

IN THE VALUE ADDED TAX TRIBUNAL

AT SUVA

No. 1 OF 2004

**In the matter of an application to
The value Added Tax Tribunal by
THE TRUSTEE IN THE
REPUBLIC
OF THE CHURCH OF JESUS
CHRIST OF LATTER DAY
SAINTS**

AND

**In the matter of the VALUE ADDED
TAX DECREE 1991**

DECISION

This is an appeal against the Appellant against the decision of the Commissioner of Inland Revenue dated 7/6/2001 disallowing the appellant's objection to the Commissioner's assessment.

The grounds of Appeal are as follows:

- a) That the trustees in the Republic of Fiji of the Church of Christ of Latter Day Saint (Trustees) are registered personal making supplies in furtherance of a taxable activity.
- b) That the materials purchased to build the Latter Day Saints Temple compromise goods or services acquired or imported for the principle purpose of a taxable activity.
- c) That the trustee's taxable activity during the relevant taxable periods is not by force of the Value Added Tax Decree limited to the selling of books, audio and videotapes, artwork, stationery and clothing.

The grounds of appeal will all be dealt together.

Briefly the facts are that the trustees in the Republic of Fiji of the Church of Latter Day Saints were appointed pursuant to the Trust Agreement executed on September 1987.

The activity carried on by the Trustees included “providing or supplying temporal support to the Church”.

The activity according to the Appellant “ encompassed the provision (by constitution of lease) of maintained and furnished buildings (including the temple) and other facilities and curriculum material including books, audio & video tapes, artwork, stationery and clothing to the Church and others.

The activity, the appellant maintains was the “taxable activity” (as defined in 54 of the Decree) carried on by the Trustees. In particular the Appellant claims that purchases made and acquired for the construction of the temple is a taxable activity by the trustees and to be considered for Value Added Tax purposes by the Commissioner and accordingly be allowed.

The Commissioner maintains that the Vat registration of the Trustees is in respect of retail sales of book, audio and videotapes etc and all transactions pertaining to the sales of these and would be considered for Vat purposes. However, any purchases whether locally acquired or imported that was acquired for the temple or any purposes other than the supply in the Trustees taxable activity of retail outlets would not be considered for Vat purposes and will accordingly be allowed.

The question therefore, before this Tribunal relates to the Trustees’ claims for input tax credits in respect of Vat paid on materials acquired by the Trustees and used in the construction of a temple in Suva, the Church of Jesus Christ of Latter Day Saints.

Section 2 of the Value Added Tax Decree defines registered person as:

“Any person who is registered or is liable to be registered under section 22 of this Decree and includes a person, for the purposes of Parts VII, VIII,IX,X, and XI of this Decree, who is not otherwise required to register under this Decree, but was required to charge Tax, has charged

tax or has represented to charge tax on a supply of goods and services in terms of Section 34 or Section 44 of this Decree,”

“Subject to this Decree, every person (other than a producer supplier) who, on or after the 1st day of July, 1992 carries on any taxable activity and is not registered, becomes liable to be registered.....”

Section 23 (5) provides

“Where the Commissioner is satisfied that a registered person is not carrying on taxable activities that involve the making of taxable supplies the commissioner may cancel that person’s registration with effect from the last day of the taxable period during which the commissioner was so satisfied, or from such other dates as may be determined by the commissioner, and shall notify that person of the date on which the cancellation of registration takes effect.”

The term “taxable activity” is defined in Section 4 of the Decree.

A Taxable activity is- **“any activity which is carried on continuously or regularly which involves the supply of goods and services for money, or on exchange of other goods and services. It does not matter whether any profit motive is involved and it includes activity carried on in the form of business, services, trade, manufacture, Profession, vocation, association or club.**

Section 4(3)(C) provide that the term “taxable activity” shall include, in the relation to any person,

“any activity carried on by a non-profit body, other than an activity, which in the opinion of the commissioner is in the competition to the disadvantage of any taxable activity carried on by any other person.”

Whether a non-profit organization is taxable or not depends on:

1. the particular supply it makes:
2. whether its supply is considered to be to the disadvantage of a registered person.

Non-Profit Body is defined in Section 2

For Vat purposes a “Non-Profit body” is any society, association or organization or recognised religious organization (whether incorporated or not) that is carried on other than for the purpose of profit or gain to any proprietor, member or shareholders and whose memorandum, articles, rules or other document constituting or governing the activities do not allow any distribution whether by way of money, property or otherwise however, to any of its proprietor, members or shareholders.

Accordingly, recognised religious organizations are also deemed to be non-profit organizations unless they carry out “taxable activities”.

Whether a non-profit organization is carrying on an activity in competition and to the disadvantage of a taxable activity depends on a number of factors.

Regulation 17 of Value Added Tax Regulations 1991 provides that:

“For the purposes of determining whether any non-profit body is carrying on an activity in competition to the disadvantage of any taxable activity carried on by any other person, the commissioner shall have due regard to:

- a) the nature and type of goods and services being supplied;
- b) the value of supplier, if registered under the Decree, would be taxable supplies;
- c) whether the consideration received for the said taxable supplies is less than the cost of making those said taxable supplies;
- d) the value of any unconditional gifts received both in kind and money;
- e) whether the making of the said taxable supplies is being subsidised by the unconditional gifts received.

Furthermore, Regulation 18 of Value Added Tax Regulations 1991 provides that:

Furthermore, Regulation (17) and without limiting the generality of subsection (1) of Section 4 of the Decree, a non-profit body shall be carrying on a taxable activity, if carried on continuously and regularly, in respect of the supply of goods and services of the following kind:

- a) the right of admission or membership of a club, association, or like body by way of a subscription or a similar fee and include affiliation fees;
- b) the admission, for a consideration, of persons to any premises;
- c) the leasing or hiring of any real or personal property;
- d) the operation of a commercial oriented venture that involves the supply of goods and services for a consideration;
- e) the supply of advertising services by way of a fee or sponsorship, and
- f) the right to participate in any event carried on or organized by that non-profit body, for a fee or charge”

and
Regulation 19 of value Added Tax Regulations 1991 provides that:

“Where the Commissioner is of the opinion that a non-profit body is carrying on one or more taxable activities, the Commissioner may not withstanding that section 22 of the Decree provides for the registration of all the taxable activities carried on by a person, direct that the registration shall only apply in respect on any identifiable separate activity or activities”.

The VAT Decree allows for the Regulation of only the taxable portion of a Non-profit Body’s total activities. It also provides that, in these instances, the Non-Profit Body’s purchases of goods and services should be separated into that used for making taxable supply and non-taxable supply. Only tax paid on inputs used in making taxable supply may be claimed as an input tax credit. The specific provisions, which are provided under section 39(2)(b) are:

Where the goods services are acquired to make both taxable supplies and non-taxable supplies.

- a) input tax wholly incurred for making taxable supplies is deductible in full;
- b) input tax wholly incurred for making non-taxable supplies is not deductible;
- c) input tax not attributable as above is apportioned on a turnover basis-value of taxable supplies/value of all supplies (both taxable and non-taxable). This is on a taxable period basis or a longer period where the commissioner considers it equitable.

In cases where the turnover basis of apportionment is not appropriate the commissioner may allow the registered person to adopt any other suitable basis to determine the proportion of input tax to be deducted.

Having consideration all the relevant sections of the VAT Decree & VAT Regulations relevant to the grounds of appeal filed herein & relevant to the question before this Court, I am of the view that the Church of Jesus Christ of Latter Day Saints, is a recognized religious organization, and is deemed to be a non-profit body and accordingly religious organization, and is deemed to be a non-profit body and accordingly is not carrying on any taxable activity other than activities which in the opinion of the Commissioner is in competition to the disadvantage of any taxable activity carried on by any other person.

Activities such as the sale of books, audio and video tapes, art work, stationery and clothing are activities considered to be in competition to the disadvantage of any taxable activity carried on by any other person. Accordingly, these activities are taxable activities

In accordance with Section 4, taxable activity may not involve profit motive.

All other activities of the Church of Jesus Christ of Later Day Saints are not taxable activities.

Activities other than these taxable activities listed on the VAT registration forms may constitute taxable activities, accordingly, for example, if a building is rented out by LDS, then such activity would amount to taxable activity. However, if the rented property is a residential accommodation, then such supply would be exempt under the First Schedule of the Decree.

The Temple is not used in furtherance of making the taxable activities compromising of the supply of books, audio and videotapes, artwork, stationery, and clothing. Therefore, input tax cannot be claimed on purchase of materials used for the maintenance or construction of the temple.

The Appeal is dismissed. I make no order as to cost.

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A Prasad

VAT TRIBUNAL

Dated: **14th** Day of **September**, 2004