IN THE REVENUE COURT

REVENUE COURT APPEAL NO: 2 OF 2002

IN RE THE GENERAL CONSUMPTION TAX ACT

BETWEEN	GEORGE TRADING LIMITED	APPELLANT
AND	THE COMMISSIONER TAXPAYER AUDIT AND ASSESSMENT DEPARTMENT (GENERAL CONSUMPTION TAX)	RESPONDENT

Mr. Herbert A. Hamilton for Appellant; Mrs. Yolande Lloyd-Small for Respondent;

Heard on May 28 and 30, July 10 and 23, and August 27, 2003.

ANDERSON: J.

This is an application by way of a summons to extend the time for the filing of an appeal in the Revenue Court, either against a decision of the Resident Magistrate for Kingston, or that of the Respondent Commissioner of Taxpayer Audit and Assessment, and was seeking an order in the following terms:-

> "That the time limit for filing an appeal against the decision of:-
>
> (a) the learned Magistrate for the Parish of Kingston, Mr. Owen Parkin, made in the Resident Magistrate's Court holden at Kingston on the 29th day of August 2001 whereby the court ordered that the applicant pay the sum of Twenty Two Million, Eight Hundred and Twenty-Eight Thousand, Two Hundred and Forty-Nine Dollars and Ninety-Six Cents ($22,828,249.96) to the Collector of Taxes;
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> (b) the respondent dated the 5th day of November 1998,
>
> be extended to 21 days from the date of this order."

The application arises out of an assessment by the then Commissioner of the General Consumption Tax (in these proceedings now represented by his successor the Commissioner of Taxpayer Audit & Assessment Department) raised on the 13th July 1998, assessing the applicant to G.C.T. in the sum of Five Million, Six Hundred and Seventy Thousand, Five Hundred and Fifty-Seven Dollars ($5,672,557.00) for the period December 1994 to

December 1997. On the 5th November 1998, after the taxpayer had objected and discussions had taken place between the parties, the Commissioner issued a decision requiring the applicant to pay G.C.T. of Five Million Seven Thousand, Two Hundred and Sixty-Seven Dollars and Twenty-Three Cents ($5,007,267.23). On the 13th March 2001, the applicant was served a summons to attend the Resident Magistrate's Court on the 28th March, 2001 in respect of the aforesaid decision for taxes, interest and penalty in the total sum of Twenty-Two Million, Eight Hundred and Twenty-Eight Thousand, Two Hundred and Forty-Nine Dollars, Ninety-Six Cents ($22,828,249.96). A trial date was fixed for 29th August 2001. On that day, the applicant's counsel did not appear in court. According to the applicant in an affidavit filed on its behalf in these proceedings, discussions took place with the tax authorities. The "supplemental affidavit" of Rafaat Hadid states that the applicant company had been assured by its accountant, a Mr. O'Gara, that there were indications from the officers taking part in those discussions, that there would be an amicable resolution of the matter before the court. It was averred that as a consequence of that alleged possibility, counsel was "not properly retained in time to represent the Appellant at the time of the hearing". The learned Resident Magistrate made an order, described in the affidavit as an "ex-parte order," that the applicant pay the sum demanded in the complaint in six (6) equal monthly instalments. I pause here merely to say that it is not at all clear to me why an order made by the Magistrate in proceedings of which due notice had been given to the applicant, and at which he was fully entitled to be present and be represented and to lead evidence, should be referred to as an ex-parte order because the applicant failed to participate.

When the matter initially came before me on the 28th day of February 2002, I made an Order granting an amendment to the summons, to state that "the time limited for filing an appeal against the order of the Resident Magistrate made on the 29th day of August 2001 be extended to 21 days from the date of this order." At the same time, a proposed notice and grounds of appeal had also been filed to facilitate consideration of the summons to extend the time. The application was adjourned to be considered on March 19, 2002. The Respondent's attorney thereafter filed a notice on March 8, 2002, that the Respondent intended to take a preliminary point in limine, objecting to the hearing of the application to extend the time.

At the request of counsel for the Applicant, the hearing for March 19, 2002 was adjourned because it was inconvenient for counsel, and the matter next came before the Court on May 13, 2002 when the Respondent sought to make submissions on its preliminary objection. On application of the Applicant's attorney, that matter was again adjourned and the following order was made.

Ordered that:-

1. Hearing of the point in limine adjourned sine die.
2. Costs to the Respondent to be agreed or taxed.
3. Attorneys for the Appellant undertake to advise the Court within fourteen (14) days, whether the Appellant will be withdrawing or pursuing this appeal.

The attorneys for the Applicant did nothing further pursuant to that order. However, in May of 2003, another summons for the extension of time was filed on behalf of the applicant. Though it purported to be a "re-listed summons", it was in fact a new summons by a new attorney-at-law on behalf of the applicant. This summons was also accompanied by a new "proposed notice and grounds of appeal."

When this new summons came before me initially on the 28th of May, 2003, counsel for the respondent again sought to take a preliminary point, *in limine*, and submitted that the court did not have the jurisdiction to hear the application. It was submitted that the basis on which the applicant's case had been before the Resident Magistrate's court was to be found in section 48 (1) of the General Consumption Tax Act. Under that section of the G.C.T. Act, the outstanding taxes, penalties and interest may be collected under the provisions of the Tax Collection Act, and under that Act, this is to be done "in a summary manner". The section of the GCT Act is in the following terms:

> "The provisions of the Tax Collection Act concerning payment, collection and recovery of tax and the enforcement of payment thereof shall apply to tax imposed under this Act."

Section 46 (1) of the Tax Collection Act provides as follows:

> All penalties and forfeitures imposed by this Act, or by the Licence and Registration Duties Act or the Property Tax Act, or by any other enactment in force for raising and imposing duties or taxes, may be recovered, and all taxes, duties, and arrears required

> to be paid to the Collector of Taxes, and not paid to him pursuant to the provisions of this Act, or other such enactments as aforesaid, as well as the penalty thereon, may, instead of the process of distress hereinbefore directed, also be recovered *in a summary manner* in the parish wherein such offence or default was committed, or the offender or defaulter resides; and, in case of non-payment, may be enforced by distress and sale of the offender's or defaulter's goods, or imprisonment not exceeding three months, unless such penalty, taxes, duties, arrears, and costs shall be sooner paid, and may be enforced under the provisions of any Statute in respect to summary proceedings, and the forms of any such Statute, or other Statutes, may be adapted to meet the requirements of this Act or other enactments as aforesaid; the taxes, duties, and arrears, and the surcharge, and any penalty attaching to such non-payment, may be included in, and recovered in one proceeding, notwithstanding any provision in any enactment relating to summary proceedings providing to the contrary.

The taxes exigible under the Act are therefore recoverable in *summary proceedings* before a Resident Magistrate, as provided for by the latter Act. The submission on behalf of the Respondent was that whenever the relevant statute, as in the case of the provision of the G.C.T. Act and the Tax Collection Act set out above, does not say that the Resident Magistrate is to exercise a special statutory summary jurisdiction but merely says that he is to exercise his jurisdiction "in a summary manner", the jurisdiction which is then conferred, is as to the Resident Magistrate in Petty Sessions. Indeed, the Summons served on the applicant company for the tax claimed in the Commissioner's decision, is explicitly stated to be issued, "In Petty Sessions". Support for this proposition is found in the case of **Hart v Black, [1956] Vol. 7, JLR page 56,** a decision of the Court of Appeal. In that case it was held that "where it is intended to confer special statutory summary jurisdiction on a Resident Magistrate, the statute must clearly and distinctly say so". (Per McGregor J.) This case is supported by **R v Harris (1971) 12 J.L.R. 591,** a decision of the Court of Appeal. Accordingly, in the instant case, the learned Resident Magistrate was sitting as a court of Petty Sessions. The principles governing the right of appeal from the Magistrate in the Petty Session jurisdiction are to be found in the provisions as set out in the Justices of the Peace (Appeals) Act. Section 3 of that Act indicates that an appeal from Petty Session lies to a Judge in the Supreme Court. It was the further submission that since this court heard appeals as the "Revenue Court" an appeal did not lie to this court qua Revenue Court. It was not "the Supreme Court" being a creature of its own statute, the Judicature Revenue Court Act, and secondly, in any event, the jurisdiction of the Revenue

Court to hear appeals which is set out in section 4 (1) of the Judicature Revenue Court Act, did not include hearing appeals from petty sessions. The provisions of that section are set out below:

> "The Revenue Court shall have jurisdiction to hear and determine any appeal, cause or matter brought to the Court under or pursuant to any of the enactments for the time being specified in the Schedule".

The enactments referred to in the Schedule are:-

> Section 18 of the Customs Act.
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> Section 14 of the Exercise Duty Act.
>
> Section 4 of the Valuation Act
>
> Sections 27(4), 31(5), 44(7), 72(4), 73(4), 76, 78(4), 80 and 81 of the Income Tax Act
>
> Section 22 of the Land Valuation Act
>
> Sections 8, 16 and 22 of the Land Development Duty Act
>
> Section 26 and 30 of the Transfer Tax Act
>
> Section 11 of the Bauxite (Production Levy) Act.
>
> Section 41 of the General Consumption Tax Act

Since the Revenue Court has this statutorily circumscribed jurisdiction, *ex hypothesi*, it is not competent to hear this application in relation to a matter arising out of a decision of the Resident Magistrate sitting in Petty Sessions.

With respect to paragraph (b) of the application, (that to extend the time for appealing against the decision of the Commissioner), counsel for the Revenue urged the court to the view that it was, in any event, too late for an appeal against the decision of the relevant commissioner as there was now a judicial decision in respect of the liability previously assessed by the relevant commissioner. The applicant had therefore lost the opportunity to have the Revenue Court hear an appeal against the respondent's assessment (even assuming it was open to the court to hear such an appeal at this time) when there was in place, a final decision of a court of competent jurisdiction, albeit a Resident Magistrate's court in its Petty Sessions summary jurisdiction, which decision had not been appealed and was therefore still extant. Indeed, the question could be asked, what would be the position if, in the absence of any appeal against

the judgment of the Magistrate, the Revenue Court, having granted leave to extend the time to appeal against the respondent's decision, then came to the decision on hearing that appeal, that the respondent was wrong on issuing the decision which was being called into question. It seems obvious that there would still be need to do something done about the Magistrate's decision.

In response to these submissions, Mr. Hamilton for the Applicant argued that the preliminary points taken *in limine* should not succeed. He submitted that it was not correct to say that the Revenue Court was not in fact part of the Supreme Court for the purposes of hearing an appeal from Petty Sessions to a Judge of the Supreme Court in Chambers. Further, the jurisdiction of the Revenue Court is not as circumscribed as suggested, being limited to the matters listed only in the Schedule. Indeed, section 3(1) of the Judicature (Revenue Court) Act specifically states:

> There is hereby established a court, to be styled the Revenue Court, which shall have such jurisdiction and powers as may be conferred upon it by this Act or any other law.

Further, by section 6 of the said Act establishing the Court, it is provided:

> 1. The Judge of the Court shall be a Puisne Judge of the Supreme Court nominated by the Governor General acting on the advice of the Judicial Services Commission, being a person appearing to be versed in the law relating to income tax.
> 2. The Judge shall, in relation to the Court, have *mutates mutandis*, all the rights powers privileges and immunities of a Puisne Judge of the Supreme Court.

In support of this proposition, he cited the case of **United Estates Limited v Commissioner of the General Consumption Tax 1992, 29 J.L.R 286**, and he referred in particular to the judgment of Downer, J.A. in the Court of Appeal, at pages 286-287. In that case, the Judge of the Revenue Court, considering that he had no jurisdiction because of section 4 of the Judicature (Revenue Court) Act, quoted above had declined to hear an appeal by a taxpayer from a decision of the Commissioner of the General Consumption Tax. The said appeal had been brought by the taxpayer on the basis that section 40(7) of the GCT Act gave a person dissatisfied with a decision of the GCT Commissioner the right to appeal to the Revenue Court. In the Court of Appeal, Downer, J.A. had this to say:

The single issue to be decided in this appeal is whether Section 40(7) of the General consumption Tax confers jurisdiction on the Revenue Court to hear an appeal from the appellant who is dissatisfied with the decision of the Commissioner.
Section 40(7), which came into force on 27th October 1991, reads as follows:

"(7) Where any person is dissatisfied with a decision of the Commissioner (other than a decision relating to an assessment made on that person) that person may appeal to the Revenue court within thirty days of the receipt of the decision and the Revenue Court may make such order as it thinks fits."

To understand the importance of these plain words, reference must be made to the Judicature (Revenue Court) Act which established the Revenue Court and by Section 3(1) of the Act stipulated that the Court "shall have such jurisdiction and powers as may be conferred upon it by this Act or by any other law." To grasp the appropriateness of extending the jurisdiction of the Court by section 40(7) of the General Consumption Act, it must noted that section 97(1) (2) of the Constitution reads as follows:

"97 (1) There shall be a Supreme Court for Jamaica which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law"

As for the status of the Revenue Court, it is in substance apart of the Supreme Court. This follows logically from 97(2) which read:

"(2) The judges of the Supreme Court shall be the Chief Justice, a Senior Puisne Judge and such number of other Puisne Judges as may be prescribed by parliament."

When parliament labels a court, the Revenue Court, and a Puisne Judge of the Supreme Court is prescribed to preside over it – the logic of the Constitution is that it is part of Supreme Court. Section 6 of the judicature (Revenue Court) Act recognizes this and is pertinent to quote it. It reads:

He then proceeded to quote section 6 which has been set out above.

As was also again noted by Downer, J.A. in **The Commissioner of Inland Revenue v Raymond Clough, RMCA 27/**90: "The Revenue Court is in substance the Revenue Division of the Supreme Court. See **Hinds v The Queen** 1977 A.C. 195".

It seems clear from the foregoing that an appeal from the decision of a Resident Magistrate sitting in his summary jurisdiction in petty sessions may properly be made before the Judge of the Revenue Court, and therefore the first limb of the preliminary objection must fail.

With respect to the second limb of the submission *in limine*, it was submitted that notwithstanding the decision of the Resident Magistrate, the Revenue Court still had the jurisdiction, pursuant to the Revenue Court Rules, to hear an appeal against the decision of the commissioner. In particular, it was submitted that Rule 32 gave the Court jurisdiction to grant an extension of time, even after the expiration of the time appointed or allowed.
Rule 32 is in the following terms:

> The Court or Judge may on the application of any party by way of summons enlarge or abridge the time for doing any act or taking any proceedings under these rules or under any other rules of procedure governing the exercise of the jurisdiction of the Court or Judge upon such terms as it may think fit; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, or the Court or Judge may direct a departure from the rules in any other way, where this is required in the interest of Justice.

Upon completion of the preliminary submissions, I ruled in favour of the applicant. Even in respect of the submissions on the second limb of the application, I felt that to deny the applicant the opportunity of at least making its submissions on the substantive application, would be inconsistent with Rule 32 set out above, and I therefore held that the preliminary point failed, and I proceeded to hear submissions on the substantive summons.

It was again submitted that the applicant's summons to extend time for filing an appeal should be granted for the following reasons.

1. Rule 32 clearly gave the court a discretion to grant the extension even where the time for doing the act contemplated had passed. The court ought to look at the extent of the delay, whether it was inordinate or inexcusable, and the balance of prejudice, as between the parties. In the instant case, the delay had not been inordinate or inexcusable.
2. The time for filing the appeal ran from the date of the Order or the date of service of notice of the decision. In this regard, it was pointed out that the affidavit of Rafaat Hadid, a director of the company, stated that he had, on the 25th day of February, 2002, received a copy of a letter from the Resident Magistrate's Court to the Commissioner of Inland Revenue, "recounting the events which led up to the Ex Parte Order by the Magistrate". It should be noted, however, that the first

summons for extension of time was filed on January 21, 2002, and the matter came on for hearing on February 28, 2002. On that day, the court granted an extension of time for filing the relevant appeal "to within twenty-one (21) days of the date of this Order". It was again before the Court on May 13, 2002, when another order was also made.

3. It was submitted that the Resident Magistrate's "Ex Parte", Order was inappropriate and wrong in principle because the magistrate did not advise himself as to the distinction to be made where an objection had been made to the assessment and where none was made.

4. The assessment of the Commissioner and the decision of the Magistrate are fatally flawed because there is a mandatory requirement both under the GCT Act and the Judicature (Resident Magistrates) Courts Act that full particulars be supplied along with summonses issuing out of the Resident Magistrate's Court. As provided in Order V11 Rule 5 of the Resident Magistrates Court Rules, "In every case the particulars of the claim shall be annexed to the summons and to all copies thereof before service and shall be deemed to be a part thereof". The case **Collector of Taxes v Winston Lincoln**, [1988] 25 JLR 44, was also cited by Counsel for the Applicant in support of the proposition that "a notice of assessment is defective if it does not contain, in substance and effect, the particulars on which the assessment is made".

5. The assessments were bad because they were "global assessments" rather than individual assessments in respect of individual returns, and because they lumped together taxes, penalties and interest.

In response to the submissions of Counsel for the Applicant, Mrs. Lloyd-Small for the Respondent submitted that the application to extend the time should be refused. She submitted that contrary to the proposition advanced by the Applicant, Rule 32 of the Revenue Court Rules, does not have any application. She made the following specific submissions.

1. The right to appeal from a decision in petty sessions is set out in section 3 of the Justices of the Peace (Appeals) Act. There is no provision for any extension of time

for lodging any appeal under the Justices of the Peace (Appeals) Act. Section 6 of the said Act provides:

> "The appellant shall, either during the sitting of the Court or other tribunal at which such judgment, decision or report as aforesaid is delivered give verbal notice of appeal or at any time within fourteen days after such judgment, decision, or report delivered give a written notice of his intention to appeal to the adjudicating Justice, or other officer or body as aforesaid, and to the respondent; and, in either case shall, within such period of fourteen days, deliver to the clerk of the Resident Magistrate's Court or other proper officer, and also to the respondents, the grounds in writing of his appeal; provided, that the time shall not commence to run in the case of an affirmative judgment until the copy of the conviction, order, or adjudication shall have been drawn up and be ready for delivery to the appellant".

The rejection of the points taken, in limine, by the respondent, was a complete recognition that a Supreme Court Judge in chambers had the right to hear the appeal from petty sessions as set out in the Justices of the Peace (Appeals) Act, and that it was this Act which was applicable herein. There is no indication that any notice of appeal was ever given either orally or in writing. Personal service of the Court's order was effected on September 18, 2001, and the period for the giving of notice expired on October 2, 2001. In fact, the application for the "extension" of the time for appealing against the decision of the Magistrate in Petty Sessions, presupposes an acceptance of the fact that the time for instituting that appeal has passed.

2. The application fails to take account of sections 13 and 48 of the Justices of the Peace (Appeals) Act. Those sections are important. Section 13 seems to set out a pre-requisite for a litigant to be entitled to an appeal. It states:

> "To entitle any person aggrieved or affected thereby to appeal from any judgment, decision, or report as aforesaid, the appellant shall, as hereinbefore provided for the giving of notice of appeal, enter into a recognizance, with one or more surety or sureties, in a sum sufficient in the case of a judgment inflicting a penalty or awarding a sum of money or costs to cover the penalty or sum awarded and costs and in a further sum of six dollars for the costs of appeal, if any, shall be adjudged".

Section 48 of the said Act also is important because it provides as follows:

> "No party shall be entitled to appeal from any judgment, order, order of dismissal, determination, conviction, decision or report, which has gone

> by default for want of appearance or otherwise, unless such party shall make oath in writing, setting forth his grounds of appeal and the reasons why he did not appear at the hearing or trial, and that such appeal is not made for delay, but to obtain substantial justice in the matter, which affidavit shall be filed, along with a written notice of appeal and a recognizance within the like period of fourteen days as is herein limited in other cases after such judgment, order, determination, conviction, decision or report as aforesaid". (My emphasis)

It was accordingly submitted that the applicant had failed to meet the conditions precedent to hearing of an appeal by this court; in particular, no satisfactory reasons were ever given as to why there was no appearance at the hearing, particularly since there was evidence that the Magistrate adjourned the hearing to allow time for the applicant or its representative to come to court.

3. This application was an abuse of the process of the Court. In support of this submission, counsel for the respondent cited **Aminali and Others v Zamurath Ramnarine [1984] 34 W.I.R. 358**, a decision of the Court of Appeal of Trinidad & Tobago. In that case it was held: "that although the Court might allow an extension of time in which to appeal where a client had misunderstood advice from her solicitor (or where the solicitor had made a mistake) and that misunderstanding (or mistake) was the substantial cause of the delay, in this case, the delay had been inordinate and the respondent had advanced no sufficient ground for extending the time in which to serve a respondent's notice; the application would be refused". In the instant case, although the applicant alleged that advice had been received from its accountant which led it to believe that the matter would be settled, and also claimed to have been advised by officers from the Revenue that the only recourse was an appeal to the Minister of Finance, the inordinate delay should militate against allowing the extension of time for appealing, especially given the applicability of section 48 of the Justices of the Peace (Appeals) Act aforesaid. Further, argued counsel for the respondent, the history of the progress of this matter before this court, to which I return below, bears out the submission that this application is an abuse of the processes of the Court.
4. With respect to the application for extension of time to appeal against the decision of the respondent, it was submitted that the decision of the Commissioner was now

barred because of the judicial decision of the learned Resident Magistrate. The Applicant has lost its right to appeal in respect of the Commissioner's decision, not having brought that appeal within the time limited by the GCT Act and the Judicature (Revenue Court) Act. Indeed, even on the applicant's own case, there were no discussions between the applicant and the Revenue in the thirty (30) days after the commissioner had made his decision of November 5, 1998, which discussion it was alleged, had contributed to the delay in retaining counsel.

In his response to these submissions, Mr. Hamilton again referred to Rule 32 of the Revenue Court Rules. He urged the Court to the view that it was not sufficient to say that the appeal was in respect of the magistrate's exercise of his petty sessions jurisdiction, and therefore governed by the JP (Appeals) Act. He submitted that there was no merit in the submission that one ***must*** (my emphasis) look to the Justices of the Peace (Appeals) Act, and he referred the Court to section 12 of the Justice of the Peace Jurisdiction Act which allowed the justices to adjourn a hearing at which a defendant failed to appear. He reiterated that in exercise of his jurisdiction, the magistrate must have regard to the statute under which the complaint is brought. The relevant statute is the GCT Act and the magistrate should accordingly satisfy himself that the complaint is properly made and before him. He again pointed out that time does not run from judgment, but only from the times set out in section 6 of the JP (Appeals) Act, and while there was an affidavit from Mr. Robert Brown that he had served the Court's order on the applicant, no copy of that order was exhibited.

He submitted in summary that the court, in considering this application, must consider the merits of the proposed appeal; whether the delay was inordinate and inexcusable; the question of the relative prejudice to the parties and the justice of the case. These were the basic considerations.

Having carefully considered the submissions, I have come to the view that this application must be dismissed. It seems to me that once there is agreement that an appeal lies to the Revenue Court Judge (sitting as a Judge of the Supreme Court) from the decision of the magistrate sitting in petty sessions, then it must follow that the governing statute is the Justice of the Peace (Appeals) Act, a decision which informed the rejection of the

preliminary point in limine I agree with counsel for the respondent that the applicant has failed to fulfill the conditions precedent for filing an appeal under that Act. Further, and in any event, I find that there is no provision for extending the time for filing of an appeal against the decision of the Resident Magistrate pursuant to the terms of the relevant Act.

However, if I am wrong in this, I would also hold that the application ought not to be allowed pursuant to Rule 32 of the Revenue Court Rules, even if that provision could be called in aid. In coming to this conclusion, I would set out the following propositions.

A. It is clear that the court has a discretion under Rule 32 pursuant to which it may grant an extension of the time for hearing an appeal. It will be recalled that the rule is in the following terms;

> The Court or Judge *may on the application of any party by way of summons enlarge or abridge the time for doing any act or taking any proceedings under these rules or under any other rules of procedure governing the exercise of the jurisdiction of the Court or Judge upon such terms as it may think fit*; (my emphasis)

In exercising its discretion, the court must look at all the circumstances and satisfy itself that it exercises that discretion in the interests of justice. In this regard, it is instructive to look at the history of this matter. The first application to extend time for filing of an appeal was filed on January 21, 2002. When that matter came before the court on February 7 2002, I granted an application for the summons to be amended. That amendment contemplated an extension of the time for filing the appeal to "twenty one (21) days from the date of the Order", and the matter should have come back before me by March 19, 2002. Nothing was done by the Applicant to secure an appropriate order, although as noted above, the Marc 19, 2002 hearing was rescheduled at the request of applicant's then counsel. The matter was next before the court on May 13, 2002, when the respondent's counsel sought to take a point in limine. On the application of the Applicant's counsel, the matter was again adjourned with "costs to the Respondent to be agreed or taxed". At the same time, the counsel for the Applicant gave an undertaking to this court "to advise the court within fourteen (14) days, whether the Appellart will be withdrawing or pursuing this appeal.

Again nothing further was done until a change of attorney was filed March 7, 2003. In May 2003, a summons, purporting to be a "re-listed summons", was filed on behalf of the Applicant. In fact, the wording of the summons is different from that which had previously been before the court.

B. No application had been heard either in respect of the Resident Magistrate's decision of August 2001, nor the Commissioner's decision in November 1998, prior to May 2003.

C. The affidavit of George Hadid, a director of the applicant company, dated 17th January, 2002, in support of the summons originally filed, stated as follows: "That due to an oversight by the Appellant's Accountant and misleading information given to the Appellant that the matter was being discussed with the tax authorities, the Appellant did not take any positive steps to retain counsel in time to attend the Resident Magistrate's Court for the hearing of the Summons". This averment differs materially from that in the "supplemental" affidavit of "Rafaat Hadid", (who it is understood, is the same person as "George Hadid"), sworn April 28, 2003 in support of this most recent application. In this latter affidavit, Mr. Hadid stated: "That the Appellant's Accountant, a Mr. O'Gara who continued to have discussions with officers of the department, assured me that there was likely to be an amicable resolution of the matter before the aforesaid date; as a consequence Counsel was not properly retained in time to represent the Appellant at the hearing of the Summons on the 29th day of August 2001". I am of the view that these two averments are fundamentally incompatible, and raise serious issues concerning the credibility of the affiant.

D. It is not at all clear to me why an order made by the Magistrate in a trial at which the Applicant had been properly notified and, on the day, given time to have counsel present its case, should be characterized as an "ex parte" order. In my view, nothing turns on the fact that the applicant was, of its own choice, un-represented at its trial.

E. I accept the reasoning of the Court of Appeal of Trinidad & Tobago in the **Aminali case** referred to above. I am persuaded that the Applicant has been guilty of

inordinate and inexcusable delay, and has failed to give any persuasive reasons for that delay.

In the circumstances, my ruling is that applications for an extension of time to file an appeal against the decisions of the Resident Magistrate and the Commissioner of the Taxpayer Audit and Assessment are both refused.

Costs to the Respondent to be agreed and if not taxed.

Leave to appeal granted.