

Judgment Both

IN THE REVENUE COURT

APPEAL NO. 1 OF 1997

BETWEEN PROPRIETORS STRATA PLAN NO. 7 APPELLANT

A N D THE COMMISSIONER OF GENERAL CONSUMPTION TAX RESPONDENT

Mrs. Angella Hudson Phillips, Q.C. and Dr. Adolph Edwards for the Appellant.

Mrs. Barbara Lee and Mr. Frank Williams for the Respondent.

Heard on the 3rd & 4th days of November 1997 and the 30th day of July 1999.

COURTENAY ORR J

This appeal finds its genesis in two decisions of the Commissioner of General Consumption Tax (the Respondent): Firstly, his decision made on the 22nd day of January 1997, confirming an assessment raised in the sum of \$323,806.19, against the appellant, together with penalty and interest, and secondly, a Notice of Demand in the sum of \$742,211.05 dated the 13th day of January 1997, and comprised of the above mentioned sum of \$323,806.19, plus compound interest and penalty on that sum.

THE BACKGROUND

The following facts were admitted or proved:

- (a) The Appellant is a corporation registered under the Registration

(Strata Titles) Act (the Strata Titles Act) by the proprietors of all of the strata lots of Strata Plan No. 7 at Turtle Beach in the parish of St Ann.

- (b) Such of the services rendered by the Appellant pursuant to the powers and duties specified in the Strata Titles Act are exempt from the payment of General Consumption Tax (GCT) in accordance with the provisions of Item 16 of Part II of the Third Schedule of the GCT Act.
- (c) During the years 1994 and 1995, the Appellant provided telephone services to the unit holders (the proprietors) of the Strata Corporation through a PBX telephone system and charged them, in addition to the charges and GCT thereon made by Telecommunications of Jamaica, (TOJ) a service charge equal to 100% of the cost of the calls.

The appellant charged no GCT for the provision of this service;

- (d) The Appellant continued during the years 1994 and 1995, to rent Turtle Resorts Ltd. the agent of the unit owners (the proprietors) space in the Common Property for the provision of the service of a reception desk, reservations office and change

rooms for their staff. The appellant also let a part of the Common Property to Triple Star Caterers for the provision of the service of a coffee shop/lounge for the use of the proprietors and their guests; the appellant charged no GCT on the rent charged the tenants for the use of the aforementioned space in the Common Property;

- (e) At the introduction of the GCT regime, the appellant did not consider itself to be a person carrying on a taxable activity who was required to apply to be registered under the GCT Act. The appellant therefore did not apply for registration and the respondent of his own volition and without requiring the appellant by notice in writing to make an application for registration, registered the appellant as a taxpayer for the purposes of the said Act and sent a Certificate of Registration bearing number 44750, to it by post, in or about the month of May 1994.
- (f) Thereafter the appellant made monthly returns to the respondent for the period January 1994 to April 1995 inclusive, returning

income for telephone services provided by Telecommunication of Jamaica through the system to the proprietors and setting off against the sum due to the respondent, the tax paid by it on local purchases, services and expenses incurred by it. This "setoff" resulted in what the appellant regarded as a credit of \$316,527 in favour of the appellant, as at the 31st March 1995;

- (g) The respondent thereupon advised the appellant that it should have filed its returns on a bi-monthly basis and further advised it that it was not entitled to the input tax claimed, in the light of its tax exempt status as the provider of services rendered by a Strata plan Corporation;
- (h) The appellant therefore revised its returns for the period January 1994 to October 1995, inclusive and thereafter made returns on a bi-monthly basis, claiming credit to go forward arising out of claims for tax paid in the sum of \$37,054 as at the 1st December 1995;
- (i) The respondent thereupon audited the returns of the appellant.
- (j) Based on this audit, which was conducted between March and April of 1996, the respondent came to the conclusion that in addition to the services provided by the appellant under the duties and powers conferred upon it as a corporation under the Strata Titles Act, which services are exempt from tax the appellant had made taxable supplies by way of the following activities as noted above;

- (i) a 100% service charge imposed on telephone calls;
 - (ii) rental of space for office and utility operations; and
 - (iii) rental of space within the common property and operated as a coffee shop.
- (k) The respondent took the view that the appellant's returns were incorrect under Section 38 (1)(b) of the GCT Act; and the respondent was not satisfied with the basis on which the appellant's returns were prepared. Accordingly, the respondent proceeded, (under Section 38(2)(a) of the GCT Act), to make an assessment of the amount that he thought the appellant ought to have stated on the return; and in accordance with subsection (2)(b), he stated the general basis on which the said assessment was made-

By Notice of Assessment dated the 29th day of July 1996, he assessed the appellant to an additional amount of GCT in the sum of \$323,806.19 for the period January 1994 to December 1995, inclusive.

- (l) In the assessment the following adjustments were made to the appellant's returns:

PERIOD ENDED	GCT PER RETURN	GCT AS CORRECTED	DEFICIENCY
Jan - Feb 1994	403.00	14,289.58	13,886.58
Mar - Apr	2,259.00	16,206.15	13,947.15
May - June	(49,247.16)	11,698.02	60,945.18
July - Aug	(51,591.14)	80.82	51,671.96
Sept - Oct	650.00	14,772.59	14,122.59
Nov - Dec	(26,579.42)	17,289.44	43,868.86
Jany - Feb 1995	4,089.77	8,929.86	4,840.09
Mar - Apr	608.00	13,371.24	10,763.24
May - June	(8,256.00)	20,268.07	28,524.00
July - Aug	4,820.00	42,335.35	37,515.35
Sept - Oct	4,759.00	25,087.88	20,328.88
Nov - Dec	(12,480.00)	10,912.24	23,392.24
TOTAL	(130,564.95)	193,241.24	323,806.19

- (m) Because the Respondent had not served the Explanation of Adjustments on the appellant together with the Notice of Assessment, which Explanation would have allowed the appellant to submit an appropriate Notice of objection, the respondent agreed to accept from the appellant a late Notice of Objection, which latter Notice the appellant submitted to the respondent by letter dated the 24th day of October 1996, through its agent Messrs. Price Waterhouse;
- (n) The appellant objected to the aforesaid assessment, by letter dated October 24, 1996, contending that the services which the respondent

identified as constituting taxable supply are services performed in pursuance of its duties and powers under the Strata Titles Act; and as such, are exempt for GCT purposes.

The appellant also requested in its said letter of objection, that its registration as a registered taxpayer be canceled, in the light of Section 29(1) of the GCT Act.

- (o) Before making a decision in respect of the appellant's said objection, the respondent served on the appellant the notice of Demand dated the 13th day of January 1977 and delivered to the appellant in January 1997. The said Demand was for payment of \$746,211.05, being the amount raised on assessment, together with all accruals in respect thereof, up to the date of said notice, plus a balance outstanding for April 1996:

Penalty under Section 54(2) of the GCT Act for the period January 1994 to December 1994	\$ 87,275.04
and for the period March 1995 to December 1995	12,113.48
Surcharge under Section 54(2A)	2,742.11
Penalty under Section 54(3)	17,939.68
Interest under Section 54(4)	<u>355,710.44</u>
Sub-Total	\$475,762.75
Balance outstanding for April 1996	<u>100.73</u>
	\$475,863.48
Less net credit per returns	<u>- 53,458.62</u>
	422,404.86
Audit assessment	<u>323,806.19</u>
Amount per Demand Notice	<u><u>\$746,211.05</u></u>

- (p) Thereafter the respondent considered the matters raised by the appellant in its letter of objection and issued his Decision by letter dated January 27, 1997, confirming the assessment raised and refusing to cancel the appellant's registration as a registered taxpayer.

THE STATUTORY FRAMEWORK

The statutory provisions relevant to this case are the General Consumption Tax Act, the General Consumption Tax Regulations, the Registration (Strata Titles) Act and of course the Revenue Court Rules.

THE PROVISIONS UNDER THE GENERAL CONSUMPTION TAX ACT

Section 3(1) provides for the imposition of General Consumption Tax. It reads in part, so far as is relevant to this case, as follows:

“3(1) Subject to the provisions of this Act, there shall be imposed from and after the 22nd day of October, 1991, a tax to be known as General Consumption Tax -

(a) In the supply in Jamaica of goods and services by a registered taxpayer in the course or furtherance of a taxable activity carried on by that taxpayer

(b)
..... by reference to the value of those goods and services.”

Section 2(1) defines the term “taxable activity” thus, (in part):

“taxable activity” means any activity, being an activity carried on in the form of a business, trade, profession, vocation, association or club, which is carried on continuously or regularly by any person whether or not

for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services (including services imported into Jamaica) to any other person for a consideration, but does not include:-

- (a)
- (b)
- (c) any activity specified in the third schedule.”

Taxable supply is in the same section described as :

“any supply of goods and services on which tax is imposed pursuant to this Act.”

Section 25 reinforces the exemption mentioned above under the definition of taxable activity at “c” above. It provides as follows:

“The goods and services specified in the Third Schedule shall be exempt from the payment of tax under this Act.”

The Third Schedule outlines those goods and services which are exempt from tax. Part I of the Third Schedule deals with exempt goods, and Part II with exempt services. Item 16 of Part II lists among exempt services:

“Services rendered by a corporation as defined in the Registration (Strata Titles) Act in pursuance of the powers and duties specified in that Act.”

Section 2(1) provides:

“Services means the matters specified in the Fourth Schedule”.

The Fourth Schedule is headed:

**“TAXABLE SUPPLIES WHICH CONSTITUTE
THE PROVISION OF SERVICES.”**

It then specifies as set out below:

“The following shall be regarded as the provision of services:

(a)

(b)

(c)

(d) the supply, other than the sale of real property of anything for a consideration which is not a supply of goods.”

(e)

Before it was amended by Act 10 of 1995 in March of that year paragraph

(d) above did not have the words “other than the sale of real property.

Prior to that, services was defined as:

“anything which is not goods but does not include real property, money, securities or choose in action.”

Section 29 (1) provides:

“29(1) A person who supplies goods and services specified in the Third Schedule shall be exempt from being registered under this Act in respect of those goods and services.”

Section 18(b) reads:

“For the purposes of this Act, anything which is not a supply of goods but is done for a consideration is a supply of services.”

**THE RELEVANT PROVISIONS OF THE REGISTRATION
(STRATA TITLES) ACT**

