



Insight

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Abdulla Shareef v Maldives Inland Revenue Authority (2018)

Summary

*What triggers the time of supply?
Can MIRA make an assessment
based on information that is not
provided by the taxpayer?*

In the case of *Abdulla Shareef v MIRA*¹, the Tax Appeal Tribunal, by unanimous decision, held that the MIRA's Notice of Tax Assessment charging GST on a transaction based on a quotation issued by Abdulla Shareef, was in violation of the time of supply rules as stipulated in Section 17 of the GST Act².

Two key issues were resolved in this decision - firstly, the issuance of a quotation by a GST registered person cannot be considered to have triggered time of supply under Section 17 of the GST Act and, secondly, if the MIRA conducts an audit of a taxpayer, the MIRA must follow the procedure set out in Section 32 of the TAA³, if and when obtaining information from a third party.

Mr Abdulla Shareef was represented at the Tax Appeal Tribunal by lawyers and tax advisors of CTL Strategies.

¹ *Abdulla Shareef v MIRA* (TAT-CA-G/2018/001)

² Goods and Services Tax Act (Law Number 10/2011)

³ Tax Administration Act (Law Number 3/2010)

Facts and Observations

GST charged based on input tax claimed by another taxpayer

Abdulla Shareef operates as a sole proprietorship under the name “Beam On” that supplies lights, sound and media equipment, and offers related services. The transaction in dispute is with regards to the supply of sound and media equipment by Abdulla Shareef to a company (“the Company”) that hosted a new year event in 2015.

After conducting the GST audit, the MIRA’s auditors held the view that Abdulla Shareef has not declared GST on an invoice with respect to the new year’s event. This decision (i.e, GST was not accounted for on the transaction) was arrived at by the auditors from the following:

1. an erroneous input tax deduction claimed by the company who sought the service from Abdulla Shareef (the input tax claim was based on a quotation issued by Abdulla Shareef);
2. Payment vouchers maintained by the said company which the MIRA deemed to be paid in relation to the said quotation.

MIRA: Abdulla Shareef issued a quotation and received payment. That triggered the time of supply

Abdulla Shareef impugned the MIRA’s audit determination on the grounds that the invoice that the MIRA determined additional GST on, was never issued by his enterprise. In the Objection Review Report issued by the MIRA, it is stated that a quotation was issued to the company who sought Abdulla Shareef’s services, and a payment that corresponded to the amount stipulated in the quotation was paid. The MIRA further argued that, though the quotation may not, in itself, be evidence of payment for services rendered, the MIRA had gathered “other information” which shows that the payment was received by Abdulla Shareef, triggering the time of supply for the transaction pursuant to Section 17 of the GST Act. This formed the basis of the audit decision.

Abdulla Shareef: An invoice was issued with respect to the quotation, and GST was accounted for, in the corresponding taxable period. The MIRA failed to rely on information provided by the taxpayer

The key technical arguments raised by Abdulla Shareef at the TAT were that, two invoices were raised with respect to the service mentioned in the quotation and that the output tax has been properly accounted for in the relevant taxable periods. It was also noted that the MIRA's audit decision results in additional tax being imposed on the same transaction, twice (first, when the quotation is issued, and second, when the tax invoices were issued). Abdulla Shareef's counsel also argued that MIRA's decision to charge output tax based on a quotation, and payment vouchers maintained by a third party (i.e; the Company), and input tax deducted by that third party, were in contravention of Section 17⁴ of the GST Act. Abdulla Shareef argued that a 'payment voucher' does not denote when payment was received by the supplier of a good or service⁵.

Documents/Information sought from a third-party can only be used in an audit if the procedures set in Section 32 are followed

It was also pointed out by Abdulla Shareef that, during the audit, the MIRA had relied upon the input tax deducted by a third party (i.e; the company) without ascertaining the validity of the information provided by the third party nor whether the correct amount was deducted by the third party as input tax. MIRA had deemed that the third-party has claimed input tax as per the law and that Abdulla Shareef had not reported the output tax of that transaction in the correct taxable period and thus, charged additional tax based on that belief, which Abdulla Shareef argued, is also in contravention of Section 17 of the GST Act.

Held

MIRA has not correctly followed the time of supply rules

By unanimous decision of the TAT members, it was held that MIRA's decision to charge additional GST was in violation of Section 17 of the GST Act. In arriving at its decision, the TAT noted Abdulla Shareef's contention that he had already accounted for GST on the transaction in question when he raised the invoices; a fact which was not disputed by the MIRA.

Member Uza. Fathimath Minhath in her opinion noted that, from the phrasing of Section 17 of the GST Act, GST is liable when an invoice is raised or payment is made with respect to a supply, whichever comes earlier - this is unequivocally clear from the wordings of the GST Act. Further Member Minhath also noted that MIRA's decision to charge additional tax from Abdulla Shareef was based on a 'quotation' issued by Abdulla Shareef to a third party ('the company') as was evident from the MIRA's Objection Review Report.

⁴ Section 17 states:

"(a) For the purpose of this Act, unless otherwise specified in this Section, the time of supply of a good or service refers to whichever occurs earlier of the following:

(1) The time at which a tax invoice for such good or service is issued;
(2) The time at which the recipient of such good or service makes full or partial payment."

⁵ Though a "paid" stamp was visible on a payment voucher prepared by the company, dated 28 February, Abdulla Shareef did not receive any payment from the company on that date.

The MIRA must duly serve a Third-party Document Request Notice if that document is to be used in making an assessment

Though the MIRA argued that the information relied upon in arriving at the audit determination, was collected under Section 23(a)(6)⁶ of the TAR⁷, Member Minhath noted that Section 32 of the Tax Administration Act sets out the procedures under which the MIRA may inspect, and if need be, require submission of documents from a third party. The MIRA did not submit any evidence showing that the procedure set out under Section 32 was followed when obtaining the quotation. Additionally, no notice was sent to Abdulla Shareef under Section 32 informing him that a Document Request Notice was issued to the third party (the Company).

MIRA contended that they did not violate Section 32 of the Tax Administration Act because they are permitted, under Section 23 of TAR, to rely upon information that was obtained by MIRA intelligence or is otherwise in possession of the MIRA. However, in arriving at its decision, the members noted that the Tax Administration Act clearly stipulates a transparent procedure for the collection of information from a third party, and since subsidiary regulations are made pursuant to the power and scope derived from the law, from a legal standpoint, a regulation cannot be interpreted or considered to supersede the provisions of the Law; the MIRA cannot bypass the scope set upon them via the regulation - As such, Any determination made based on such information would be *void ab initio* as the information was not obtained in accordance with the law.

Our Comments

Careless application of audit procedures led to an unnecessary assessment

It was evident from the case that the MIRA charged GST on a transaction for which Abdulla Shareef has already accounted for GST. The MIRA's decision to charge GST was based on input tax claimed by another taxpayer - however, the auditors failed to verify whether or not that input tax was claimed correctly, nor did the MIRA check whether Abdulla Shareef had accounted for GST for the supply stated in the quotation in question. A rather simple fact check or full disclosure of documents to Abdulla Shareef by the MIRA could have easily avoided the assessment and the subsequent dispute.

⁶ Section 23 states:

"(a) Factors that may be considered by MIRA in making an assessment under Section 39(a) of the Act include the following:

...

(6) Information obtained by MIRA intelligence or from other State Institutions;

(7) Information related to the person being audited which is included in tax returns and other documents submitted by other taxpayers."

⁷ Tax Administration Regulation (Regulation Number 2013/R-45)

*Serving a Third-party
Document Request
Notice is essential if such
documents/information is
to be utilised*

From a practical perspective, it is understood that the MIRA is in possession of vast amounts of information on taxpayers. Such information may be collected when tax returns are filed or when the MIRA conducts audits. However, whatever the source of information, if such information is to be used in making an assessment on a taxpayer, the MIRA must serve proper notices and acquire the information as per the procedures set out in the law. For instance, where a taxpayer submits an invoice to the MIRA, the MIRA will know - from the particulars of the invoice - what the issuer's revenue is, and, obviously, the fact that the person has issued the invoice and thus the time of supply has triggered.

However, if the MIRA is to make an assessment of the person that issued that invoice, the MIRA cannot simply utilise the invoice they had received before. Instead, notices should be served and information gathered through the procedures stipulated in the law. If the information is sought from a third party, the notice stated in Section 32 (Third-party Document Request Notice) must be served on the third party and a copy of the notice sent to the taxpayer. The MIRA cannot bypass this process and simply use the information that the MIRA has acquired outside the parameters of the said rules.

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About us

CTL Strategies LLP is a multi-disciplinary law firm that provides comprehensive legal solutions to both local businesses operating globally and foreign businesses with interests in the Maldives. Our team is comprised of corporate and tax lawyers, tax advisors and chartered accountants.

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