

Bhurtun Chambers

Monthly newsletter

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Introduction

Effective communication is a key element in various spheres including tax litigation and litigation generally.

Such effective communication must exist at all levels in tax litigations. Counsels must receive all relevant information and documents from their clients. There must then be a proper exchange of documents and views between the parties in a prompt and transparent manner.

Once the matter reaches the objection level, the key to successful case is the proper drafting of the grounds of objection. This can only be done by considering all the relevant accounting and legal principles applicable. The next step is to respond, within the parameters of law, to all queries and requests for explanations by the Director General of the Mauritius Revenue Authority.

I can here take the example of an assessment raised on one company involved in the provision of diverse financial services. An assessment for an amount of roughly Rs250,000 was revised to nil at the objection level following communication of all explanations by the taxpayer.

The same principles will be applicable when a matter reaches the ARC. The proper drafting of reasons for representations are crucial as can be seen from the case of **Eurofin v Director-General, Mauritius Revenue Authority ARC/IT/572-14**.

Generally, written communication between parties and a judicial or quasi-judicial body is important in order to ascertain the position of all parties concerned, especially, when the wording of the law regulating a procedure may not have the same meaning in the mind of all parties involved.

We can here take the example of the case of **Cosgrove** (see below at page 10 for the summary) where Counsel for the Appellant did not request for an oral Hearing before the Review Panel given that he considered that it was for the Review Panel to schedule same. At the end of the day, the Review Panel did not schedule any oral Hearing and took a decision on the basis of the written submissions submitted by the parties.

Effective communication is therefore one of the key elements that is required to be able to present a case in the best possible manner.

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Decisions Delivered by the Assessment Review Committee

1. S. Canagasaby & Sons Ltd v Director-General, Mauritius Revenue Authority ARC/CUS/44-19

In this case, the Applicant had made its objection to the Respondent 339 days after the statutory delay of 28 days.

The chronology of events is as follows:

- a) The Respondent issued a Notice of Underpayment on 24 September 2018.
- b) On 18 October 2018, Applicant wrote a letter to the Respondent, seeking to amend the Customs Declaration and Applicant considered this letter to be an objection to the Notice of Underpayment. The letter did not contain any ground of objection.
- c) On 16 September 2019, Respondent sent a reminder to the Applicant.
- d) On 23 September 2019, Applicant was advised by an officer of the Mauritius Revenue Authority to make an objection in the prescribed form, with supporting documents.
- e) On 26 September 2019, Applicant made the objection.
- f) On 24 November 2019, The Respondent informed the Applicant that the objection would not be considered given that it was a late objection.
- g) Applicant communicated a medical certificate to the Respondent to the effect that between 20 October 2018 and 10 November 2018 Mr Canagasaby was undergoing medical treatment and the said certificate did not mention that he was incapacitated.

The first issue was whether the Applicant could make an objection in the form of a letter.

The Committee observed that:

It must be pointed out that Section 24A(3)(a) of the Customs Act provides that a person may object “to the notice in a form approved by the Director-General. (Underlining is ours). There is a difference between “in a form” and “on a form”. As drafted, Section 24A does not require that the approved form has to be filled for an objection to be considered. What this Section requires is that an objection has to be in a certain format in the sense that it necessarily has to contain certain information for the objection to be considered by the Mauritius Revenue Authority. One such essential requirement is that the person shall specify the detailed grounds of objection.

The Committee went to analyse the letter and concluded that it did not amount to an objection given that the said letter did not mention that the Applicant was objecting to the Notice and that it did not contain grounds of objection.

The only objection was therefore the one made on 26 September 2019. Given that the medical certificate did not establish that Mr Canagasaby was so incapacitated that he could not make the objection and also did not explain the reason for which the objection was made after nearly one year, the Committee maintained the decision of the Respondent.

2. B Ferozia Hosanee v Director-General, Mauritius Revenue Authority ARC/VAT/17-18; ARC/IT/29-18

The Assessment raised by the Respondent was based on an examination of the bank statements of the Applicant. There were several types of deposits and the Applicant averred that the amounts credited came from her husband and therefore should not be taxed.

During the Hearing before the Committee, the Applicant failed to provide relevant documents to substantiate her averments.

The Committee therefore granted a period of 1 month to the Applicant for relevant documents to be provided to the Respondent, failing which, she would have to pay all taxes.

3. Devarajen Poinoosammy v Director-General, Mauritius Revenue Authority ARC/VAT/71-21

The Applicant lodged the representations before the ARC late by 65 days. The explanation given by the Applicant related to health problems and Covid-19 related issues.

The facts showed that the Applicant managed to retain the services of a tax representative 13 days after the assessment notice. The Committee observed that the tax representative wanted to obtain further information from the Respondent before lodging the representations. In the Circumstances, the Committee reached the conclusion that it would not be in the interest of justice to deprive the Applicant of an opportunity to have his representations entertained. The representations were therefore accepted by the Committee.

4. Mahmad Sheik Reza Ramjan v Director-General, Mauritius Revenue Authority ARC/IT/235-21

The Applicant made a late objection to the Respondent by 710 days. He explained that he was in jail and that when he was released, there was a lock-down. Even after the lockdown, he still could not move freely given that he was in a red-zone.

The Committee observed that the decision of the Respondent not to consider the objection did not provide for reasons as to why the Respondent did not consider the reasons put forward by the Applicant to amount to just or reasonable cause. The relevant extract of the Ruling reads as follows:

In the case of Peerless Limited v/s GRA & Ors (2015) UKPC 29, the Privy Council citing the case of R V Civil Service Appeal Board, Ex. Cunningham (1992) ICR 816, stated that the form of a determination is part of the procedure of a hearing and is no less subject to the requirements of procedural fairness than any other part. The very importance of the decision in question to the individual may be such that the individual cannot be left to receive an unreasoned decision as if “the distant oracle had spoken (per Lord

Mushill in R v Secretary of State for the Home Department Ex p Doody (1994) AC531 at p 565).

The Committee directed the Respondent to consider the late objection of the Applicant given that he was in prison and that he did not have access to his relevant documents.

5. Mohammad Javed Acktar Idris Roheeman v Director-General, Mauritius Revenue Authority ARC/IT/273-18 & ARC/VAT/137-18

The matter was one where the Respondent refused to consider the objection of the Applicant which was late by 263 days.

The case for the Applicant rested on the averment that he did not receive the notice of assessment of the Respondent given that he was not on good terms with his landlord. The Respondent could not rebut such averment in the absence of any acknowledgement of receipt of the said notice.

The Committee analysed the definition of the term “just and reasonable cause” and concluded that the facts of the present matter amounted to just and reasonable cause such that the Respondent was required to consider the late objection of the Applicant.

6. Smile Creation Ltd and Oths v Director-General, Mauritius Revenue Authority ARC/IT/126-17; ARC/IT/226-17; ARC/IT/254-17;ARC/IT/255-17

The Applicants 2 and 3 were the directors of Applicant 1. An assessment was raised by the Respondent on the basis of the cars of the Applicant 1 having been used by the directors. The contention of the Respondent was to the effect that the use of the cars amounted to fringe benefits.

The directors averred that the cars were used for personal use only for a proportion of 20%.

The Committee concluded that the use of the cars amounted to fringe benefits pursuant to the Income Tax Regulation.

7. Travelmymy.com Ltd v Director-General, Mauritius Revenue Authority ARC/VAT/08-18

In this case, the representations were lodged 28 days later. The director of the Applicant explained that the administrative matters were being dealt with by his partner who did not lodge the representations within the statutory delay.

In the circumstances, given that the Applicant was late by only 28 days, the Applicant was allowed to proceed with its representations.

Selected Decisions delivered by the Supreme Court

1. Blue Diamond v. Swan Life Ltd 2022 SCJ 121

This is an appeal against a decision of the Master and Registrar allowing an amendment to the heading of the Memorandum of Charges by inserting after the words “Blue Diamond” the words “under administration as represented by the Judicial Administrator, Mr Gerard Lincoln.

The Supreme Court referred to the following provisions of the Insolvency Act, pertaining to companies under administration:

244. Proceedings in Court

During the administration of a company, proceedings in a Court against the company or in relation to any of its property shall not be commenced or continued, except –

- (a) with the administrator’s written consent; or
- (b) with the permission of the Court on terms that the Court thinks appropriate.

291. Notice of fact of administration

(1) A company shall set out, in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company, after the company’s name where it first appears –

- (a) for as long as the company is in administration, the words “administrator appointed”; and

(b) for as long as a deed of company arrangement is in force, the expression “subject to deed of company arrangement”,

(2) The Court may, on an application by the company, exempt the company from the requirement in subsection (1)(b)

The Supreme Court further observed that when an entity is put under administration, the sole control of the company is under the administrator.

The Supreme Court therefore maintained the decision of the Master and Registrar on this issue.

2. David Dawson Cosgrove v The Financial Services Review Panel 2022 SCJ 160

The Applicant was aggrieved by a decision of the Enforcement Committee established under the Financial Services Act (FSA).

The Applicant lodge an application for a review before the Review Panel. Before the Review Panel, the FSC raised two objections to the effect that, firstly, the application for review was not copied to the FSC and secondly the application for review was made outside the statutory delay.

The relevant provision of the FSA is as follows:

Section 53(4)

Any licensee who is aggrieved by the decision of the Enforcement Committee under subsection (3) –

(a) may, within 21 days of the issue of the written notification, lodge an application with the Secretary of the Review Panel specifying the reasons for a review of the decision;
and

(b) shall, at the same time, file a copy of his application with the Commission.

The Review dealt with the matter on the basis of written submissions of the parties and meetings held for the purpose of providing clarifications. Subsequently, the Review Panel upheld both objections of the FSC.

The Applicant then lodged the present matter for Judicial Review on the basis that the Review Panel ought to have held a hearing before deciding on the objections. The Applicant relied on the following provision of the FSA:

Section 62(1)

For the purposes of sections 54 and 63, the Review Panel shall hold hearings which shall be conducted in public unless otherwise directed by the Review Panel.

In light of the nature of the objections raised by the FSC, the Court concluded that Applicant was given a reasonable opportunity to present his case. An oral hearing was not required in all types of cases. Furthermore, the Applicant did not request for a hearing before the Review Panel.

In the circumstances, the case of the Applicant was set aside.

Important amendment

The First Schedule to the Financial Services (Consolidated Licensing and Fees) Rules 2008 has been amended to provide as follows:

FS-1.20	Money Lending	14	Rs. 43,000 (USD 1,000)	Rs. 82,000 (USD 1,900)
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With effect from 01 April 2022.

A new table was added to the same Schedule as follows:

Virtual Asset Service Providers				
Code	Class of Licence	Relevant section of The Virtual Asset and Initial Token Offering Services Act 2021	Processing Fee	Fixed Annual Fee
VA – 1.1	Virtual Asset Broker - Dealer (Class M)	7	USD 1,000 (MUR 45,000)	USD 2,000 (MUR 90,000)
VA – 1.2	Virtual Asset Wallet Services (Class O)	7	USD 1,000 (MUR 45,000)	USD 1,900 (MUR 85,000)

Virtual Asset Service Providers				
Code	Class of Licence	Relevant section of The Virtual Asset and Initial Token Offering Services Act 2021	Processing Fee	Fixed Annual Fee
VA – 1.3	Virtual Asset Custodian (Class R)	7	USD 1,500 (MUR 70,000)	USD 2,500 (MUR 110,000)
VA – 1.4	Virtual Asset Advisory Services (Class I)	7	USD 3,000 (MUR 135,000)	USD 5,000 (MUR 220,000)
VA – 1.5	Virtual Asset Market Place (Class S)	7	USD 3,000 (MUR 135,000)	USD 5,000 (MUR 220,000)
VT –1.1	Issuers of Initial Token Offerings	23	USD 2,000 (MUR 90,000)	–

With effect from 01 April 2022.

Our Trainings

Bhurtun Tax Training Institution is actually conducting a training on Basics of International Taxation over three half-days.

The following Trainings will be open for registration soon:

Introduction to Revenue Laws	Four half-days Face to Face Training
Some main differences between the OECD and the UN Model Tax Conventions	2-hour short training Online
Trusts and Taxation of Trusts	Three half-days Face to Face Training
A review of important decisions in tax matters	One half-day Online
The PAYE system	One half-day Online
How to deal with Objections and cases before the ARC-A Practical Approach	3 full days Face to Face

An analysis of the 80percent exemption under the Income Tax Act
(Free webinar)

25 May 2022
10h00 to 11h30
(fully booked)

25 May 2022
10h00 to 11h30

Practical Aspects of Cases before the Assessment Review Committee
(Free webinar)

01 June 2022
10h00 to 11h30
(register by sending email to bhurtuntaxtraining@gmail.com)

All relevant details may be obtained by sending an email to bhurtuntaxtraining@gmail.com or by visiting the Facebook page “Bhurtun Tax Training Institution”.

TAILOR-MADE TRAININGS FOR EMPLOYERS

Our training institution also provides trainings as per specific requirements of employers for the benefit of their employees. Such trainings are delivered within the premises of the employers. Some examples of such trainings are as set below, but of course, employers may request for specific trainings depending on the needs of their staff:

1. Mastering International Taxation

2. Mastering the Taxation of the Global Sector
3. The operation of the VAT system
4. Mastering the Income Tax System
5. The Taxation of Trusts and Foundations
6. The Conduct of Cases before the Assessment Review Committee
7. The Rules of Statutory Interpretation

Our Training Institution is approved by the MQA so that employers are eligible for appropriate refunds by the HRDC.

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