

(CORAM: OMAR, J.A., MFAJILA, Ag. J.A., And MAPIGANO, Ag. J.A.)

CIVIL APPEAL NO. 31 OF 1987

JASHBHAI P. PATEL & COMPANY LIMITED...APPELLANT

VERSUS

NATIONAL PHARMACEUTICAL COMPANY LIMITED...RESPONDENT
(Appeal from the Judgment and Decree of the High
Court of Tanzania at Dar es Salaam (Kazimoto, J.)
dated the 18th day of September, 1986

in

Civil Case No. 275 of 1983

JUDGMENT OF OMAR, J.A.:

The appellant is a limited liability Company by the name of Jashbhai P. Patel which had sued the respondent the National Pharmaceutical Company Limited for the recovery of the sum of Shs. 320,117/20 being customs duty, sales tax, other charges and interest, which the appellant had incurred when they cleared from the customs the consignment of medicine owned by the respondent.

The appellant Company is a Clearing and Forwarding Agent. The goods, according to P.W.1 Marendra Gajjar were first cleared duty free as per import free entry No. 380 of 17.5.78. Afterwards the Audit Section of the Customs Department in their query No. 77/78 (customs No. 364) raised this matter of short levies and the Commissioner of Customs in confirming the audit report about import duty, short levy and sales tax on certain medicines wrote on 3th December, 1980 to the Controller and Auditor General about those medicines that are chargeable with duty at 30% ad valorem, and sales tax at 18%.

This letter Exhibit P.4 was also addressed to seven companies including that of the appellant and warned that should the clearing agents not settle the short levies which amounted to over shs. 8 million not later than 1st January, 1981 they would run the risk of their agency licences being withdrawn.

The appellant company paid the sales tax, customs duty on 30/12/80 as per their enclosed receipts No. P.55119 and No.P.356121 plus other charges amounting to shs. 255,073/50. On 1st January, 1981 a demand letter by the appellant was sent to the respondent requesting for this amount to be settled. There has been no favourable response from the respondent Company who avoided the

payment and gave the following reasons in their defence:
 "respondent denied that the customs duty sales tax and any other charges were paid by the plaintiff on its behalf and/or instructions as alleged in the plaint. If it is proved that the appellant has paid then he had no instructions from the principal to pay such duty and levy". This is no doubt a wrong view, the owner of the goods which are lying at the customs does not determine what taxes he should pay, they are imposed upon him by the Government.

The evidence adduced including the exhibits tendered shows that taxes for various types of medicine vary. For example the rate of duty for conjez tablets is given as 30% customs duty and 18% sales tax; castor oil BP is given as 10% customs duty and 12% sales tax. These rates may be known to the owners and their agents or they may not be known, in which case the duty of the auditors is to bring to the attention of those concerned the existance of such taxes and it was no where suggested that the owners and their agents who did not pay did so deliberately. They were merely reminded to pay to the Customs which had suffered a loss of shs. 8 million due to non payment of correct levy. About the parties responsibilities and obligations Section 126 and 127 of East African Customs and Transfer Tax Management Act states that any duly authorized agent who performs any act on behalf of the owner is deemed as the owner of goods and is held liable for all payments and acts. Similarly any owner of such goods shall be liable for acts of such authorized agent. From the foregoing it is clear that both owner and agent are liable for non observance of customs rules and regulations.

As Mr. Majithia, Counsel for the appellant had said, the issue here is whether the money was paid. If it was paid, as indeed it was, then the question of reimbursement comes in which is what this case is all about.

There is no issue of negligence or carelessness in filling the Customs forms wrongly. Because if the forms were filled negligently by the agent under import free entry they passed through the customs and were approved by the customs and payment was made in that respect. Then the auditors checked the entries as they did with this particular entry No. 380 of 17.5.78 and discovered the goods should have the taxes paid for.

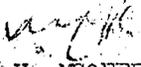
I am of the firm view that the reimbursement of the money paid by the agent should be effected by the principal who is the respondent as there has been no negligence on the part of the agent which could have caused any unexpected loss. In fact this was no loss, merely an obligation on the part of owner. There are merits in this appeal.

As the other Members of the Court agree this appeal is allowed and the judgment of the High Court set aside with costs to the appellant in this Court and the court below.

DATED at DAR ES SALAAM this 30th day of October, 1987.

A. M. A. OMAR
JUSTICE OF APPEAL.

I certify that this is a true copy of the original.


(J. H. MSOFFE)
SENIOR DEPUTY REGISTRAR