>th</sup> July 1998, assessing the applicant to G.C.T. in the sum of Five Million, Six Hundred and Seventy Thousand, Five Hundred and Fifty-Seven Dollars (\$5,672,557.00) for the period December 1994 to

December 1997. On the 5<sup>th</sup> November 1998, after the taxpayer had objected and discussions had taken place between the parties, the Commissioner issued a decision requiring the applicant to pay G.C.T. of Five Million Seven Thousand, Two Hundred and Sixty-Seven Dollars and Twenty-Three Cents (\$5,007,267.23). On the 13<sup>th</sup> March 2001, the applicant was served a summons to attend the Resident Magistrate's Court on the 28<sup>th</sup> March, 2001 in respect of the aforesaid decision for taxes, interest and penalty in the total sum of Twenty-Two Million, Eight Hundred and Twenty-Eight Thousand, Two Hundred and Forty-Nine Dollars, Ninety-Six Cents (\$22,828,249.96). A trial date was fixed for 29<sup>th</sup> August 2001. On that day, the applicant's counsel did not appear in court. According to the applicant in an affidavit filed on its behalf in these proceedings, discussions took place with the tax authorities. The "supplemental affidavit" of Rafaat Hadid states that the applicant company had been assured by its accountant, a Mr. O'Gara, that there were indications from the officers taking part in those discussions, that there would be an amicable resolution of the matter before the court. It was averred that as a consequence of that alleged possibility, counsel was "not properly retained in time to represent the Appellant at the time of the hearing". The learned Resident Magistrate made an order, described in the affidavit as an "ex-parte order," that the applicant pay the sum demanded in the complaint in six (6) equal monthly instalments. I pause here merely to say that it is not at all clear to me why an order made by the Magistrate in proceedings of which due notice had been given to the applicant, and at which he was fully entitled to be present and be represented and to lead evidence, should be referred to as an ex-parte order because the applicant failed to participate.

When the matter initially came before me on the 28<sup>th</sup> day of February 2002, I made an Order granting an amendment to the summons, to state that "the time limited for filing an appeal against the order of the Resident Magistrate made on the 29<sup>th</sup> day of August 2001 be extended to 21 days from the date of this order." At the same time, a proposed notice and grounds of appeal had also been filed to facilitate consideration of the summons to extend the time. The application was adjourned to be considered on March 19, 2002. The Respondent's attorney thereafter filed a notice on March 8, 2002, that the Respondent intended to take a preliminary point in limine, objecting to the hearing of the application to extend the time.

At the request of counsel for the Applicant, the hearing for March 19, 2002 was adjourned because it was inconvenient for counsel, and the matter next came before the Court on May 13, 2002 when the Respondent sought to make submissions on its preliminary objection. On application of the Applicant's attorney, that matter was again adjourned and the following order was made.

Ordered that:-

1. Hearing of the point in limine adjourned sine die.
2. Costs to the Respondent to be agreed or taxed.
3. Attorneys for the Appellant undertake to advise the Court within fourteen (14) days, whether the Appellant will be withdrawing or pursuing this appeal.

The attorneys for the Applicant did nothing further pursuant to that order. However, in May of 2003, another summons for the extension of time was filed on behalf of the applicant. Though it purported to be a "re-listed summons", it was in fact a new summons by a new attorney-at-law on behalf of the applicant. This summons was also accompanied by a new "proposed notice and grounds of appeal."

When this new summons came before me initially on the 28<sup>th</sup> of May, 2003, counsel for the respondent again sought to take a preliminary point, *in limine*, and submitted that the court did not have the jurisdiction to hear the application. It was submitted that the basis on which the applicant's case had been before the Resident Magistrate's court was to be found in section 48 (1) of the General Consumption Tax Act. Under that section of the G.C.T. Act, the outstanding taxes, penalties and interest may be collected under the provisions of the Tax Collection Act, and under that Act, this is to be done "in a summary manner". The section of the GCT Act is in the following terms:

"The provisions of the Tax Collection Act concerning payment, collection and recovery of tax and the enforcement of payment thereof shall apply to tax imposed under this Act."

Section 46 (1) of the Tax Collection Act provides as follows:

All penalties and forfeitures imposed by this Act, or by the Licence and Registration Duties Act or the Property Tax Act, or by any other enactment in force for raising and imposing duties or taxes, may be recovered, and all taxes, duties, and arrears required

to be paid to the Collector of Taxes, and not paid to him pursuant to the provisions of this Act, or other such enactments as aforesaid, as well as the penalty thereon, may, instead of the process of distress hereinbefore directed, also be recovered in a summary manner in the parish wherein such offence or default was committed, or the offender or defaulter resides; and, in case of non-payment, may be enforced by distress and sale of the offender's or defaulter's goods, or imprisonment not exceeding three months, unless such penalty, taxes, duties, arrears, and costs shall be sooner paid, and may be enforced under the provisions of any Statute in respect to summary proceedings, and the forms of any such Statute, or other Statutes, may be adapted to meet the requirements of this Act or other enactments as aforesaid; the taxes, duties, and arrears, and the surcharge, and any penalty attaching to such non-payment, may be included in, and recovered in one proceeding, notwithstanding any provision in any enactment relating to summary proceedings providing to the contrary.

The taxes exigible under the Act are therefore recoverable in summary proceedings before a Resident Magistrate, as provided for by the latter Act. The submission on behalf of the Respondent was that whenever the relevant statute, as in the case of the provision of the G.C.T. Act and the Tax Collection Act set out above, does not say that the Resident Magistrate is to exercise a special statutory summary jurisdiction but merely says that he is to exercise his jurisdiction "in a summary manner", the jurisdiction which is then conferred, is as to the Resident Magistrate in Petty Sessions. Indeed, the Summons served on the applicant company for the tax claimed in the Commissioner's decision, is explicitly stated to be issued, "In Petty Sessions". Support for this proposition is found in the case of Hart v Black, [1956] Vol. 7, JLR page 56, a decision of the Court of Appeal. In that case it was held that "where it is intended to confer special statutory summary jurisdiction on a Resident Magistrate, the statute must clearly and distinctly say so". (Per McGregor J.) This case is supported by R v Harris (1971) 12 J.L.R. 591, a decision of the Court of Appeal. Accordingly, in the instant case, the learned Resident Magistrate was sitting as a court of Petty Sessions. The principles governing the right of appeal from the Magistrate in the Petty Session jurisdiction are to be found in the provisions as set out in the Justices of the Peace (Appeals) Act. Section 3 of that Act indicates that an appeal from Petty Session lies to a Judge in the Supreme Court. It was the further submission that since this court heard appeals as the "Revenue Court" an appeal did not lie to this court qua Revenue Court. It was not "the Supreme Court" being a creature of its own statute, the Judicature Revenue Court Act, and secondly, in any event, the jurisdiction of the Revenue

Court to hear appeals which is set out in section 4 (1) of the Judicature Revenue Court Act, did not include hearing appeals from petty sessions. The provisions of that section are set out below:

“The Revenue Court shall have jurisdiction to hear and determine any appeal, cause or matter brought to the Court under or pursuant to any of the enactments for the time being specified in the Schedule”.

The enactments referred to in the Schedule are:-

Section 18 of the Customs Act.

Section 14 of the Exercise Duty Act.

Section 4 of the Valuation Act

Sections 27(4), 31(5), 44(7), 72(4), 73(4), 76, 78(4), 80 and 81 of the Income Tax Act

Section 22 of the Land Valuation Act

Sections 8, 16 and 22 of the Land Development Duty Act

Section 26 and 30 of the Transfer Tax Act

Section 11 of the Bauxite (Production Levy) Act.

Section 41 of the General Consumption Tax Act

Since the Revenue Court has this statutorily circumscribed jurisdiction, *ex hypothesi*, it is not competent to hear this application in relation to a matter arising out of a decision of the Resident Magistrate sitting in Petty Sessions.

With respect to paragraph (b) of the application, (that to extend the time for appealing against the decision of the Commissioner), counsel for the Revenue urged the court to the view that it was, in any event, too late for an appeal against the decision of the relevant commissioner as there was now a judicial decision in respect of the liability previously assessed by the relevant commissioner. The applicant had therefore lost the opportunity to have the Revenue Court hear an appeal against the respondent's assessment (even assuming it was open to the court to hear such an appeal at this time) when there was in place, a final decision of a court of competent jurisdiction, albeit a Resident Magistrate's court in its Petty Sessions summary jurisdiction, which decision had not been appealed and was therefore still extant. Indeed, the question could be asked, what would be the position if, in the absence of any appeal against

the judgment of the Magistrate, the Revenue Court, having granted leave to extend the time to appeal against the respondent's decision, then came to the decision on hearing that appeal, that the respondent was wrong on issuing the decision which was being called into question. It seems obvious that there would still be need to do something done about the Magistrate's decision.

In response to these submissions, Mr. Hamilton for the Applicant argued that the preliminary points taken *in limine* should not succeed. He submitted that it was not correct to say that the Revenue Court was not in fact part of the Supreme Court for the purposes of hearing an appeal from Petty Sessions to a Judge of the Supreme Court in Chambers. Further, the jurisdiction of the Revenue Court is not as circumscribed as suggested, being limited to the matters listed only in the Schedule. Indeed, section 3(1) of the Judicature (Revenue Court) Act specifically states:

There is hereby established a court, to be styled the Revenue Court, which shall have such jurisdiction and powers as may be conferred upon it by this Act or any other law.

Further, by section 6 of the said Act establishing the Court, it is provided:

1. The Judge of the Court shall be a Puisne Judge of the Supreme Court nominated by the Governor General acting on the advice of the Judicial Services Commission, being a person appearing to be versed in the law relating to income tax.
2. The Judge shall, in relation to the Court, have *mutates mutandis*, all the rights powers privileges and immunities of a Puisne Judge of the Supreme Court.

In support of this proposition, he cited the case of **United Estates Limited v Commissioner of the General Consumption Tax 1992, 29 J.L.R 286**, and he referred in particular to the judgment of Downer, J.A. in the Court of Appeal, at pages 286-287. In that case, the Judge of the Revenue Court, considering that he had no jurisdiction because of section 4 of the Judicature (Revenue Court) Act, quoted above had declined to hear an appeal by a taxpayer from a decision of the Commissioner of the General Consumption Tax. The said appeal had been brought by the taxpayer on the basis that section 40(7) of the GCT Act gave a person dissatisfied with a decision of the GCT Commissioner the right to appeal to the Revenue Court. In the Court of Appeal, Downer, J.A. had this to say:

The single issue to be decided in this appeal is whether Section 40(7) of the General consumption Tax confers jurisdiction on the Revenue Court to hear an appeal from the appellant who is dissatisfied with the decision of the Commissioner.

Section 40(7), which came into force on 27<sup>th</sup> October 1991, reads as follows:

“(7) Where any person is dissatisfied with a decision of the Commissioner (other than a decision relating to an assessment made on that person) that person may appeal to the Revenue court within thirty days of the receipt of the decision and the Revenue Court may make such order as it thinks fits.”

To understand the importance of these plain words, reference must be made to the Judicature (Revenue Court) Act which established the Revenue Court and by Section 3(1) of the Act stipulated that the Court “shall have such jurisdiction and powers as may be conferred upon it by this Act or by any other law.” To grasp the appropriateness of extending the jurisdiction of the Court by section 40(7) of the General Consumption Act, it must be noted that section 97(1) (2) of the Constitution reads as follows:

“97 (1) There shall be a Supreme Court for Jamaica which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law”

As for the status of the Revenue Court, it is in substance apart of the Supreme Court. This follows logically from 97(2) which read:

“(2) The judges of the Supreme Court shall be the Chief Justice, a Senior Puisne Judge and such number of other Puisne Judges as may be prescribed by parliament.”

When parliament labels a court, the Revenue Court, and a Puisne Judge of the Supreme Court is prescribed to preside over it – the logic of the Constitution is that it is part of Supreme Court. Section 6 of the judicature (Revenue Court) Act recognizes this and is pertinent to quote it. It reads:

He then proceeded to quote section 6 which has been set out above.

As was also again noted by Downer, J.A. in **The Commissioner of Inland Revenue v Raymond Clough, RMCA 27/90**: “The Revenue Court is in substance the Revenue Division of the Supreme Court. See **Hinds v The Queen** 1977 A.C. 195”.

It seems clear from the foregoing that an appeal from the decision of a Resident Magistrate sitting in his summary jurisdiction in petty sessions may properly be made before the Judge of the Revenue Court, and therefore the first limb of the preliminary objection must fail.

















