



CARIBBEAN COURT OF JUSTICE

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THE CCJ DISMISSES GUYANA STORES LTD'S CHALLENGE TO PAY 3 BILLION DOLLARS IN UNPAID TAXES

Port of Spain, Trinidad. In the case of *Guyana Stores Ltd v The Attorney General, the Revenue Authority and the Commissioner of the Revenue Authority*, the Caribbean Court of Justice (CCJ) upheld the Court of Appeal's decision that Guyana Stores' appeal should be dismissed as the company failed to make out any constitutional law breaches of its rights to not be deprived of its property.

Guyana Stores challenged a demand by the Revenue Authority to pay the sum of \$3,811,346,397 for unpaid taxes. The company said that the Revenue Authority failed to assess the taxes payable by the company in accordance with the provisions of the Income Tax Act, in particular, that no notice of assessment had been sent to the Company prior to the Revenue Authority's demand. In such a case, it was argued, it would have been unconstitutional for the Revenue Authority to demand that the said taxes be paid as it would amount to a deprivation of the company's property. The company also argued that the requirement to pay a 2% minimum corporation tax as required by section 10A of the Corporation Tax Act was unconstitutional because, among other things, (a) the purported tax was not truly a tax but a forced loan and as such it amounted to a compulsory acquisition of property and (b) the Revenue Authority had been wrongfully applying the statute because, for example, the proper interpretation of the Corporation Tax Act excluded the imposition of any taxes in years where the company was unprofitable, and not for all years as demanded by the Revenue Authority.

The CCJ held that the 2% minimum corporation tax was not a loan because the State does not repay the taxpayer nor does the taxpayer have any right to repayment or redemption. The court regarded these two features as crucial elements of any loan. Since the legislation was not unconstitutional, if the Revenue Authority had been wrongfully interpreting and applying the section, this alleged misapplication should have been challenged by following the statutory procedure laid down in s.78 of the Income Tax Act, and not by launching a constitutional action. It was an abuse of process for litigants to bring claims for constitutional relief in matters where not only was an alternative remedy available but that remedy was the natural and the statutorily provided recourse.

The Court also found that there was no statutory form of notice prescribed for conveying an assessment to a taxpayer and, after examining the correspondence between the parties, the Court concluded that the company had been notified of the assessment, that the assessment had not been done in an arbitrary manner and that it had been perfectly open to the company to notify the Commissioner of its objection and inconceivable that the Commissioner would have rejected the company's objection. Furthermore, nothing stopped the Company from bringing two sets of proceedings, one in the High Court challenging an alleged constitutional violation and another before the Commissioner and the Appeal Tribunal.

The Court concluded that there was no basis for it to intervene to protect the company from the consequences of its decision not to follow the statutory provision for disputing a tax liability. It would be left to the company and the Revenue Authority, as well as the State in its greater capacity, to resolve the dispute as to the liability to tax if, indeed, beyond the Company's challenge to the constitutionality of the 2% minimum tax, there was really a dispute. The appeal was therefore dismissed with costs to the Respondents.