

# IN THE HIGH COURT OF SINDH KARACHI

## Suit No. 257 of 1985

Plaintiff : Karachi Electric Supply Corporation  
through Mr. Amel Khan Kasi, advocate

Defendants : Muhammad Ramzan Katiar & another (**Nemo**)

Date of hearing : 11-11-2024

### JUDGMENT

**OMAR SIAL, J:** Karachi Electric (Plaintiff) has filed this suit to recover money it paid to Muhammad Ramzan (Defendant No.1) on account of octroi tax from 15.07.1982 till 31.06.1983. The Union Council, Darsanna Channa (Kathore) (Defendant No.2), contracted Muhammad Ramzan with the leasehold rights to collect the same.

2. The challenge of Karachi Electric to the levy is manifold. Primarily, the grounds agitated are (i) that no valid subsisting contract for award of collection rights existed between the Defendants, (ii) levy did not apply to the goods imported by Karachi Electric, (iii) Union Council was not empowered to impose the levy, and that (iv) Union Council had exempted the goods from the levy under its resolution dated 24.11.1982.

3. On 3.8.1986, the following consent issues were adopted by the Court;

1. Was the imposition of Octroi Tax by Defendant No.2 wholly or partially unlawful?
2. Was there any binding and enforceable contract between the Defendants whereby Defendant No.1 could collect the Octroi?
3. Whether the plaintiffs have made payments to defendant no.1 under a mistake of law? If so, what is the effect?

4. Whether the plaintiff cannot challenge the contract's authenticity between defendant no.1 and defendant no.2?
5. Is the plaintiff entitled to recover the amount paid to defendant no.1 from the defendants jointly and severally?
6. What should the relief be?

### **ISSUE NO.1**

4. Chapter IX of the Sindh Local Government Ordinance, 1979, provides for the levy of taxes. Section 60(1) provides that “...a council may levy, in the prescribed manner, all or any of the taxes, rates, tolls, and fees mentioned in Schedule V...” Section 2(15) of the SLGO, 1979 defines a council as “...a corporation, municipal committee, town committee, district council, or union council, as the case may be.” Schedule V, Part III, item 5 empowers a Union Council to “tax on the import of goods for consumption, use or sale in the local area (by union councils only).” Hence, it is incorrect of Karachi Electric to suggest that the Union was not empowered to levy the octroi tax.

5. Octroi has been defined in section 2(m) of the Sindh Municipal Committee Octroi Rules, 1964 (“Octroi Rules”) as “a tax on the import of goods for consumption, use or sale within the octroi limits.” These rules were initially framed as the West Pakistan Municipal Committee Octroi Rules, 1964, under the Municipal Administration Ordinance, 1960. Subsequently, the Ordinance was repealed by the Sindh Local Government Ordinance in 1972. The Octroi Rules, however, stood preserved by a deeming provision, i.e., section 4(2)(1)(a), which provided that “any...rule...applicable thereunder ...shall, so far as is not inconsistent with the provisions of the Ordinance and the rules, be deemed to have been respectively made...under this Ordinance.” The 1972 Ordinance was repealed through SLGO 1979. Under section 120(2)(1)(a), the Octroi Rules were deemed to have existed under the cover of SLGO, 1979.

6. Section 64, SLGO, 1979 empowered the Union Council (Defendant No.2) to collect, ‘...all taxes, rates, tolls, and fees levied

*under this Ordinance...in the prescribed manner by the persons authorized for such collection.”* Section 45, SLGO 1979 empowered the Union Council, *“to enter and perform all such contracts as it may consider necessary or expedient to carry into effect the provisions and purposes of this Ordinance.”* Rule 225 of Octroi Rules allows for the lease of Octroi collection subject to fulfilling the conditions met in the rule. Rule 226(a) further states, *“Where the collection of Octroi in any municipality is leased under this Chapter...all amounts collected as Octroi shall belong to the lessee...”*

7. There is no cavil to the fact that specific consignments could be exempted from the payment of the octroi tax. However, the Provincial Government was the competent authority to provide that exemption, as provided in section 62(1), SLGO 1979. A resolution of the Union Council dated 24.11.1982 is on record, demonstrating such an exemption. However, nothing has been brought to the record as evidence that the Provincial Government granted such an exemption. In the absence of that declaration by the Provincial Government, the stand-alone resolution of the Union Council does not meet the statutory requirement as mandated in section 62 of the SLGO, 1979.

8. Furthermore, Rule 35 of the Octroi Rules provides that *“When goods liable to Octroi are presented at an Octroi Post, the person in charge of the goods shall declare whether the goods are intended for:... (b) consumption, use or sale within the Octroi limits for a purpose for which an exemption is to be claimed;...”* Rule 36 further states, *“If no declaration is made under rule 35, it shall be deemed that the goods are intended for consumption, use or sale within the Octroi limits.”* Nothing has been brought on record by Karachi Electric to demonstrate that such a declaration of exemption was presented at the Octroi post at the time of goods clearance. The absence of such a declaration was fatal for Rule 36, by a deeming provision that holds that absence equates to having no exemption. This interpretation has been confirmed in the law reported as **NTDC v. Pub Corporation & others (2017 SCMR 1506)**. The failure to file the necessary declaration also negates the maxim *expressio unis est*

*exclusio alterius* which mandates that when the law requires a thing to be done in a specific manner, it should be done in the same manner.

9. Given the above discussion, this issue is answered negatively.

**ISSUE No.3**

10. The mistake of law argument would have been applicable and perhaps even supported Karachi Electric's arguments if the octroi tax was not leviable on its consignments. Nothing has been brought to the record to demonstrate that the law did not require imposing the octroi tax. This contradicts Karachi Electric's argument that all payments tendered were made under protest. There is nothing on the record to substantiate the plea of protest either. The payments were made under the applicable laws, and the Plaintiff has been unable to make a case in defense of a mistake of law.

**ISSUE Nos. 2 and 4**

11. It is a matter of record that Muhammad Ramzan had entered into an agreement dated 10.07.1982 with the Union Council for the leasehold rights of the collection of octroi within the territorial limits of the Union Council. It is also a matter of record that the Union Council did cancel the contract, which constrained Muhammad Ramzan to approach this Court in a Constitutional Petition No. 690/1982. Ultimately, the matter was compromised, and the Union Council undertook not to act on the cancellation. The Union Council in its Written Statement confirmed the existence of a valid contract between itself and Muhammad Ramzan. The Union Council took the stance that Karachi Electric does not have the *locus standi* to challenge the validity of the contract. On the other hand, Karachi Electric contends that the contract had to be re-executed, and the Government of Sindh had to approve. Without such a newly executed contract and the approval of the Government of Sindh, Muhammad Ramzan had no authority to collect the octroi tax. On the one hand, Karachi Electric contends that the agreement executed between the Defendants allowed for the exemption of octroi tax and

that the goods of Karachi Electric stood exempted. In the same breathe it also claims that there existed no valid contract. KE cannot blow hot and cold at the same time. Even otherwise, Karachi Electric is not privy to the contract and cannot, as a third party, obliterate a valid subsisting contract by claiming so.

12. I further note that the petition between the Defendants was compromised via an application dated 20.09.1982. After that, the Union Council, vide various letters, made representations to different organisations confirming that Muhammad Ramzan's sole proprietorship, Katiyar Sons, was authorized to collect the applicable octroi tax.<sup>1</sup> Furthermore, the representations made by the Union Council after the compromise application give rise to the presumption that all the official formalities stood duly observed. In light of the same, Article 129(e) of the Qanun-e-Shahadat Order, 1984 vests in court the power to presume that all the official acts vis-a-vis the signing of the contract and the necessary approvals, if required, were duly obtained.

**ISSUE No. 5**

13. Given the above discussion, this is answered in the negative.

**ISSUE No. 6**

14. The suit stands dismissed with no order as to costs.

**JUDGE**

---

<sup>1</sup> Letters dated 26.09.1982 (Exhibits X/9, X-10, X/18) Letter dated 14.11.1982 (X-11)