

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

In the matter of Articles 40, 142, 144, and 153 of the Constitution of the Co-operative Republic of Guyana.

-and-

In the matter of sections 70, 72, 76 and 78 of the Income Tax Act.

-and-

In the matter of section 10 of the Corporation Tax Act.

-and-

In the matter of the Fiscal Enactments (Amendment) Acts, No. 16 of 1994 and 3 of 1996.

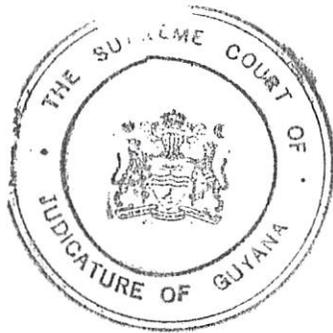
BETWEEN:

GUYANA STORES LIMITED, a company duly incorporated in Guyana under the Companies Act, having its registered office at Lot 19 A Water Street, Georgetown, Demerara, Guyana.

(Plaintiff)

-and-

- 1. **THE ATTORNEY-GENERAL**
- 2. **THE GUYANA REVENUE AUTHORITY**



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**3. THE COMMISSIONER-GENERAL of
the GUYANA REVENUE
AUTHORITY, Mr. Khursid Sattaur.**

(Defendants

Jointly and severally)

BEFORE:

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

Mr. Stephen Fraser and Mr. Marcel Bobb for the Plaintiff.

**Mr. Mohabir A. Nandlall with Mr. Anderson for the 1st named
Defendant.**

Mr. Ashton Chase, S.C for the 2nd and 3rd named Defendants.

DECISION

On the 9th July 2012, the plaintiff, Guyana Stores Limited, by way of constitutional motion, applied to the court for the following constitutional reliefs:

a) A Conservatory Order that the plaintiff shall not be required, to pay to the sum of \$227,599,636 (two hundred and twenty seven million, five hundred and ninth six thousand six hundred and thirty six dollars) or any other sum whatsoever, being tax, interest and penalties for the years 1986, 1987, 1988, 1989, 1990, 1991 and any other pre-privatization year whatsoever, whether pursuant to the demand letter of the 24th May

2012, issued by the second and/or third named Defendants, or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise, however, until further order.

b) A conservatory order that the second and/or third defendants and each and every one of them, their servants and/or agents, howsoever, shall not be entitled to issue any notices of assessment, demand for outstanding taxes, tax liability statements and/or take any or any further steps or proceedings to collect, levy or recover the sum of \$227,599,636 (two hundred and twenty seven million, five hundred and ninety nine thousand, six hundred and thirty six dollars) or any other sum whatsoever, being Income Tax interest and penalties for the years 1986, 1987, 1988, 1989, 1990 or in any other year whatsoever, whether pursuant to the demand letter of the 24th May 2012, issued by the said second and/or third Defendants, or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise, howsoever, until further order;

c) A conservatory Order directing that the Plaintiff shall not be required to pay the sum of \$3,190,570,703 (three billion, one hundred and ninety million, five hundred and seventy thousand seven hundred and three dollars) or any other sum whatsoever, being Corporation Tax,

interest and penalties for the years 1986, 1987, 1988, 1989, 1991, 1999, 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 or any other year whatsoever, whether pursuant to the demand letter of the 24th May 2012 issued by the second and/or third defendants, or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise, howsoever, until further order.

d) A conservatory order that the second and/or third defendants and each and every one of them, their servants and/or agents, howsoever, shall not be entitled to issue any notices of assessment, demand for outstanding taxes, tax liability statements and/or take any or any further step or proceedings to collect levy or recover the sum of \$3,190,570,703 (three billion, one hundred and ninety million, five hundred and seventy thousand, seven hundred and three dollars or any other sum whatsoever, being Corporation Tax, interest and penalties for the years 1986, 1987, 1988, 1989, 1991, 1999, 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or any other year whatsoever, whether pursuant to the demand letter of the 24th May 2012, issued by the said second and/or third defendants, or any other demand letter, notice of

assessment, assessment, tax liability statement or otherwise, howsoever, until further order;

e) A conservatory order directing that the Plaintiff shall not be required to pay the sum of \$237,619,211 (two hundred and thirty seven million six hundred and nineteen thousand, two hundred and eleven dollars) or any other sum whatsoever, being Property Tax, interest and penalties for the years 1985, 1987, 1988, 1989, 1993, 1994, 1999 or any other pre-privatisation year, whatsoever, whether pursuant to the demand letter of the 24th May 2012, issued by the second and/or third defendants, or any other demand letter notice of assessment, assessment, tax liability statement or otherwise, howsoever, until further order;

f) A conservatory Order that the second and/or third defendants and each and every one of them, their servants and/or agents, howsoever, shall not be entitled to issued any notices of assessment, demand for outstanding taxes, tax liability statements and/or take any or any further steps or proceedings to collect, levy or recover the sum of \$237,619,211 (two hundred and thirty seven million, six hundred and nineteen thousand, two hundred and eleven dollars) or any other sum whatsoever, being Property Tax, interest and penalties for the years

1985, 1987, 1988, 1989, 1993, 1994, 1999 or any other year whatsoever, whether pursuant to the demand letter of the 24th May 2012 issued by the said second and/or third Defendants, or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise howsoever until further order;

g) A conservatory Order directly that the Plaintiff shall not be required to pay the sum of \$155,556,847 (one hundred and fifty five million, five hundred and fifty six thousand, eight hundred and forty seven dollars) or any other sum whatsoever, being Capital Gains Tax, interest and penalties for the years 1992, 1996, 1999, or any other pre-privatizations year, whatsoever, whether pursuant to the demand letter of the 24th May 2012, issued by the second and/or third Defendants, or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise, howsoever, until further order.

h) A conservatory order that the second and/or third defendants and each and every one of them, their servants and/or agents, howsoever, shall not be entitled to issue any notices of assessment, demand for outstanding taxes, tax liability statements and/or take any or any further steps or proceedings to collect, levy, or recover the sum

of \$155,556,847 (one hundred and fifty five million, five hundred and fifty six thousand, eight hundred and forty seven dollars) or any other whatsoever, being Capital Gains Tax, interest and penalties for the years 1992, 1996, 1999, or any other pre-privatization year whatsoever, whether pursuant to the demand letter of the 24th May 2012 issued by the second and/or third defendants or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise, howsoever, until further order.

i) A declaration that the Fiscal Enactments (Amendment) Acts Nos. 16 of 1994 and 3 of 1996, insofar as they impose a 2% minimum corporation tax is inconsistent with Articles 39, 40 and 142 of the Constitution of the Republic of Guyana, and accordingly void to the extent of its consistency.

j) A declaration that all or any attempts by the second and/or third Defendants, their servants or agents to levy, impose, demand, collect and/or recover in any way whatsoever, the 2% minimum Corporation Tax, whether they considered it imposed by the Fiscal Enactments (Amendment) Acts Nos. 16 of 1994 and 3 of 1996 or otherwise howsoever is in breach of articles 39, 40 and 142

of the Constitution of the Republic of Guyana and accordingly null and void.

k) A declaration that the Plaintiff is not liable to pay the sum of \$227,599,623 (two hundred and twenty seven million five hundred and ninety nine thousand six hundred and thirty six dollars), or any other sum whatsoever, being Income Tax, interest and penalties for the years 1986, 1987, 1988, 1989, 1990, 1991 or any other pre-privatization year whatsoever, whether pursuant to the demand letter, notice of assessment, assessment, tax liability statement or otherwise, howsoever.

l) A declaration that the Plaintiff is not liable to pay the sum of \$3,190,570,703 (three billion, one hundred and ninety million, five hundred and seventy thousand, seven hundred and three dollars) or any other sum whatsoever, being Corporation Tax, interest and penalties for the years 1989, 1987, 1988, 1989, 1991, 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or any other year whatsoever, whether pursuant to the demand letter of the 24th May 2012, issued by the second and/or third Defendants, or any other demand letter notice of assessment, assessment, tax liability statement or otherwise, howsoever;

m) A declaration that the Plaintiff is not liable to pay the sum \$237,619,211 (two hundred and thirty seven, six hundred and nineteen thousand, two hundred and eleven dollars) or any other sum whatsoever, being Property Tax, interest and penalties for the years 1985, 1987, 1988, 1989, 1993, 1994, 1999, or another pre-privatization year whatsoever, being Property Tax, interest and penalties for the years 1985, 1987, 1988, 1989, 1993, 1994, 1999, or any other pre-privatization year, whatsoever, whether pursuant to the demand letter of the 24th May 2012, issued by the second and/or third Defendants, or any other demand letter, notice of assessment, assessment, tax liability statement or otherwise, howsoever;

n) A declaration that the Plaintiff is not liable to pay the sum of \$155,556,847 (one hundred and fifty five million, five hundred and fifty six thousand, eight hundred and forty seven dollars) or any other sum whatsoever, being Capital Gains Tax, interest and penalties for the years 1992, 1996, 1999 or any other pre-privatization year, whatever, whether pursuant to the demand letter, notice of assessment, assessment, tax liability, statement or otherwise, however;

o) A declaration that the second and/or third Defendant and neither of them is entitled to assess or re-assess the Plaintiff except in

- accordance with the procedures set out at sections 70, 72, 76 and 78 of the Income Tax Act;**
- p) A declaration that the second and/or third Defendant and neither of them adhered to or followed or applied the procedures set out aforesaid at sections 70, 72, 76 and 78 of the Income Tax Act prior to issuing the said letter of demand of the 24th May 2012, or in determining that the Plaintiff was liable as claimed or at all.**
- q) Damages in excess of \$100,000 (one hundred thousand dollars) for breach of the Constitution.**
- r) Punitive damages.**
- s) Such further or other relief as to the Court seems just.**
- t) Costs”.**

It should be noted that the only enforceable orders sought by the plaintiff are for the payment of general compensatory damages and punitive damages. Thus, the plaintiff has sought no enforceable order which has the capacity of giving permanence to the conservatory orders which have been sought in the Notice of Motion and which have been granted on the 13th July 2012. No final prohibitory or other enforceable order on which the Conservatory orders can be sustained has been sought as a means of redress (final order). The court therefore sees it fit to discharge the Conservatory Orders granted on the 13th July 2012.

In the Affidavit in support of Motion, it does not at all appear that the plaintiff has paid any of the taxes assessed claimed or demanded by the 2nd or the 3rd named defendants. Indeed, there is no fact pleaded which can give rise to a finding that the plaintiff at the time of the filing of the Motion has paid any of the taxes assessed, claimed or demanded by the 2nd or 3rd named defendants. As such, there is no cause of action for a claim for damages. The claim for damages, general or punitive, was therefore misconceived and must therefore be dismissed.

The only remaining remedy sought by the plaintiff in the Notice of Motion is for a number of declarations without any related consequential relief.

Article 153 (2) of the Constitution provides:

“The High Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of the preceding paragraph;

(b) to determine any question arising in the case of any person which is referred to it in pursuance of the next following paragraph

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of articles 138 to 151 (inclusive)”.

The marginal note to Article 153 reads **“Enforcement of protective provisions.”** Declaratory orders without any consequential enforceable order(s) cannot be considered as orders made “for the purpose of enforcing or securing the enforcement of any of the provisions of articles 138 to 151. As such, in a constitutional action or motion for redress under Article 153 of the Constitution, it is incumbent upon the plaintiff or applicant to seek redress in the form of an enforceable order or, at the very least, a declaratory order coupled with a consequential enforceable order.

In the text **“The Law of Writs”** by V.G Ramchandran (Volume 1), under the caption of **“Declaratory Relief”**, the learned author stated at page 162:

***“Articles 32 and 226 of the Constitution confer power on the Supreme Court and all High Courts to issue “directions, orders or writs” including the writs specified therein. However, the power has been conferred for the purpose of enforcement of the fundamental rights (Article 32) or for the enforcement of the fundamental rights or for any other purpose (Article 226). If the above object underlying Articles 32 and 226 is to be taken into account, a prayer for a declaration cannot be said to be an appropriate relief to be prayed.*”**

In **Charanjit Lall -v- Union of India** (1950) S.C.R 869, the petitioner filed a petition under Article 32 of the Constitution of India challenging the constitutional validity of the Sholapur Spinning and Weaving

Company (Emergency Provisions) Act 1950. Dealing with the declaratory relief sought, Mukheya J observed:

“It would appear from the language of Article 32 of the Constitution that the sole object of the article is the enforcement of fundamental rights guaranteed by the Constitution. A proceeding under this Article cannot really have any affinity to what is known as a declaratory suit. The first prayer made in the petition seeks relief in the shape of a declaration that the Act is invalid and is apparently inappropriate to an application under Article 32.”

In the case of **Makhan Singh V State of Punjab** (1964) 4 S.C.R 797, the petitioner challenged the constitutional validity of the Defence of India Act 1962 and the Rules made thereunder and also the a detention Order as being violative of the fundamental rights guaranteed under Articles 14, 21 and 22 of the Constitution. But, in view of the Presidential Order issued under Article 359 of the Constitution, the validity of the Act or the Rules or any action taken thereunder was not open to attack. Gajendragedkar J. observed:

“It would be unreasonable to suggest that what the detenu cannot do to secure his release, he should be allowed to do merely for the purpose of obtaining an academic declaration. A proceeding taken under section 49 (1) (b) like a petition filed under Art. 226 (1) or Art. 32 (1) is intended to obtained relief and the relief in such cases means the order for the release of the detenu.....

If the sole relief which the detenu seeks to obtain cannot be claimed by him by virtue of the Presidential Order, it would be unreasonable to hold that he can claim a different relief viz. a mere declaration; such a relief is clearly outside the purview of the proceedings under Article 49 (1) (b) and Arts. 226 (1) and 32 (1)."

In **K.K. Kochuni V State of Madras** A.I.R 1959 S.C 725, Das C.J after referring to the case of **Charanjit Lall V Union of India** (*supra*) stated:

"If therefore the contentions of the petitioners be well founded as to which we say nothing at present, a declaration as to the invalidity of the impugned Act together with the consequential relief by way of injunction restraining the respondentsfrom asserting any rights under the enactment so declared void will be the only appropriate reliefs which the petitioners will be entitled to get."

In the instant case, no consequential relief by way of prohibition against the 2nd and/or 3rd respondents has been sought by the applicant. All the applicant has sought are bare declarations without consequential relief. Such declarations being non-enforceable orders *per se* cannot be categorized as orders "for the purpose of enforcing or securing enforcement" of the applicant's right under Article 142 or any other Article since they are no more than non-enforceable court orders.

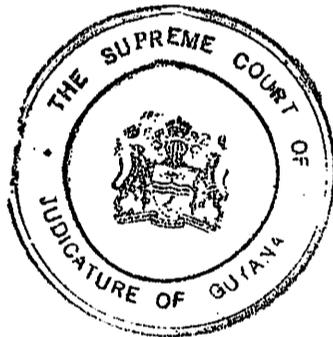
It does appear to the court that the Affidavit in support of Motion does not contain a substratum of facts to support a claim for monetary compensation for loss or injury suffered. At the same time, the other

reliefs sought are merely declaratory unaccompanied by any related claim for consequential reliefs in the form of enforceable orders. Article 153 is an **enforcement** provision and not a provision for purely non-enforcement reliefs.

Having regard to the observations of the court of the Notice of Motion, including the grounds thereof and the Affidavit in support of Motion, the court must dismiss the Motion as deficient and misconceived.

Motion dismissed. Conservatory orders granted on the 13th July 2012 discharged.

No order as to costs.



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

Dated this 12th day of July, 2013