

TAX CASE COMMENTARY

Introduction

The Institute of Chartered Accountants of Maldives is the national professional accountancy body of the Maldives, established to promote and regulate the accounting and auditing profession. It plays an important role in strengthening professional standards, supporting accountants and auditors, and contributing to better financial reporting, governance, and business practices in the Maldives.

The Taxation Committee of Institute of Chartered Accountants of Maldives focuses on matters relating to taxation policy, compliance, and administration in the Maldives. The committee reviews tax legislation, provides technical guidance, and prepares professional commentaries on significant tax cases and developments to support greater understanding of tax laws and their practical application.

This tax case commentary on *Maldives Bay Private Limited v Maldives Inland Revenue Authority [2023] SC 12* has been prepared by the Taxation Committee of Institute of Chartered Accountants of Maldives as part of its efforts to provide practical insights into important judicial decisions affecting the Maldivian tax landscape.

Maldives Bay Private Limited v Maldives Inland Revenue Authority

[2023] SC 12, 05 April 2023

Factual Background

Maldives Bay Private Limited (“**Maldives Bay**”), the operator of Angsana Velavaru tourist resort sold capital assets, including sand barges and fire pumps, to Sanctuary Sands Maldives Private Limited (“**Sanctuary Sands**”). Maldives Bay declared Goods and Services Tax (“**GST**”) on the transactions at the general sector GST rate of 6% (general sector GST rate prevailing at the time).

Maldives Inland Revenue Authority (“**MIRA**”) issued a Notice of Tax Assessment to Maldives Bay, charging additional GST on the basis that the transaction was subject to tourism sector GST pursuant to section 15(a)(1) of the Goods and Services Tax Act (“**GST Act**”).

MIRA’s position was that:

- a. Maldives Bay was registered with MIRA under the tourism sector for GST purposes; and
- b. The invoices relating to the transaction were issued under its tourism sector Taxpayer Identification Number (“**TIN**”).

Accordingly, MIRA asserted that the transaction was subject to GST at the tourism sector rate of 12% (tourism sector GST rate prevailing at the time).

Tax Appeal Tribunal Decision

Maldives Bay challenged the assessment before the Maldives Tax Appeal Tribunal (“TAT”), which ruled in its favour. The TAT held that the transaction does not constitute supply of “tourism goods” under sections 15(a)(1) and 15(a)(2) of the GST Act on the following grounds.

- a. Only goods supplied from a tourism establishment, as specified under section 15 of the GST Act, may be classified as a tourism good.
- b. It may be inferred from section 15(a)(2) of the GST Act that, for the purpose of classifying a taxable supply made by an establishment referred to in section 15(a)(1) of the GST Act as either a tourism or general sector supply, it is necessary to consider whether the goods are of the nature that is ordinarily made available to the primary recipients of such establishments, namely tourists.
- c. The sale of capital assets by Maldives Bay cannot be construed as supply of goods ordinarily provided to tourists at a resort. Accordingly, the transaction cannot be regarded as a supply of tourism goods.
- d. The classification of a taxable supply as either a tourism sector or general sector supply must be determined by reference to section 15 and 16 of the GST Act, and not by sector under which the taxpayer is registered or the TIN under which the invoice was issued.

High Court Judgement

Following the TAT's decision, a subsequent appeal was filed by MIRA before the High Court, which overturned the TAT's ruling and decided in favour of MIRA on the following grounds.

- a. Maldives Bay is registered with MIRA as a tourism goods and service provider. Accordingly, supplies made by Maldives Bay could, prima facie, be regarded as tourism goods.
- b. The invoices in question were raised under a tourism sector TIN.
- c. The goods were not supplied through a staff shop at the resort.
- d. The burden of proving that the goods were supplied in a manner not falling within the GST sector for which they were registered rested on Maldives Bay. However, Maldives Bay failed to discharge this burden satisfactorily.

Legal Issue before Supreme Court

Following the High Court decision, Maldives Bay filed an appeal to the Supreme Court presenting the following legal issues for determination.

1. Whether it is required under the GST Act to consider the primary business of the company, its GST registered sector and the TIN under which the invoice is issued, in determining the taxable rate of a supply made pursuant to section 15 and 16 of the GST Act.
2. Whether the capital assets supplied by Maldives Bay to Sanctuary Sands is subject to tourism sector GST rate or the general sector GST rate.
3. Whether a burden of proof arises on Maldives Bay in respect of matters not disputed by MIRA.

Supreme Court Judgment

The Supreme Court unanimously held that, pursuant to sections 15(a)(1) and 15(a)(2) of the GST Act, tourism sector GST rate is applicable only on taxable supplies made by a registered tourism establishment to its primary customers, i.e., tourists.

The Supreme Court observed that the treatment of certain supplies as zero-rated under section 20 of the GST Act, demonstrates that the authority to levy GST under the Act depends on the nature of the supply. Further, it reaffirmed that taxes can only be imposed pursuant to statutory authority enacted by Parliament, and that the same principle equally applies in determining the applicable GST rate. Accordingly, the GST Act does not permit the classification of a supply as a tourism good based on the taxpayer's GST registered sector or the TIN under which an invoice is issued.

Since the capital assets sold to Sanctuary Sands by Maldives Bay are not goods ordinarily made available to tourists at the resort, the Supreme Court held that the transaction cannot be considered as a tourism good and is therefore subject to GST at the general sector rate.

The Supreme Court also held that, where a taxpayer is registered under the wrong GST sector or has not been registered for GST, MIRA may regularize the registration in line with its administrative practice, as there is no legal restriction preventing it from doing so.

The Supreme Court further held that, although the burden of proving that a supply falls outside the taxpayer's registered GST sector generally rests with the taxpayer, no such burden arose in this case, as there is no dispute between the parties regarding the nature of the supply, i.e., sale of capital assets. Accordingly, Maldives Bay was not required to furnish documentation to establish that the supplies were not tourism goods.

The judgement establishes a clear precedent on the statutory basis for determining the applicable GST rate and reinforces the limits of administrative discretion in determining the tax treatment under the GST Act.