

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 42 of 2007

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

City District Government, Karachi
 and others.

....

Appellants

Versus

M/s. Trading Corporation of
 Pakistan (Pvt.) Limited.

.....

Respondents

Date of hearing : 13.01.2020

Date of judgment : _____

Appellant City District Government, Karachi through Syed Hassan Mustafa Abidi and Mrs. Azra Muqeem, advocates.

Respondent M/s. Trading Corporation of Pakistan (Pvt.) Limited through Ms. Afsheen Aman, advocate.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:-

Through this appeal, the

appellants impugned the judgment and decree dated 05-12-2006, whereby the appellants City District Government, Karachi (i.e. defunct CDGK and others) demanded octroi payable on consignments i.e. rice passing through KMC jurisdiction and the same was adjusted from the amount deposited by the respondent as Transit Pass Security.

2. Facts of the case, in a nutshell, are that the respondent is a body corporate owned by the Federal Government, who filed a Suit for recovery of Rs.45,72,798/- with interest. The said amount was deposited by the respondent with the appellants, as Transit Pass Security, in respect of the

jute bags imported by the respondent from Bangladesh, for packing of rice to be exported. The respondent claimed that being a Federal Government Body, they were responsible for export and movement of the rice. The said jute bags were imported for re-exporting as packing material of rice. According to the respondent, since it was owned and operated for the Federal Government as an agent; therefore, they were not liable to pay octroi on the goods handled by them, as per the Notification dated 28th October, 1974 and Circular dated 18th December, 1982. The respondent also asserted that apart from the said notification and circular, since the jute bags were required for re-export purposes; therefore, no duty was payable but upon the insistence of the appellants and to satisfy them that these bags were used as packing material for export of rice, the said bags were cleared under Transit Pass Security and an amount of Rs.45,78,798/- was deposited, which was refundable after re-export of the said jute bags. Hence, after re-export of the jute bags, as packing material, the respondent claimed for refund of the aforesaid amount but the appellants refused to do so by taking a plea that some amount of octroi was payable on consignments of the rice imported within KMC limits, as such the same was adjustable and finally adjusted against the payment of the octroi duty. So far as the unexportable rice is concerned, the respondent claimed that the same was sold locally and octroi on the same was paid/payable by the purchasers and not by the respondent. It is claimed that the respondent was not responsible to pay the said amount, while the aforementioned amount was deposited as security and after re-export of the jute bags as required in packing of the rice meant for export, the said amount was refundable to the respondent. Since the matter could not be resolved; therefore, the respondent filed a Suit for recovery of the said amount along with interest, which was decided in favour of the respondent, through the impugned judgment and decree.

3. M/s. Syed Hassan Mustafa Abidi and Mrs. Azra Muqeen, advocates, the learned counsel for the appellants submit that the respondent has brought the rice within the territorial jurisdiction of the appellants, as such octroi was payable on such commodity. They submit that the respondent has admitted that some quantity of rice was sold by the respondent in the local market, as such at least on the said quantity of the rice octroi was payable. According to them, the godowns of the respondent were situated within the local limits of KMC, as such, they were responsible to pay octroi to the appellants. They pointed out that the appellants have written letters on 12-03-1987, 03-06-1987, 10-06-1987 and a show-cause dated 10.08.1989 to the respondent for disclosing the quantity of rice sold out locally, so that the amount of octroi may be calculated, but they did not respond to such letters. They submit that although, the respondent disclosed in their pleadings about the quantity of rice sold out locally but they did not file any document to substantiate such quantities. They submit that on account of the failure of the respondent to respond to such letters; a show-cause notice was issued to the respondent. According to them, since at that time, octroi was leviable; therefore, due to the non-payment of proper octroi, the appellants were justified in adjusting the octroi amount from the Transit Pass Security deposited by the respondent with the appellants.

4. On the other hand, Ms. Afsheen Aman, the learned counsel for the respondent submits that the instant appeal is time-barred as the appellants did not pay copying charges within time, as such delay in preparing and delivery of the copy was on the part of the appellants. She submits that if such delay in getting copies is considered on their part, the instant appeal is time-barred. According to her, the judgment and the decree were pronounced on 05.12.2006 and the appeal ought to have been filed within 20 days and if winter holidays are excluded, the appeal should be filed on or before 25-01-2007. So far as merits of the case are

concerned, she contends that the jute bags were never passed through the jurisdiction of the appellants, as such the demand of octroi was not justified. She submits that the jute bags were imported from Bangladesh for the purposes of re-export, as such no duty or taxes, including octroi, were payable on the same. Regarding rice movement, her contention is that no octroi was chargeable on the same as it was re-exportable commodity. According to her, an amount of Rs.45,72,798/- was deposited as Transit Pass Security, as such after re-export of the jute bags, the said amount should have been refunded to the respondent, which the appellants have failed. She submits that it would not be justified to adjust the said amount against a certain claim of the so-called octroi, which was not payable by the appellant, as per the notification and the circular, issued by the Federal Government. In the end, she submits that the impugned judgment and decree are in accordance with law and the same may be maintained. In support of her above contentions, she relied upon the cases reported as **Al-Ghazi Tractors Limited vs the Province of Sindh (1991 MLD 1616)**, **Messrs Trading Corporation of Pakistan vs City District Government, Karachi (SBLR 2005 Sindh 1483)** and **Raja Khan vs Manager (Operation) Faisalabad Electric Supply Company (WAPDA) and others (2011 SCMR 676)**.

5. We have given anxious consideration to the submissions made before us and have gone through the relevant record as well as impugned judgment, the decree as well as the decisions relied upon by the counsel for the respondent.

6. At the very outset, it is noted that the appeal has been filed in a timely manner. Hence the objection of the learned counsel for the respondent that the appeal is time barred is overruled. It is noted that the appellants were claiming payment of octroi from the respondent but surprisingly the appellants themselves were not sure about the total

amount of octroi payable to them. The dispute between the parties was about an uncertain quantity of rice, which was presumed to be sold out by the respondent locally, as the same could not be exported. Both the parties examined only one witness in support of their assertions. While recording evidence, the respondent has produced the aforementioned notification, circular and legal notice, while no credible document was produced albeit some letters written by the appellants. The respondent claimed that octroi on locally sold rice was paid or payable by the purchaser and not by the respondent. Nevertheless, it is an admitted position that the respondent has deposited an amount of Rs.45,72,798/- with the respondent as Transit Pass Security regarding the jute bags imported by the respondent and the same has passed through the jurisdiction of the appellants had remained controverted. The amount so deposited as security for giving assurance that the said jute bags would be re-exported and after re-export of the same, the respondent was entitled to refund of the said amount. It has come on the record that under Notification dated 28th October, 1974 (Annexure A, page 51 of the Court file), and circular dated 18 December 1982 (Annexure B, at page 53), the respondent was not required to pay octroi duty on the movement of rice meant for export, as such, there was no question of payment of octroi on exported rice. So far as the payment of octroi in the local market is concerned, the appellants could not ascertain such quantity of rice, hence their demand for payment of octroi was also not justified being based on an uncertain amount. Besides, the respondent claimed that the octroi on such goods was paid by the purchaser and not by the respondent. In the present case, the amount in question was deposited regarding jute bags and not in respect of rice, as such the adjustment by the appellants of the said amount in respect of the rice sold out in the local market was also not justified.

7. It was also claimed by the appellants that the respondent godowns were situated within their territorial limits. We are of the view that this contention of the appellant is also incorrect, as the godowns were situated at QRG (Port Qasim), Landhi, TPX, and Shershah as such amongst them the godown situated at Port Qasim and TPX certainly did not fall within the jurisdiction of the appellants. The learned counsel for the appellants has categorically stated that the exported rice was prepared and packed for re-export at Port Qasim, which did not fall within the jurisdiction of the appellants. The appellants during the trial could not produce any evidence contrary to such assertions of the learned counsel for the respondent. Moreover, it is also not controverted that the respondent is a body corporate owned by the Federal Government and the same was operated as an agent of the Federal Government for regulating of export of rice from Pakistan and thus how are liable for payment of octroi.

8. In the light of the above facts, we are of the view that the respondent was not required to pay octroi to the appellants on any account, hence, the impugned judgment and decree do not suffer from any illegality, as the same appear to be free from any misreading and non-reading of the available evidence. Consequently, the instant appeal is declared as meritless and the same alongwith the listed applications is dismissed, with no order as to cost.

JUDGE

JUDGE

The octroi is not a fee, as the same falls under the definition of a provincial tax and being provincial tax, the same was not payable by the Federal Government as per Article 165(1) of the Constitution of Pakistan, which reads as under:

“Article 165. (1): *The Federal Government shall not, in respect of its property or income, be liable to taxation under any Act of Provincial Assembly and, subject to clause (2), a Provincial Government shall not, in respect of its property or income, be liable to taxation under Act of Majlis-e-Shoora (Parliament) or under Act of the Provincial Assembly of any other Province.”*