

Bhurtun Chambers

ARC Rulings/Decisions Update No. 2 of 2024:

CHETTA-WATEE SOOKNAH v/s DIRECTOR GENERAL-MRA

ARC/CUS/026-23

12 June 2024

FACTS

The Applicant here benefited from Excise Duty concession on a 1998 cc Second-hand Car under the **Excise Act 1994**.

MUR 710,658 (Excise duty = MUR 617,964 + VAT = MUR 92,694) was exempted under the said concession.

To benefit from the same, the Applicant was required to sign a declaration/undertaking to the effect that:

1. She is coming back to settle in Mauritius;
2. She still holds a Mauritian nationality/citizenship;
3. She is aware that for a period of 4 years from the date of validation of the import declaration (26 February 2019), she **shall not be absent from Mauritius for more than 183 days in aggregate** during each year or any other period unless the Director-General is satisfied that her absence was due to just and reasonable cause.

The **Applicant spent an aggregate 197 days outside Mauritius**. Not satisfied with the explanations provided by the Applicant by email, the Respondent issued a Notice of Claim informing her that she was in breach of the conditions attached to the concessions and that the amount payable would be MUR 13,666. The Applicant subsequently lodged an objection contesting the claim. Not satisfied with the Applicant's explanations and reasons given, the objection was disallowed.

The Applicant then lodged Representations with the Clerk of the ARC on the grounds:
"Reasons for not travelling on 02/02/2023 rejected on my stated medical grounds"

ISSUE

In this matter, the ARC considered that the grounds of Representations as provided by the Applicant did not validly challenge the Notice of Determination. The Committee reminded that the Applicant is required to set out precise reasons for Representations and that such a requirement is compulsory under **s.19(1) Mauritius Revenue Authority Act**. The Committee also referred to the supreme Court case of ***De Guardia De Ponte v The Assessment Review Committee [2023] SCJ 21*** on the couching of Representations (A summary of this case can be found in our Newsletter of April 2024.)

For these reasons, the Committee considered that the Representations as couched should be set aside.

However, since there was no objection and given that the Applicant was *inops consilii*, the Committee went on to consider the explanations provided by the Applicant.

CONCLUSION AND REASONING OF THE ARC

The ARC decided to set aside the representations.

In reaching this decision, the Committee noted the explanations of the Applicant that: she did not travel due to her medical condition; she did not know that she needed to provide the Respondent with a medical certificate showing that she was unfit to travel; and that she relied on her own judgment and took the decision not to travel. The Committee further noted that the Applicant stated in her email to the MRA that she was not aware that she had gone over the 183 days.

The Committee explained that the 183 days condition is an essential one under the **Excise Act** and that the Applicant has the responsibility and burden of proof to satisfy the MRA that her absence was due to just and reasonable cause, which she failed to do here.

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