

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 572
CS 47/2015

In the matter between:

SEYCHELLES REVENUE COMMISSIONER
(rep. by George Thachett)

Plaintiff

and

NADINE ANDRE
(rep. by Joel Camille)

Defendant

Neutral Citation: *SRC v Andre* CS 47/2015 [2020] SCSC 572

Before: Burhan J

Summary: Regulation 191(1) and (2) of the Trade Tax Regulations and the evidence of the plaintiff taken accumulatively, clearly indicate that the person who is liable to pay the GST is the defendant who was in charge of the vessel and who sold the vessel. Since the defendant did not object or appeal to the Revenue Tribunal on the GST assessment made, she cannot now challenge this issue before this Court.

Heard: 31st January 2019, 28th January 2020, 13 February 2020 and 7 May 2020. submissions

Delivered: 14 August 2020

ORDER

Judgment in favour of the plaintiff as prayed for in paragraph 8 (a) and (b) of the prayer in the amended plaint dated 1st of April 2019 together with costs.

JUDGMENT

BURHAN J

- [1] The plaintiff in this case initially filed plaint claiming a sum of SR 1,963,492.12/- in outstanding taxes, which was subsequently amended by amended plaint dated 9th of November 2015 to SR 1,199,142.45/- to reflect amounts cleared by the defendant. Thereafter once again by amended plaint dated 1st April 2019, the amount claimed was

further reduced to SR 298,751.15/-, being outstanding GST (goods and services tax) due on the sale of an imported Afri Cat vessel by the name of "Spirit of Seychelles". The last amended plaint acknowledges the fact that the other previously outstanding amounts owed in business tax had been settled by the defendant.

- [2] The plaintiff's case is that the defendant had bought/ imported an Afri Cat vessel by the name of "Spirit of Seychelles" at concessionary tax rates and later sold the said vessel in 2012, at which point the claimed GST became due. The plaintiff led evidence to establish that the defendant is the owner of a business registered with the Seychelles Revenue Commission by the name of Krystal Car Hire engaged in car hire business. This is supported by document P2. It is further borne out from the evidence led on behalf of the plaintiff and exhibit P4 that the defendant has registered another business in the name of Crystal Gift Shop in her name. Learned Counsel for the plaintiff has further led evidence from the Seychelles Licensing Authority that after importation of the said Afri Cat vessel by the name of "Spirit of Seychelles" a license to hire the vessel was issued to the defendant which is further corroborated by exhibit P5 issued by the Seychelles Licensing Authority.
- [3] On the 22nd December 2010 exhibit P6, the defendant on behalf of Krystal Charters wrote to the Ministry of Finance informing the ministry of her intention to sell the vessel by the "Spirit of Seychelles" and querying how much the GST would be on the sale. The defendant had signed the letter P6 as Managing Director. The letter refers to the tax concession given on the vessel on its importation.
- [4] According to the plaintiff by letter P7, the Ministry of Finance had informed the defendant they had no objection to the disposal of the vessel provided the outstanding tax was settled. Thereafter the plaintiff became aware that the defendant had sold the said vessel for a sum of US\$ 400,000 as borne out by exhibit P8.
- [5] The plaintiff by letter dated 24th April 2012, P10 informed the defendant that the GST tax due was SR 747,642.00. The relevant assessment notices P11 and P12 were also produced to court to prove that the defendant was made aware of the amount of GST due to the Revenue Commission. The plaintiff admits subsequently a sum of SCR 448,890.85 was

paid by the defendant and therefore now claims the balance sum of SR 298,751.15 from the defendant.

- [6] The defendant in her defence claims the vessel was never hers and that she never imported any such vessel. The defendant claims that the vessel was imported and owned by her boss Khalfan Ahmed Harib. Her position is that she was only a representative of one foreign national who owned the vessel. To affirm this fact, she produced document D1 which states inter-alia that the 1st party one Khalfan Ahmed Harib is the purchaser of the Afri Cat vessel and the 2nd party the defendant Nadine Andre is committed to leasing /chartering the boat for commercial purposes. I observe this document has no date on it and therefore I am unable to come to a finding when this document was signed and when it came into effect.
- [7] It is the contention of learned Counsel for the plaintiff that the plaintiff's claim is mandated by virtue of section 21 of the Revenue Administration Act to recover any unpaid revenue. On importation of a vessel, the importer benefits from concession on GST payable. If the vessel is subsequently sold the GST becomes payable. The Trades Tax Regulations, 1997 under the Customs Management Act provides as follows –

Regulation 85 (4)

In the case of disposal by sale or otherwise of goods imported at concessionary rate of tax or free of tax under Regulations 228, 236 and 238 and liable to tax under Regulation 191 on such disposal, the rate of tax applicable thereto shall, notwithstanding subregulation (1), be the rate in force at the time of such disposal.

- [8] In analysing the evidence before me, I will first deal with whether the defendant was only a representative or the owner of the vessel. The plaintiff has clearly established by oral and documentary evidence that the licensing authority had issued the license in the name of the defendant. According to document P6, the license to hire the vessel was issued to the defendant Nadine Andre by the Licensing Authority and the name of the business referred to in the license to which the conditions apply is Krystal Charter. It was the defendant as Managing director of Krystal Charter who had informed the Tax Department of her intention to sell the vessel. It is also clear from the evidence of the plaintiff that the

defendant after being noticed of the tax due, had proceeded to make part payments in a sum of SCR 448,890.85 of the total sum due. Therefore it appears the defendant was the person who was in charge of the vessel and who caused and allowed such goods to be sold. Document P6 and P8 clearly indicate the defendant was in charge of the vessel at the time the vessel was sold and was the person who caused and allowed such vessel to be sold. It would be pertinent at this juncture to refer to regulations 191(1) and 191(2) of the Trades Tax Regulations 1997

[9] Regulation 191 (1) reads as follows:

All goods which have been imported free of tax on the ground that they are property of the Government or any company, firm or individual privileged by contract or otherwise to import such goods free of tax shall, in case of the sale or other disposal thereof, be liable and to be charged with tax on the proceeds of the sale or the value of the goods, as determined under Regulation 89, unless approval from the minister, has been obtained for the sale or disposal without being liable to or being charged with the tax.

[10] Regulation 191(2) states:

“the person in whose charge of such goods may be sold or who shall cause or allow such goods to be sold or otherwise disposed of, shall furnish the controller with the particulars of the sale thereof or disposal and pay to the controller the tax which may be due thereon. (Emphasis added)

[11] Therefore in the view of this court, giving due regard to these regulations and the evidence of the plaintiff taken accumulatively, it is the defendant who was in charge of the vessel and who sold the vessel who is liable to pay the GST taxes due on the sale of the vessel. There is no evidence before court to indicate that any approval from the minister has been obtained for the sale or disposal of the vessel without being liable to or being charged with the tax.

[12] Further on consideration of the aforementioned regulation 191 (2), it appears that the undated agreement D1 does not absolve the defendant from her liability on the basis she is a representative of the owner, considering the overwhelming evidence of her involvement

in the sale of the vessel established by the plaintiff. Therefore learned Counsel for the defendant's submission on this issue bears no merit.

- [13] 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. Learned Counsel for the plaintiff has brought to the notice of this Court the provisions of section 21(2) of the Revenue Administration Act (hereinafter referred to as the said Act) which 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”.

- [14] 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.

- [15] In relation to Part IV it is pertinent at this stage to draw attention to section 15 (1) of the said Act which reads as follows:

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

- [16] 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.

- [17] 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.

[18] 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.

[19] 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;*

[20] 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.

[21] Therefore, the defendant's submission regarding income tax as being excessive, is a matter which could have been raised before the Revenue Tribunal referred to above. Since the defendant did not object or appeal as provided for in the statute, she cannot now ask this court to decide whether or not it was a correct assessment.

[22] For the above reasons, I proceed to give judgment in favour of the plaintiff as prayed for

in paragraph 8 (a) and (b) of the prayer in the amended plaint dated 1st of April 2019 with costs.

Signed, dated and delivered at Ile du Port on 14 August 2020


14-08-2020

Burhan J