2013 – HC – DEM – CIV – CM – 109

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CONSTITUTIONAL/ADMINISTRATION

In the matter of the Constitution of Guyana.

-and-

In the matter of Articles 142 and 149 D and 153 of the Constitution of Guyana.

BETWEEN:

GEORGE ISACC JORDON

(Applicant)

-and-

THE REVENUE AUTHORITY

(Respondent)

BEFORE:

HON. MR. JUSTICE IAN CHANG – CHIEF JUSTICE (ag.)

Mr. K. Juman – Yassin for the Applicant.

Ms. Joy Persaud for the Revenue Authority.

Ms. Goodings for the Minister of Foreign Affairs.

DECISION

On the 17th December 2013, the applicant, George Isacc Jordan, by way of Notice of Motion, applied to the High Court for the following:

"(a) An Order or Rule nisi of Certiorari directed to the Commissioner-General of the Guyana Revenue Authority

to show cause why this Honourable Court should not quash the decision in not granting to the applicant duty free concession on Grand Cherokee Jeep, Engine No. MX08WL153082 on the ground that the decision is unreasonable, unconstitutional, unlawful, irrational, ultra vires, void and of no legal effect, an arbitrary abuse of power vested in the Commissioner-General of the Guyana Revenue Authority.

(b) A Writ or Order in the nature of Mandamus directing the Commissioner-General of the Guyana Revenue Authority to grant duty-free concession in respect to the Grand Cherokee Jeep Engine No. MX08WL153082 to the applicant.

(c) Any order or further Order as may be just.

(d) Costs."

Despite the rubric of the Notice of Motion and, more particularly, the absence of the Attorney-General as a respondent party to the proceedings, it does appear from the reliefs sought that the applicant was not at all seeking any relief under Article 153 of the Constitution for breach of any constitutional right under the Bill of Rights or protective provisions of Articles 138 to 151 but was rather seeking prerogative reliefs at common law. The court has overlooked that there is no legal entity by the name of Guyana Revenue Authority. Under the Revenue Authority Act, there is a statutory body called the Revenue Authority and not Guyana Revenue Authority.

In his Affidavit in support of Motion, the applicant deposed that he was 67 years of age and had been a teacher in the Bahamas from 2007 to the 25th August 2013. He had always intended to return to Guyana after his retirement. Prior to his retirement, he had sought information about his re-migration to Guyana and what duty-free concessions were being offered to re-migrants. From the webside of the Ministry of Foreign Affairs, he saw the listed requirements for re-migrant status and duty free concessions (Exhibit A). The requirements remained the same from the 12th December 2012 to the 19th July, 2013.

He deposed that, on the basis of that information, on the 12th December 2012, he purchased from a company in Japan a used Grand Cherokee jeep for U.S$1,720 and paid U.S$1,810 for insurance and freight for its shipment to Guyana (Exhibit B). Before he retired on the 25th August 2013 he shipped to Guyana his belongings including the Grand Cherokee jeep. A week after his arrival in Guyana on the 19th July 2013, he applied to the Ministry of Foreign Affairs for re-migrant status which carried with it the grant of duty-free concessions. His application for duty-free concessions was granted on all items except the Grand Cherokee jeep. It was on the 31st July 2013 that he received a communication from the Ministry of Foreign Affairs that the Minister had not approved duty-free concessions on that jeep. He went to the Ministry of Foreign Affairs and spoke to Mrs. Phillips, the remigration officer. He was then informed that the Minister had declined to grant duty-free concessions on the jeep because it was not registered or insured in Bahamas before he had returned to Guyana. He explained to the

officer that the vehicle was purchased by him on the 12th December 2012 and had arrived in Guyana on the 15th February 2013. He further explained to her that that was so because his intention was to import it in Guyana after he was the owner for at least 6 months. He pointed out that the requirements as stated in paragraph 6 of Exhibit A (Requirements) stated that a copy of the motor vehicle, insurance and title had to be provided (if necessary) and that there was no doubt that he was the owner of the vehicle for 6 months. He further pointed out that he had owned the vehicle for over 6 months prior to his return to Guyana on the 19th July 2013. The Remigration Officer told her that she was unable to do anything since she was following the Minister's instructions. He requested that the reason(s) for the refusal be put in writing. But he received nothing in writing.

He further deposed that, in August 2013, he went to the Ministry of Foreign Affairs and spoke with the Minister of Foreign Affairs who informed him that she would not reconsider his status for duty-free concessions for the said vehicle. He was informed by an officer of the Revenue Authority that registration of the vehicle in Guyana would require payment of $7,600,000 in taxes.

He deposed that, on the 15th September 2013, when he re-checked the website which had information from the Ministry of Foreign Affairs, he observed that the policy guidelines on the re-migrant scheme in relation to the grant of duty-free concessions had completely changed (Exhibits D1 –

D7). It was his opinion that such a change was a consequence of his application.

In Affidavit in Answer sworn to by Mr. Khurshid Sattaur, the Commissioner-General of the Revenue Authority, it was deposed that the applicant had never applied to the Revenue Authority for tax exemption on a Grand Cherokee motor jeep and that the applicant was required by law to pay excise duties and taxes on the vehicle in the sum of $7,823,060. The Commissioner-General contended that the applicant could not have had a legitimate expectation of an illegality.

Mr. Sattaur pointed out that the applicant was granted remigrant status on the 31st July 2013 but that the Ministry of Foreign Affairs had no authority to grant or to refuse duty-free concessions since to do so would be a usurpation of the functions of the Revenue Authority under law. The Revenue Authority exercises no control over the actions of the Ministry of Foreign Affairs and grants duty-free concessions only on items permitted by law. It is the sole entity responsible for the grant of duty-free concessions. Information published on the website of the Ministry of Foreign Affairs is neither maintained nor controlled by the Revenue Authority and the Revenue Authority has neither adopted nor approved the guidelines laid out by the Ministry of Foreign Affairs.

The Commissioner-General deposed that the applicant's re-migrant status did not automatically qualify him for duty-free concessions and that all

statutory requirements had to be complied with before he could be granted duty-free concessions. He pointed out that, under Section 23 of the Customs Act, a remission of import duty on a motor vehicle in the case of a qualifying re-migrant is allowed only once within 6 months of re-assuming residence in Guyana. In the case of the applicant, the grand Cherokee jeep arrived in Guyana on the 15th February 2013 and the applicant was granted re-migrant status on the 31st July 2013. At the time when the said vehicle arrived in Guyana, the applicant was not a qualifying re-migrant and consequently was not entitled to duty free concessions on the said vehicle. He deposed that, after the applicant's application for duty-free concessions on the said vehicle was denied, the applicant, by way of written correspondence dated the 28th August 2013, requested permission to export the said motor vehicle to Bahamas (Exhibit A) – which indicated that the applicant accepted that he was not entitled to duty-free concession on the said motor vehicle. He deposed that his Attorneys-at-law had advised him that the Revenue Authority cannot be estopped from pleading that it is not bound by the guidelines/criteria published on the website of the Ministry of Foreign Affairs.

In the Affidavit in Answer sworn to by Michelle Phillips, Remigration Officer of the Ministry of Foreign Affairs, it was denied that Exhibit A was the remigrant policy on the Ministry of Foreign Affairs's website in 2013. She attached to her Affidavit, the policy that was posted on the said Ministry's website from the 26th July 2010 to January 31, 2013 as Exhibit MPL. That

policy was updated on the Ministry's website on the 31st January 2013 (Exhibit MP2).

She deposed that the applicant submitted an application for remigrant status on the 23rd July 2013 and that application was approved on the 30th July 2013 by the Minister of Foreign Affairs. She deposed that the Ministry of Foreign Affairs is the authority responsible for granting remigrant status in Guyana and the relevant guidelines are placed on its website for guidance to prospective applicants. She denied that the Ministry of Foreign Affairs approves items for tax exemption. Rather, all documents submitted by the applicant are forwarded to the Revenue Authority for consideration of tax exemptions. She informed that court that, on information received, the applicant was having another matter before the High Court in its ordinary civil jurisdiction in which he was seeking damages for misrepresentation made by the Ministry of Foreign Affairs in relation to the same Grand Cherokee jeep based on the denial of his application for tax emptions on the declared value.

Section 23 (1) of the Customs Act, Chapter 82:01, provides:

> ***"A remission of import duty on a motor vehicle is allowed on the import of a motor vehicle by eligible public officis <u>and qualifying remigrants</u>; provided, however, that the remission under this section is available to re-migrants, only once, within six months of re-assuming residence in Guyana."***

Section 25 (5) defines "qualifying remigrants" as :

> ***"Guyanese citizens returning to reside in Guyana after a period of continuous bona fide residence of at least five years abroad who have attained the age of eighteen as of date of return and meet the criteria specified in the regulations."***

This court had occasion to treat with section 23 (1) and (5) of the Customs Act in the case of **Application by Eisenhower Naraine for Writ of Mandamus** (2014 – HC – DEM – CIV – M – 33). In the absence of any criteria specified in any Regulation containing any criteria to qualify as a re-migrant, there can be no doubt that the applicant was a "qualifying remigrant" within the meaning of section 23(5) for the purpose of section 23(1) of the Customs Act. But, the proviso to section 23(1) clearly provides:

> ***".....provided, however, that the remission under this section is available to re-migrants only once, within 6 months of re-assuming residence in Guyana."***

This, the statutory grant of remission of import duty on a motor vehicle to a "qualifying remigrant" is available to him or her within 6 months of his or her re-assuming residence in Guyana.

In the instant case, the applicant was granted re-migrant status on the 31st July, 2013. But, the Grant Cherokee jeep had arrived in the country on the 15th February 2013 i.e. over 4 months before the applicant became a "qualifying remigrant". No doubt, the applicant was statutorily entitled to remission of import duty on a motor vehicle imported by him as a re-migrant within 6 months of his resumption of resumption of residence in Guyana. But was he statutorily entitled to the remission of import duty on the

particular Grand Cherokee jeep which he had imported into Guyana long before he had re-assumed residence in Guyana? I think not. Section 23 (1) clearly states:

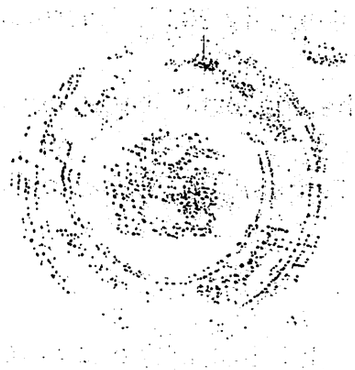
> ***"A remission of import duty <u>on a motor vehicle is allowed on the import of a motor vehicle</u>...."***

When the Grand Cherokee motor jeep was imported into Guyana by the applicant, the applicant had not yet resumed residence in Guyana - even though he had intended to so do. According to the applicant, he applied for re-migrant status the following week after he had arrived in Guyana on the 19th July 2013 i.e. after the vehicle was already imported in Guyana on the 15th February 2013. Therefore, while the vehicle was imported into Guyana by the applicant, it was not imported by the applicant **<u>as a remigrant</u>** since 15th February 2013, the applicant was not yet a qualifying re-migrant.

It is instructive to note that, while under section 23 (1) of the Customs Act, the remission of import duty is allowed **<u>on the import of a motor vehicle</u>**, section 246 (1) of the Act stipulates:

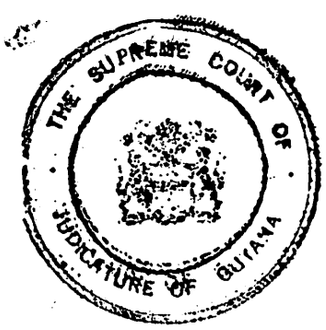
> ***"If for any purpose of the customs laws it becomes necessary to determine the precise time at which an importation of any goods shall be deemed to have had effect, such time shall be deemed to be the time at which the aircraft or ship importing such goods actually arrived in Guyana."***

Clearly, when the vehicle was imported in Guyana, it attracted import duty of customs since, at that time, the applicant as importer was not a qualifying remigrant to whom section 23 (1) had application.



The court sees the need to iterate that the remission of import duties of customs under section 23 (1) is not a matter for the discretionary power of the Revenue Authority or the Commissioner-General but is a matter of statutory right or entitlement. In this case, the applicant's imported Grand Cherokee motor jeep did not attract that statutory remission.

For the reasons above stated, the Orders or Rules nisi Certiorari and Mandamus granted on the 19th December 2013 must be discharged. The Court so orders. There will be no order as to costs.



Mr. Ian N. Chang, C.C.H, S.C
Hon. Chief Justice (ag.)

Dated this 11th day of December, 2014.