

Council notice about GST charge, in the circumstances, not unreasonable

Legislation	Ombudsmen Act 1975, Goods and Services Tax Act 1985, Rating Powers Act 1988
Agency	Local authority
Ombudsman	Nadja Tollemache
Case number(s)	A2915
Date	1992

Payment of increased GST—timing of Notice—effect of rapid change in central and local government

A chain of events concerning the implementation of new legislation, in this case the increase in the Goods and Services Tax to 12.5 percent led to this complaint against a local authority.

The complaint concerned an allegation that a District Council had acted unreasonably in charging 12.5 percent GST on rates. The background to the complaint was that on 1 July 1989, a Saturday, the day of commencement of GST increase to 12.5 percent, the complainant received his rates notice. On 3 July, the following Monday, the complainant attempted to pay his year's rates account. He was advised to pay 10 percent GST on the first instalment, the remainder to be charged at 12.5 percent GST. He disagreed with the additional 2.5 percent on the basis of a newspaper article he had read which discussed the rate change. The complainant asked the Inland Revenue Department for its advice as to whether the Council's advice in its interpretation of the statement in the paper. IRD responded noting that:

... the time of supply of the service, which determined what rate of GST you should pay is the earlier of the date an invoice is issued, or any payment is received. As the invoice is dated 29 June 1989 then the rate of GST on that instalment should be 10 per cent, even though payment has been made after 1 July 1989. Additionally, if you elect to pay your full year's rates on this demand then the rate of GST shall be 10 per cent.

The complainant took this letter to the Council for its consideration, to which it replied:

It appears that the last paragraph of their (Inland Revenue's) letter did not add that the rates for the full year had to be paid before 30 June 1989 to qualify for GST at 10% GST therefore is only on the first instalment not on your full year's rates.

The *Goods and Services Tax Act 1985*, section 9(3) provides-

where goods are supplied under an agreement to hire, or where services are supplied under any agreement (or enactment) which provides for periodic payments, they shall be deemed to be successively supplied for successive parts of the period of the agreement (or the enactment) and each of the successive supplies shall be deemed to take place when a payment becomes due or is received whichever is the earlier.

Had the payment of rates been received on or prior to 30 June 1989 the complainant would have been charged 10 percent GST. However as it was received after this date the charging of 12.5 percent GST appears to be legally correct.

The Council was asked to explain whether there was a policy to have rates notices in the post at a specific interval before the due date, and if not what usual procedure was. The Council responded stating it *'has not levied rates before 1989/90 but [the Council] is unable to comment on what the procedure for the Borough and County Councils were before this. At the time the rates were struck for each authority the due and payable dates were advertised. For the County Council the rates assessment notices were usually sent out between one and three days before the due and payable date. For the Borough Council the assessment notices were sent out on the due and payable date or the day before if the due and payable date was a weekend. The procedure that we have followed this year is the same as the Borough Council. The notice that went into the local newspaper on 14 June 1989 stated:*

'PURSUANT TO PART IX OF THE RATING POWERS ACT 1988 THE FOREGOING RATES AND CHARGES [EXCEPT FOR METERED WATER SUPPLY] LEVIED SHALL BE PAID IN FOUR [4] INSTALMENTS DUE AND PAYABLE ON THE 28 JUNE, 1 SEPTEMBER, 1 DECEMBER 1989 and 1 FEBRUARY 1990 RESPECTIVELY'.

From the above it was the Ombudsman's understanding that advertising of due and payable dates took place in a local newspaper at the time the rates were struck, thus allowing ratepayers time, that is two weeks, to enquire of the Council the amount owing and to pay them in advance of the due date. If no enquiries were made by ratepayers prior to receiving their notice, under the above system of posting notices payment would be required on or after the due date.

The Council was also asked why it had not considered striking the rates in time for people to be advised, then given an opportunity to pay rates prior to 1 July. The Council replied:

In their letter to the Municipal Association of July 1986, following the introduction of GST, the Inland Revenue Department commented that they considered that 'the rates struck for the year to 31 March 1987 is consideration for a single supply'.

It was not until 17 April 1989 that they advised the Local Government Association that the proper interpretation should have been that 'each instalment is deemed to trigger a separate supply'. This revised ruling was conveyed to Councils in late April 1989. The ruling also contained a comment that if local authorities set due and payable dates significantly different from the pattern of previous years (and presumably previous constituent authorities), they might invoke Section 76 of the Goods and Services Tax Act i.e. that such a move was aimed to defeat the intention and application of the Act.

This only left two months for any Council planning to set its rates later in the year to accelerate the process.

Late advice from the Inland Revenue Department accompanied by a requirement not to set due and payable dates differently from previous years made it very difficult for the Council to have posted their notices earlier. The Council had complied with section 110(1) of the *Rating Powers Act 1988*, which concerned giving notice of making a rate.

It was also explained that the Council had been under pressure since amalgamation to establish a new structure for its activities, the introduction of the *Rating Powers Acts*, modification of both the instalment and differential systems; introduction of the Public Sector Accounting Standards and concepts, change to accrual accounting and changes in the financial reporting system to accommodate both previous authorities.

Quite correctly the Council advised that the present case highlighted the difficulties being experienced by local authorities with rapidly changing legislation. It also demonstrated the effects of rapid local government reform (amalgamation of local authorities). It appeared that insufficient time was being allowed by Government for local authorities to assess the implications of the changes and iron out the problems before the deadlines for implementation were upon the community. In light of this, and in particular the fact that public notice was given in the local newspaper 14 days prior to the due dates, and the ruling by the Inland Revenue Department in respect of the invoking of section 76 of the *Goods and Services Tax* if changes in procedure were instigated, the Ombudsman formed the final view that the complaint that the Council had acted unreasonably could not be sustained.

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