



## Supreme Court of New Zealand

16 November 2010

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

### **CONTRACT PACIFIC LIMITED v COMMISSIONER OF INLAND REVENUE (SC114/2009) [2010] NZSC136**

#### **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 [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

Contract Pacific is an inbound tour operator (that is, it sells holiday packages to overseas wholesalers who on-sell them). Amendments to the Goods and Services Tax Act 1985 (GST Act) in 1999 made it clear that GST was payable on these supplies with effect from May of that year. Concluding that it had unnecessarily accounted for GST between July 1993 and April 1999, Contract Pacific filed a GST return seeking a refund of the GST it had paid during that period.

Under s 46(1)(a) of the GST Act, a claimed refund must be paid within 15 working days of receipt of the return unless the Commissioner has, within that 15 working day period, either given notice of his intention to investigate the

return (under s 46(5) of the GST Act) or requested further information of the taxpayer (under s 46(4) of the GST Act).

In this case, the Commissioner gave timely notice of an intention to investigate the return under s 46(5) and some months later requested further information from Contract Pacific about its claim. In February 2001, the Commissioner by mistake sent Contract Pacific a cheque for the refund which had been claimed. This cheque was cancelled before it was presented.

A further and retrospective amendment to the GST Act provided that supplies by inbound tour operators to overseas customers had always been subject to GST but there was an exception in relation to refunds which had been paid before May 2001. Contract Pacific claimed that when the Commissioner sent the cheque to it in February 2001, he was relevantly paying the refund and, on this basis, sued the Commissioner on the cheque. In order to succeed in this claim, Contract Pacific had to establish first, that the Commissioner was obliged under ss 20(5) and 46 of the GST Act to refund GST and secondly, that the issuing of the cheque amounted to the payment of a refund. The Supreme Court judgment addresses only the first of these points.

The High Court held that as the Commissioner's request for further information was not made within the 15 working day time limit provided for in s 46(4) it triggered an obligation to make an immediate refund. The Court of Appeal set aside that judgment and held that having given timely notice of investigation, the Commissioner was entitled to make a further request for information as part of that investigation.

This Court has unanimously dismissed Contract Pacific's appeal from that decision. It has held that the Commissioner's request for information did not lie outside the investigation process contemplated by s 46. More fundamentally, however, it has also concluded where either s 46(4) or (5) has been engaged, the governing subsection as to payment is s 46(1)(b) and the refund does not become payable until the point in time stipulated in s 46(1)(b) which is when the Commissioner has determined that the refund is payable.

Since the Commissioner was never of that opinion, the refund never became payable.

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