Supreme Court of New Zealand

10 May 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Thompson v Commissioner of Inland Revenue
(SC 52/2011) [2012] NZSC 36

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appellant, Mr Gaire Thompson, was registered for GST under the Goods and Services Tax Act 1985 in relation to business activities including the leasing of land at Rolleston. In late 1999 he applied to be de-registered on the basis that his taxable supplies for the succeeding 12 months would be under the then registration threshold of $30,000. The Commissioner duly de-registered him with effect from 30 November 1999. Between December 1999 and September 2000 Mr Thompson disposed of the Rolleston land pursuant to three sales, two of which were to an associated company. He did not account for the output tax on these transactions and had no obligation to do so providing his de-registration stood. But an input tax credit claimed by the associated company attracted the attention of the Commissioner and following an investigation, the Commissioner cancelled the November 1999 de-registration, reinstated Mr Thompson's registration until 31 January 2001 and assessed him for output tax on all three sales.

Mr Thompson's ability to de-register depended on his satisfying the Commissioner that his taxable supplies for the succeeding 12 month period would be less than $30,000. At the time he sought de-registration, the rent payable in relation to the Rolleston land exceeded $30,000 per annum. The

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rental issue could be addressed by disposal of all or some of the land if it was to occur over the next 12 months. But such disposal was also potentially capable of being treated as involving a taxable supply (in which case, his taxable supplies would necessarily exceed the threshold). It was, however, arguable that such disposals were not material given s 51(1)(c) of the Act.

Mr Thompson's challenge to the Commissioner's decision to alter the de-registration date succeeded before the Taxation Review Authority which concluded that the proceeds of future sales were irrelevant to the s 52(2) assessment but that, given such sales were to occur, his future rental receipts as at 30 November 1999 were going to be under the threshold.

In *Lopas v Commissioner of Inland Revenue* (2006) 22 NZTC 19,726 (CA), a judgment released after the Taxation Review Authority decision, the Court of Appeal held that a proposed disposal of assets which in that case had actually been "planned" at the de-registration date was relevant to the s 52(2) assessment. They, therefore, rejected the approach to s 52(1)(c) which had been taken by the Taxation Review Authority in that case and in dealing with Mr Thompson's challenge.

Subsequent steps in the present dispute before the High Court and Court of Appeal involved considerable focus on *Lopas* and particularly on the significance of the use of the word "planned" in the Court of Appeal judgment. The Commissioner was partially successful in the High Court which upheld the assessments to output tax on the first two sales but not the third, and completely successful in the Court of Appeal which upheld all three assessments.

On appeal to the Supreme Court, Mr Thompson accepted that he had not been entitled to de-register on 30 November 1999 given the stage that negotiations had reached in relation to the first of the sales. He also accepted that he was liable to pay output tax on that transaction. He maintained, however, that he was entitled to be de-registered with effect from 9 February 2000 (which was the day following the time of supply in respect of the first of the sales). If this contention was right, he would have had no liability for output tax on the other two sales. He argued that his prospective rental turnover for the 12 months following 9 February 2000 was under the $30,000 threshold and that the two later sales which were to occur were not, as at that date, "planned" with the result that the associated proceeds of sale did not have to be taken into account.

The Court has unanimously dismissed Mr Thompson's appeal. Mr Thompson's argument placed too much weight on the use by the Court of Appeal in *Lopas* of the word "planned". The practical effect of s 52(2) is that

Mr Thompson was not entitled to be de-registered unless at the proposed de-registration date it could be predicated that his turnover for the succeeding period of 12 months was not going to exceed the threshold. As at 30 November 1999, Mr Thompson faced the dilemma that his turnover for the succeeding 12 months was necessarily going to exceed the threshold because, unless there was a sale, his rental receipts would exceed the threshold and, if there was a sale, the proceeds of sale would take him over the threshold. Although Mr Thompson did not necessarily face the same dilemma as of 9 February 2000 after the first of the sales, the likelihood of further imminent land sales was such that he was unable to meet the s 52(2) test.

The appeal was accordingly dismissed.

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