SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 663
CS121/2017

In the matter between:

REVENUE COMMISSIONER **Plaintiff**
(rep. by Khalyaan Karunakaran)

and

BEOLIERE AQUA (PTY) LIMITED **Defendant**
(rep. by Frank Elizabeth)

Neutral Citation:	*Revenue Commissioner v Beoliere Aqua* (CS121/2017) [2019] SCSC (02 August 2019).
Before:	Burhan J
Summary:	Learned Counsel for the defendant has not satisfied Court that regulations pertaining to this case, namely the Trade Tax (Imports) (Amendment) Regulations 2007, SI 30 of 2007 has been repealed or amended since the Custom Management Act (Act 22 of 2011) came into force. Therefore it is applicable in terms of the saving provision contained in section 272(1) of the Custom Management Act. Section 22(1) of the Revenue Administration Act precludes the defendant from challenging the amount assessed. Further as the defendant has failed to follow due procedure in appeal as set out in section 16(1) of the Revenue Administration Act, he cannot by pass that procedure and come directly to Court.
Heard:	5th November 2018, 28th November 2018 and 4th February 2019, 8th June 2019 and 12th June2019.
Delivered:	02nd August 2019.

ORDER

Judgment entered for the plaintiff as prayed for in a sum of SR 1,411,820.20 (one million four hundred and eleven, eight hundred and twenty and twenty cents) together with legal interest from the date of filing plaint and costs.

JUDGMENT

BURHAN J

[1] The plaintiff the Revenue Commissioner filed action against the defendant Beoliere Aqua (Pty) Ltd represented by its director Mr. Austin White, claiming a total sum of SCR 1,411,820,20 (One million four hundred and eleven thousand eight hundred and twenty cent) for costs and interest from the date of suit.

[2] It is apparent on a reading of the plaint, that the defendant is a company manufacturing mineral water and the said sum was owing for the levy on the importation of seven consignments of PET preform bottles upon which a levy of 70 cents a bottle was due in terms of section 10 of the Trade Tax Act 1992 and SI 30 of 2007 of the Trade Tax regulations 2007.

[3] The details of the importation of the PET preform bottles as mentioned in the plaint on which the aforementioned levy was imposed are set down in the Bill of Entry C382 dated 9th January 2014 marked as exhibit P1 in Court, the Bill of Entry C3701 dated 25th March 2014 marked as exhibit P2, the Bill of Entry C11070 dated 8th August 2014 marked as exhibit P3, the Bill of Entry C 19437 dated 23rd September 2014 marked as exhibit P4, the Bill of Entry C 20112 dated 1st October 2014 marked as exhibit P5, the Bill of Entry C 16027 dated 14th November 2014 marked as exhibit P6, the Bill of Entry C 18600 dated 18th December 2014 marked as exhibit P7.

[4] The plaintiff also refers to a notification of unpaid levy on the importation of the PET preforms being served on the defendant on the 16th of April 2015 Exhibit P8. The defendant -company had lodged an objection on the 21st of April 2015. After consideration of the objection, the decision was communicated to the defendant on the 8th of October 2015 exhibit D1. In the communication the defendant had been informed that if dissatisfied with the decision, it could apply to the Revenue Tribunal for the review of the decision. In between this period, a meeting was held on the 8th of July 2015 by the directors of the defendant-company and the custom officers for negotiation of the payment refer exhibit P9

and D2 but was unsuccessful, thereafter the decision on the objection D1 was communicated to the defendant.

[5] According to the plaint and relevant annexures, a final notice was issued on the defendant dated 16th of May 2016 giving 21 days for payment. The defendant had replied the plaintiff by email dated 23rd of May 2016, acknowledging receipt and stating their lawyer had been informed. Another notice to attend and give evidence at a meeting to be held on the 5th of August 2016 was issued on the defendant followed by an email. The defendant had failed to attend the meeting and no reason for failure to do so was communicated. Thereafter, a notice of intended prosecution dated 2nd May 2017, was issued on the defendant by email exhibit D3.

[6] The evidence of the defendant as given by its director Mr. Austin White was that the overseas supplier provides the Bill of Lading, Commercial Invoice and Packing List to the importer and when the goods arrive at the destination, these documents are given to the handling agent who then puts it through a central online government customs system by the name of ASYCUDA, to determine the levy payable on the imported items, PET preform bottles as in this instant case. Each type of item is given a code and when put through the system, it automatically generates the levy payable to the government. The handling agent then contacts the importer and informs him of the amount of the levy. Once the levy is paid the goods are released. It appears this procedure continued till 2011.

[7] However in 2014, the year relevant to the levy claimed by the plaintiff, the defendant states he was never asked to pay the levy on the PET preform bottle as the Bill of Entry did not state levy but stated guarantee. He further stated that as there was no levy, they had accordingly reduced the retail price and therefore the defendant had not benefitted from any non-payment of levy. It is the defendant's contention that if they were now to pay the levy, this would affect the profits the defendant he had declared in his declaration of 2014 on which he has been taxed and would now result in a massive loss to his company. He stated for 4 years the government never requested any payment of levy either at the point of entry or at the point of sale.

[8] It is apparent from the evidence before Court as admitted by the plaintiff witnesses that there was a change in government policy and following the complaints of importers, it was decided the levy was to be collected NOT at the point of entry but at the point of sale, after the sale of the bottles. It is clear from the evidence before Court that the amount appearing near the word Guarantee set out in the Bill of Lading was the amount of levy due and guaranteed to be paid by the importer after the release of the consignment, not at the time of clearing at the point of entry but after sale, at the point of sale. This it appears has caused confusion to the defendant in this case, even though it in the view of this Court it should have not as the directors of the defendant company being seasoned importers, should have known or queried what the word "guarantee" referred to in the Bill of Lading meant and whether there was a complete removal of the levy on the PET preform bottles which the defendant –company had been regularly paying on earlier occasions.

[9] Further, it is settled law that in cases of this nature, it is not for Court to once again proceed to calculate the sum claimed in the plaint. Section 21(2) of the Revenue Administration Act (herein after referred to as the Act) reads as follows:

"In an action for recovery of revenue, a copy of the notice of assessment shall be received by the Court as evidence that the revenue is due and payable, and the Court shall not entertain any plea that the revenue assessed is not recoverable because it has not been properly assessed or that the assessment under which the revenue is payable is the subject of objection and appeal".

[10] Further section 13(1) of the said Act reads as follows:

The production of a notice of assessment, or a document under the hand of the Revenue Commissioner purporting to be a copy of a notice of assessment, is conclusive evidence of the due making of the assessment and (except in proceedings under Part IV) that the amount and all particulars of the assessment are correct.

[11] In relation to Part IV proceedings referred to in the preceding paragraph , section 15 (1) of the said Act reads as follows:

Subject to subsection (2), a taxpayer dissatisfied with a revenue decision may, within sixty days after service of the notice of the decision, serve on the Revenue Commissioner an objection in writing against the decision stating fully and in detail the grounds for the objection.

[12] Section 16(1) of the said Act reads as follows:

A taxpayer dissatisfied with an objection decision may make an application to the Revenue Tribunal in accordance with Section 72 for review of the decision.

[13] Further section 17(1) of the said Act reads as follows:

A party to a proceeding before the Revenue Tribunal dissatisfied with the Tribunal's decision on an objection decision may lodge a notice of appeal against the decision to the Supreme Court in accordance with Section 78.

[14] Further appeal is permitted even up to the Seychelles Court of Appeal. Therefore the law specifically provides for a procedure for relief in respect of revenue decisions.

[15] Learned counsel for the plaintiff also relied on the case of **Yves Bossy v Republic (1980) SLR 40** which held as follows:

(i) where any legislation provided for appeal against the decision of any government official or body, it is that proceeding or method that must be followed;

(ii) it is not permitted to by-pass that procedure and instead make an appeal to Court;

(iii) the tax legislation provided a procedure to appeal against an assessment by the Controller of Taxes;

[16] Therefore learned counsel for the defendant's contention in his written submission that due to the ASYCUDA system encountering technical difficulties in respect of the calculation of levy and therefore the levy was not calculated properly, is a matter that this Court cannot entertain as according to section 21 (2) of the Revenue Administration Act, a Court shall not entertain any plea that the tax assessed is not proper.

[17] Similarly in the case of **Controller of Taxes v Ho- Sap (1983) SLR 148,** it was held that an excessive tax was a matter to be raised before the Taxation Board of Review (at present Revenue Tribunal) on an appeal made by the defendant and in the absence of such an appeal, the defendant could not raise it now (in Court).

[18] Therefore, the defendant's submission regarding levy not being properly calculated due to a breakdown of the system, is a matter which could have been raised before the Revenue Tribunal referred to above. Since the defendant did not appeal under section 16 (1) of the Act, he cannot now ask this Court to reconsider the amount of levy and decide whether or not it has been correctly assessed.

[19] Learned Counsel for the defendant next contended that the Trade Tax Act 1992 under which this action is being prosecuted has been repealed and replaced by Custom Management Act (Act 22 of 2011) and therefore this case cannot proceed. It would be pertinent at his stage to state that though section 271 of the Customs Management Act 2011 states that the Customs Management Decree1980 and Trade Tax Act (Cap 240) is hereby repealed, the very next section however, section 272 (1) of the Custom Management Act which is a savings and transitional provision, reads as follows:

The regulations made, certificates and directions issued under the repealed Acts shall continue in effect until they are repealed or amended under the provisions of this Act.

[20] Learned Counsel for the defendant has not satisfied Court that the regulation pertaining to this case namely, the Trade Tax (Imports) (Amendment) Regulations 2007, SI 30 of 2007 has been repealed or amended since the Custom Management Act (Act 22 of 2011) came into force. Therefore it is clear that in terms of section 272(1) of the Custom Management Act, the regulation referred to herein i.e. SI 30 of 2007 of the Trade Tax regulations, relevant to the levy per PET preform bottle in this instant case, is still is in force. Even under the Excise Tax (Amendment of Schedules 1and 2)) (Amendment) Regulations 2014, SI 5 of 2014 page 49, maintains the same levy per Pet and preform bottle (70 cents per bottle), therefore this Court sees no merit in the said defence.

[21] In regard to the defendant's contention that as there was no levy, they had accordingly reduced the retail price and therefore the defendant had not benefitted from any non-payment of levy and that if they were now to pay the levy, this would affect the profits the defendant had declared in his declaration of 2014, on which he has been taxed, it is the view of this Court that the Revenue Commissioner is not precluded from revisiting these declarations and if satisfied, make the necessary adjustments where and when necessary in respect of the assessment and calculation of the profit based tax. However the levy claimed by the plaintiff in this case on the PET preform bottles has to be paid by the defendant.

[22] For all the aforementioned reasons, this Court is satisfied that the plaintiff has established the claim against the defendant on a balance of probabilities and gives judgment in favour of the plaintiff as prayed for in a sum of SR 1,411,820.20 (one million four hundred and eleven, eight hundred and twenty and twenty cents) together with legal interest from the date of filing plaint and costs.

Signed, dated and delivered at Ile du Port on 02nd of August 2019.

2-08-2019

M Burhan J