

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

CIVIL JURISDICTION

COURT FILE NO.: **2018-HC-DEM-CIV-SA- 1 - 16**

In the matter of the Income Tax Act, Chapter 81:08
and the Corporation Tax Act, Chapter 81:03 of the
Laws of Guyana.

BETWEEN:

Guyana Beverages Inc., a company incorporated
under the laws of Guyana with its registered office
situate at Plot 4A Area “AA1”, Plantation Great
Diamond, East Bank Demerara.

Appellant

-and-

The Commissioner General of the Revenue Authority.

Respondent

The Honourable Justice Navindra A. Singh, Puisne Judge

Messrs. Nikhil Ramkarran and Barrie Attzs for the Appellant

Ms. Maritha Halley for the Respondent

Delivered May 17th 2019

DECISION

BACKGROUND

The Appellant, Guyana Beverages Inc. (hereinafter referred to as GBI) is a limited liability company incorporated in Guyana which is wholly owned by S. M. Jaleel and Company Ltd. (hereinafter referred to as SMJ), a company incorporated in Trinidad.

GBI sells and distributes products manufactured by SMJ in Guyana.

For the period January 1st 2006 through August 7th 2015 an environmental tax of \$10 per beverage container was levied and collected from GBI and SMJ.

GBI and SMJ filed suit against the **Co-operative Republic of Guyana** in the original jurisdiction of the Caribbean Court of Justice (hereinafter referred to as the CCJ) seeking a declaration that the collection of such taxes was a breach of the Revised Treaty of Chaguaramas and for an order that the aggregate sum collected be reimbursed by **Guyana**.

On May 9th 2017 the CCJ granted the declaration and order as prayed [see S. M. Jaleel & Co. Ltd. and Guyana Beverages Inc. v The Co-operative Republic of Guyana [2017] CCJ 2 (OJ)].

On March 29th 2018 GBI filed the tax appeals herein [2018-HC-DEM-CIV-SA-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16], appealing assessments of Corporation and Property taxes by the Guyana Revenue Authority (GRA) for years of assessment 2010 through 2017 on the basis, *inter alia*, that as a result of the afore-stated judgment of the CCJ the GRA determined that the sums previously recorded as environmental tax expenditure for years of income 2009 through 2016 could no longer be allowed as such and proceeded to reassess the corporation taxes for that period.

During the case management process GBI filed a Summons seeking a declaration of law with respect to sections 5(a) and 10 of the Income Tax Act; CAP 81:01 and that Summons was duly determined on December 3rd 2018 whereby this Court declared;

“that with respect to the Corporation Tax Appeals (2018-HC-DEM-CIV-SA-1, 2, 3, 7, 9, 10, 13 and 16) where section 10 of the Income Tax Act, CAP 81:01 applies, it will only apply to the year in which the sum previously expended during years of

income 2009 through 2016 is subsequently recovered. Consequently, there can be no recovery within the meaning of section 10 of the ITA until the Respondent actually refunds the monies outstanding to the Appellant in respect of the environmental expense incurred by it during year of income 2009 through 2016 and further such monies can only be deemed profit for the purposes of section 5(a) of the ITA in the year of income in which it is refunded.”

In furtherance of this declaration GRA was ordered to recalculate the corporation tax assessment and property tax assessment for years of income 2009 through 2016 be recalculated on the basis that there was no recovery of the environmental tax expense incurred during years of income 2009 through 2016 by GBI.

The recalculation shows that the sum to be repaid to GBI is \$880,547,353.00.

GBI has applied to this Court for an Order directing the Commissioner General of GRA (the Respondent herein) to pay the said sum to GBI.

It is clear that this sum [\$880,547,353.00] is included in the sum that the CCJ ordered the **Co-operative Republic of Guyana** to pay to GBI and SMJ [in [2017] CCJ 2 (OJ)].

In that case the CCJ had ordered that the aggregate sum paid as environmental tax be repaid by the **Co-operative Republic of Guyana**, not having stated the precise sum to be repaid, most likely because that figure had to be calculated and determined by the parties from records that would have been in the parties' possession.

In fact, the parties to that case subsequently determined that sum to be \$1,160,134,680.00.

It seems obvious that the sum of \$880,547,353.00 is a portion of the sum of \$1,160,134,680.00, the judgment sum in the case determined by the CCJ.

The order made by this Court on December 3rd 2018 could not logically lead to an Order compelling the Respondent herein (the Commissioner General of GRA) to pay or refund that sum.

This is so because GBI and SMJ chose to engage the CCJ by filing suit against Guyana on that issue rather than engaging the High Court in Guyana through a tax appeal/s on that issue and in these circumstances, GBI cannot logically or reasonably expect to benefit from a refund as contemplated in section 10 of the Income Tax Act, having already secured a judgment for the said sum.

The Order has however narrowed the issues and quantum to be determined in these appeals.

The order made by this Court on December 3rd 2018 is a correct statement of the law, however, it was not intended that the Respondent herein would “refund” that money since that sum is already secured in favour of the Appellant herein in the judgment of S. M. Jaleel & Co. Ltd. and Guyana Beverages Inc. v The Co-operative Republic of Guyana.

When that sum is paid by the **Co-operative Republic of Guyana** to GBI and/or SMJ that will be an income event to be dealt with as per the revenue law of the jurisdiction in which it is paid.

In these circumstances this Court cannot and will not order the Commissioner General of GRA to pay to GBI a sum which is already secured in a previous judgment [S. M. Jaleel & Co. Ltd. and Guyana Beverages Inc. v The Co-operative Republic of Guyana [2017] CCJ 2 (OJ)], since this would effectively result in the GRA and the **Co-operative Republic of Guyana** **each** paying to GBI the same judgment.

Justice N. A. Singh