

Land Transport Appeals Tribunal
Sitting @ Suva.

Appeal # 138 of 2018.

Between: **All Earthworks Limited**

Appellant

And: **Land Transport Authority**

Respondent

Date of Hearing: 16th April 2018.

Appearances and Representations

For Appellant : Mr F. Haniff.

For LTA : Mr G. Stephens.

Judgment

Introduction

The Appellant, All Earthworks Limited, imported two left hand drive vehicles. They then applied for the registration of the two vehicles. The Land Transport Authority refused the registration of the two vehicles.

The decision of LTA is contained in a letter dated 26th January 2018 and is as follows:

"2. Regulation 8 (3) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 states that:

The Authority must not register a vehicle or issue a permit to use an unregistered vehicle in respect of a vehicle in which the centre of the steering wheel is to the left of the centre of the vehicle.

Regulation 35 (2) (b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 states that:

Notwithstanding sub-regulation (1), the authority may exempt - individual specialized vehicles if the Authority determines that it is impractical for the vehicles to comply with this Part because of their specialized nature.

3. Following the Authority's deliberations dated 18.08.17, you are hereby notified that the Authority refused registration of the two [2] left hand vehicles.

4. Please note that motor vehicles are not specialized vehicles in nature and therefore exemptions under Regulations 35 (2) (b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 do not apply."

The Grounds of Appeal

The grounds of appeal filed on behalf of the Appellant are as follows:

"1. The LTA erred in holding that the left hand drive concrete mixer trucks are not specialized vehicles in terms of Regulation 35 (2) (b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000.

2. The LTA erred in not giving reasons why the left hand drive concrete mixer trucks are not specialized vehicles in terms of Regulation 35 (2) (b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000, given that it routinely grants exemptions for left hand vehicles to be registered on the roads in Fiji."

The Function and Powers of the Tribunal

Section 40 (2) and 46 of the Land Transport Act sets out the function and powers of the Tribunal for the purposes of hearing and determining appeals, respectively.

Regulation 35 (5) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 gives this Tribunal jurisdiction to deal with this matter.

Analysis

The Tribunal has noted the grounds of appeal filed by the Appellant, All Earthworks Limited and the submissions made at the hearing of this matter. The Tribunal has also noted the written submissions. The Tribunal would now go over each ground of appeal in turn.

- 1. The LTA erred in holding that the left hand drive concrete mixer trucks are not specialized vehicles in terms of Regulation 35 (2)(b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000.**

The two vehicles that were sought to be registered by the Appellant, All Earthworks Limited were Concrete Mixer Trucks ((Howo - (Model), (Sino Truck - (Make))). The vehicles are left hand driven vehicles, where the centre of the control of the vehicles is located to the left of the centre of the vehicles.

The relevant law dealing with registration of vehicles is the Regulation cited as the Land Transport (Vehicle Registration and Construction) Regulations 2000. Regulation 42 (1) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 provides that *"the centre of the steering wheel or in the case of a motorcycle or other motor vehicle which is steered by means of handle bars, the centre of the control must not be located to the left of the centre of the motor vehicle unless the vehicle is one to which regulation 8 (1) (b) applies."* In simple terms Regulation 42 requires that motor vehicles that are to be registered for use in Fiji must be right hand driven vehicles. In all vehicles the centre of the control or position of the steering must be located on the right side of the vehicle unless Regulation 8 (1) (b) applies.

Regulation 8 (1) (b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 states that *"the Authority must not register or renew the registration of a vehicle unless it is satisfied that the vehicle complies with the provisions of the Act and regulations in relation to construction and equipment or has been issued with a valid exemption."* The exemptions referred to in Regulation 8 (1) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 are contained in Regulation 6 of the Land Transport (Vehicle Registration and Construction) Regulations 2000. The relevant provision being Regulation 6 (3) (c) which states that *"the Authority may, upon application, issue an exemption permit in respect of the use of a vehicle, subject to any restrictions and conditions which the Authority considers appropriate, as follows - a vehicle construction exemption permit issued under regulation 35 (2)"*.

Regulation 35 of the Land Transport (Vehicle Registration and Construction) Regulations 2000 states that:

"(1) A motor vehicle or trailer to be used in a public street must comply with the requirements of this Part.

(2) Notwithstanding subregulation (1), the Authority may exempt -

(a) a vehicle or class of vehicles whose age or design of such vehicle, or other feature makes it impractical for such vehicle to have been constructed to comply, other than vehicles that were registered in Fiji prior to this Part becoming effective: or

(b) individual specialised vehicles if the Authority determines that it is impractical for the vehicles to comply with this Part because of their specialised nature.

(3) A vehicle which has been granted an exemption under this Regulation must only be used in accordance with the conditions of the exemption.

(4) If the Authority intends to withdraw from a vehicle an exemption granted under subregulation (2), The Authority must give at least 12 months' notice to the owner of the vehicle."

Regulation 35 of the Land Transport (Vehicle Registration and Construction) Regulations 2000 was considered by the LTA when the application for exemption for the registration of the trucks was made by the Appellant. The LTA following its deliberations determined that the two vehicles were not specialised vehicles. The LTA did not give reasons on how and on what basis they determined the vehicles not to be specialised vehicles.

A definition of a "specialised vehicle" is not contained in the Regulation or the Act. The Tribunal notes that the LTA Act defines a vehicle, goods vehicle, heavy goods vehicle, minibus, motor vehicle and omnibus. The Land Transport (Vehicle Registration and Construction) Regulations 2000 defines articulated vehicle, motorcycle, motor tractor, private motor vehicle, visitor's motor vehicle and public utility vehicle. The Land Transport (Public Service Vehicles) Regulations 2000 defines road service vehicles.

In order to determine what is a "specialised vehicle". It needs to be defined. The relevant definition of "specialised" according to Oxford Dictionary is "designed for a purpose." Put into context a "specialised vehicle" is a vehicle that is designed for a particular purpose. The Tribunal is of the view

that specialised vehicles are vehicles that have special functions and features to carry out normal tasks under special or extraordinary circumstances.

In this matter the issue is whether the concrete mixer trucks are specialised vehicles. In order to determine whether the concrete mixer trucks are specialised vehicles the functions and features of the truck need to be evaluated. The basic function of a concrete mixing truck is to maintain the material's liquid state through agitation, or turning of the drum, until delivery. The interior of the drum in a concrete mixing truck is fitted with a spiral blade. When the drum is operational it moves in one rotational direction, the concrete is pushed deeper into the drum. This is the direction the drum rotates in while the concrete is being transported to the site. The truck also has a small water tank. The water tank is used for softening the concrete, if needed and washing off the left over concrete after the bulk is discharged.

Concrete mixers generally do not travel far from their plant, as the concrete begins to set as soon as it is in the truck. It is normally preferred that the concrete be in place within 90 minutes after loading. If the truck breaks down or for some other reason the concrete hardens in the truck, workers may need to enter the drum with jackhammers or even discharge the concrete so the concrete does not harden and settle in the drum. The purpose of the truck is to store and convey concrete. The trucks are specifically designed for concrete cartage.

Having noted the functions and the operations of the Concrete Mixer Trucks the Tribunal finds that a concrete mixer truck is a specialised vehicle under Regulation 35 of the Land Transport (Vehicle Registration and Construction) Regulations 2000. The LTA erred when it did not consider the two concrete mixer trucks to be specialised vehicles under Regulation 35 of the Land Transport (Vehicle Registration and Construction) Regulations 2000.

- 2. The LTA erred in not giving reasons why the left hand drive concrete mixer trucks are not specialized vehicles in terms of Regulation 35 (2)(b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000, given that it routinely grants exemptions for left hand vehicles to be registered on the roads in Fiji.**

The Tribunal notes from the records that the LTA did not give any reasons why the trucks were not specialised vehicles. The Tribunal has found the trucks to be specialised vehicles to which 35 (2)(b) of the Land Transport (Vehicle Registration and Construction) Regulations 2000 applies.

The Appellants counsel has submitted that the LTA did not exercise its discretion fairly in the registration process. Mr Haniff submitted that LTA was registering similar trucks and other vehicles that were left hand driven.

From the affidavit of Xiong Lin, a Director of the Appellant Company the Tribunal notes that the Appellant company has a truck, registration number HQ201 that was previously registered as left hand truck. The LTA through an affidavit of John McArthur states that the truck was registered as a right hand vehicle in the LTA system. The vehicle extract was annexed. Mr Lin in his affidavit showed to the Tribunal that two concrete mixer trucks, bearing registration numbers HG 292 and HG293 are left hand driven vehicles. These trucks are similar to those that were sought to be registered by the Appellants. The photos of the trucks taken by Mr Lin and annexed in his affidavit clearly show the steering or centre of control of the trucks to be located on the left of centre of the trucks. This means that the vehicles are left hand driven. The vehicle extracts for HG 292 and 293 provided by LTA and contained in the affidavit of John McArthur states that the two trucks are right hand driven. It is evident that the vehicles are left hand driven vehicles and for the LTA records to show that they are right hand driven vehicle is a serious anomaly in the records of the Land Transport Authority. LTA must look into it.

The Tribunal had sought the records of all vehicles in the LTA database that were registered as Left Hand driven vehicles. The LTA has provided the information. The records of LTA show 83 vehicles are registered as left hand driven vehicles. The breakdown of the type and class of vehicles are as follows:

Vehicle Type	Quantity	Class	Quantity
Van	12	Private	46
Car	42	Commercial	21
Machinery	15	PSV	6
Trucks	6	Diplomatic	7
Recreational	2	Government	3
Motor Cycles	6		
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Total	83	Total	83

Of the 6 public service vehicles one is a left hand driven rental vehicle with LR number plate and 5 are left hand driven Taxis with LT plates. Of the 83 vehicles only 2 vehicles are shown to have exemption. One is a private, second hand Liberty Jeep (Van) with IP registration with registration issue date of August 2016 and the other a government vehicle (new) - Ford where it's registered with exemptions for blue/red flashing

lamp and swivel lights, siren, speed camera and radar. The LTA database records that the government vehicle is exempted on the basis that it is a specialized vehicle. This is the only vehicle which has any reasons on record for the exemption of the left hand drive vehicle. No reasons are recorded for the Liberty Jeep a private vehicle for its registration as a left hand drive vehicle.

The Tribunal also notes from the LTA database information that 2 new trucks, Shanqi (Make) both bearing JF registrations were registered in November 2017 as left hand driven vehicles. The laden mass of the vehicles are 17,500 tonnes. No reasons are noted for the exemptions in the records. In addition to these two trucks a number of other vehicles were registered by LTA as left hand driven vehicles. No notification is contained in the LTA database that these vehicles have been granted exemption prior to its registration. LTA database must contain this relevant information. These need to be placed on the database as the records are searched from the database and individual files are not looked at.

The applications for the registration of the vehicles by the Appellants were before the Board in August 2017. The Appellants vehicles are specialized vehicles. Some of the issues LTA determined was high risks, safety issues when driving left hand vehicles on the roads unescorted and the risks during overtaking and disembarking of people in the middle of the roads. The Tribunal agrees that these are pertinent issues considering that Fiji roads are for right hand driven vehicles. However, the Board must apply these considerations consistently as these considerations are relevant for all left hand driven vehicles not only those vehicles sought to be registered by the Appellants. Following the refusal to register the Appellants left hand driven vehicles for these reasons the LTA did not apply the same reasons when it registered other left hand driven vehicles.

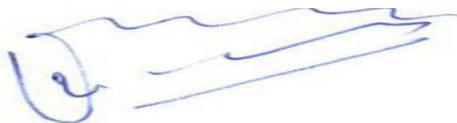
The Tribunal has noted that a number of left hand driven vehicles on the road in Fiji do not comply with Regulation 41 (3) of the Land Transport (Vehicle Registration and Construction) Regulations 2000. The requirement is that left hand driven vehicles must display a sign "LEFT HAND DRIVE" in distinguishable white capital letters not less than 50 mm high on a black background on the rear of the vehicle. The Tribunal has also noted that a number of left hand driven vehicles, some are trucks are driven on the Fiji roads with LTA having recorded them as right hand vehicles. This might be the reason they do not bear the left hand drive sign. The Tribunal seeks that the LTA to look into this. Turning a blind eye when a problem is highlighted will not help anyone. The integrity of the LTA does not improve if such matters are ignored.

The Tribunal finds that the Appellants vehicles are specialised vehicles and similar vehicles have been registered and are on the roads in Fiji. The LTA did not fairly deal with the application for registration by the Appellant.

The appeal succeeds for the reasons given.

Orders of the Tribunal

1. The LTA is directed to inspect the two specialised vehicles (Concrete Mixer Trucks) of the Appellant, bearing chassis No. LZZMBBGE6GC21429, engine no. JIAA1G30076 and chassis No. LZZMBBGE6GC21428, engine no. JIAA1G30075 respectively and if the two vehicles comply with the registration requirements as per the Land Transport (Vehicles Registration and Construction) Regulations 2000 and any other relevant laws then register the two vehicles.
2. The LTA is to pay the Appellant \$2000.00 costs within 30 days. The costs have been summarily assessed.



Chaitanya Lakshman

Land Transport Authority Appeals Tribunal

11th May 2018

