

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JUDICIAL**

**IN THE MATTER** of an Appeal to the VAT Tribunal by **ISLAND CUSTOMS**  
**AGENCIES LIMITED** a limited liability company having its registered office in Suva.

**AND**

**IN THE MATTER** of the **VAT DECREE** under Section 50

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**DECISION**

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Grounds of Appeal are-

- a. **THAT** the Respondent failed and or neglected to consider that 10% VAT upon importation of the goods by the Appellant was paid on the invoice value to the Respondent which was supplied by the exporter on which the commission was included.
- b. **THAT** the Respondent failed and or neglected to consider that once the Appellant has paid 10% VAT on the commission which is the only service that it provided the Respondent in law is not entitled to claim any further VAT on the same commission received by the Appellant.

The Appellant imports perishable goods and he claims he pays 3 levels of taxes.

- a. The VAT on import of the goods (Customs VAT)
- b. VAT paid on local charges
- c. VAT on wholesales [distribution] of the goods to retailers.

The Appellant has no objections to these 3 stages of VAT payment.

The issue is whether VAT is payable on the commission received by the Appellant from the Exporter.

Grounds 1 and 2 of the Appeal overlap and I will deal with them together.

The Appellant claims that any commission forms part of the income value of the goods for which VAT was paid at the initial stages when goods were received by him. The CIR (Respondents) claims that the invoice by the overseas suppliers only shows the value of the goods and commission is paid after the service has been supplied. VAT is payable on the commission received. The Appellant alleges that VAT on the commission is in effect double taxation.

Section 15 of the Value Added Tax Decree (VAT) sets the criteria where VAT is charged. Section 15(1):

***“Subject to the provisions of this Decree the tax shall be charged in accordance with the provisions of this decree at the rate of ten percent on the supply(-) in Fiji of goods and services on or after the 1<sup>st</sup> day of July 1992, by a registered person in the course or furtherance of a taxable activity carried out by that person by reference to the value of that supply”***

‘Supply’ is defined in detail in Section 3 of the VAT decree and ‘taxable’ activity in Section 4(1).

Section 14 of the VAT Decree imposes a tax on the importation of goods into Fiji and VAT is charged on the value of goods. Both parties agree that the VAT paid on importation of goods can be claimed as in input tax credit.

Once the Appellant receive supplies from the Overseas Supplier and pays 10% VAT on the income value of the goods, he distributes the same to his local clients. He receives commission once the goods has been cleared from the Customs and transported to the premises of his various local customers.

This commission attracts VAT according to CIR.

The Appellant’s contention is that the invoiced value is inclusive of commission and therefore when 10% VAT is paid at the point of entry the VAT covers both the value of the goods and the commission.

In ‘Heinemann Australian Dictionary 4<sup>th</sup> Edition’ ‘Commission’ is defined as ‘any fee paid to an agent for services such as buying or selling goods.’

The Appellant supplies good and is paid for the same and he then remits the invoice value of the goods to the Oversees Supplier. The Oversees Supplier pays the Appellant, commission for his services for selling the goods.

It appears the arrangement between the supplier and the Appellant is that before the invoice value of the goods is remitted to the supplier the Appellant retains his commission and the balance is then remitted.

The commission is the contentious issue between the parties. The 10% VAT paid initially is claimable and therefore the question of double taxation does not arise further as has been pointed out by the Respondent the invoices annexed do not show that the value of goods is inclusive of commission.

Further there was an agreement between the Appellant and the supplier that commission was to be deducted from the invoiced value of the goods prior to remitting the goods.

The commission earned is Appellant's income and therefore attracts VAT.

Both the Grounds of Appeal are dismissed. I make no order as to cost.

**COURT OF REVIEW**