

CIV\APN\80\96

IN THE HIGH COURT OF LESOTHO

In the Application of :

T.M. AHMED t/a MAPUTSOE FACTORY SHOP

Applicant

vs

**THE COMMISSIONER OF SALES TAX
THE ATTORNEY GENERAL**

**1st Respondent
2nd Respondent**

J U D G M E N T

**Delivered by the Hon. Mr Justice M L Lehohla on the
17th day of October, 1997**

On 7th March, 1996 the applicant obtained against the respondents an interim order returnable on 13th March, 1996.

The 1st respondent was required in terms of that interim order, to show cause why he shall not be ordered to open the applicant's shops forthwith; and why the said closure shall not be declared *ultra vires* the provisions of the Sales Tax Act 1982; and why the 1st respondent shall not be ordered to follow lawful channels to

recover sales tax and why both respondents shall not be ordered to pay costs of this application.

On the return date i.e. 13th March, 1996 after hearing arguments on both sides the Court discharged the interim order and thus dismissed the application with costs but gave the applicant two months within which to raise the Sales Tax owing to the 1st respondent failing which the Commissioner was allowed to levy execution on the applicant in order to recover the amount owing to the Collector of Tax.

Contrary to the applicant's deponent assertions it seems that the reasons for closure of applicant Maputsoe Factory Shops was that the respondents had received information that these shops were being closed. Since the applicant owed the respondents (and this is not disputed) the respondents locked the premises so that whatever assets were in the shops could not be spirited away. This was done in order to distress and collect tax.

Since the facts are not denied, it would be profitable to deal with legal issues.

First, the letter of appointment was in terms of Section 4(2)(d) entitling the Commissioner to do all things as would enable him to collect tax.

Section 4(2)(d) of the Sales Tax Act 1982 reads :

“The Commissioner may, either personally or by appointing other persons for that purpose -

(d) do all such acts as are likely to enable him to collect tax”/

Thus the locking of premises was one of the things the Commissioner was entitled to do to enable him to collect tax and ensure that goods are not taken away in consequence of which his purpose might be thwarted.

Mr Matookane for the applicant argued that section 4 should be restricted to the question of assessment only. Indeed among other things that the Commissioner may do is, in terms of Section 4(2)

- (a) “demand production of books of account;
- (b) enter and search the premises of vendors or persons liable to pay tax under this Act;
- © seize and confiscate goods which are in his opinion kept or left out of the vendor’s books of account”.

Needless to say as shown earlier the Commissioner’s powers are not restricted to provisions of subsections (a) to © above only but extend to (d) which gives him very extensive powers in as far as it entitles him to do *all such acts* as are likely to enable him to collect tax. It should be clear therefore that *Mr Matookane*,

in the line he is pursuing, is holding the wrong end of the stick. In the line he is pursuing he seems to ignore the fact that evidence has established and *Mr Putsoane* confirmed in his submissions that assessment had been done. So there is no pretence that assessment is yet to be done. All that is being attempted by the Commissioner is to collect tax and not assess.

It should be appreciated that the amendment to Section 20 of the principal Act by Section 20A of the Sales Tax (Amendment) Order, 1986 insofar as it tends to affect section 4 of the principal Act above does not conflict with that principal Act, or at least the intention of the Legislature was not to secure a clash between the Principal Act and the amendment.

Section 4 of the Sales Tax(Amendment) Order 1986 provides under section 20A(1) that :

“In any case where tax is recoverable in the manner provided by section 20, the Commissioner, may,

- (a) instead of proceeding under section 20, recover the tax by distress; and
- (b) for that purpose, in writing authorise an office of the Sales Tax Department to execute distress upon the moveable property of the person from whom the tax is recoverable and employ such servants and agents as he may think necessary to assist him in the execution of the distress”.

Suffice it to say that subsection (2) empowers the Commissioner to authorise that a sales tax debtor's house or premises be broken open for purposes of executing distress under sub section (1) above.

The point I wish to drive home is that section 4(2)(d) of the Principal Act on collection of tax and section 20A dealing with collection and recovery are devoted to virtually deal with the same thing. Hence I see no contradiction between these two sections.

I reject therefore *Mr Matookane's* contention that section 4 above deals with assessment only. Impliedly, section 4(2)(a) may go to assisting in the assessment but 4(2)(d) is directed at collecting tax.

I am satisfied that the respondents were within their rights to lock the premises to be able to achieve the second leg of their operation, namely, distress.

Mr Matookane's argument is confined to definition in **Osborne's Concise Law Dictionary** 2nd Ed. Saying "distress means taking possession of the goods i.e. act of taking moveable property out of possession of the wrongdoer to compel performance of an obligation, - (a legal mode of self-help)".


But in terms of the Statute referred to above it should be clear that the Commissioner is given far more extensive powers in that in distressing he or his agent can leave property where he found it and let it remain there for a period of ten days. This he effects by locking the premises in terms of section 20A subsections (1),(2), (3) and (4) of the Sales Tax(Amendment) Order 11 of 1986.

So in terms of the Statute it seems to me that the property need not be taken away but the same end is achieved by keeping the property in the premises for ten days. The fact of the property so remaining in the premises during this period has nothing to do with the assessment.

The submission gains the Court's favour therefore that what was being done in locking goods where they were found was to enable execution of the distress order for tax to be collected.

I am of the view therefore that whether it is perceived that it is Section 20A of the Act as amended or Section 4(2)(d) that was applicable the end result or objective was the same, namely to enable the office of the Commissioner to collect tax.

It was for the above reasons that the Court made the order referred to earlier when discharging the interim order with costs.


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JUDGE
17th October, 1997

For Applicant : Mr Matooane
For Respondents : Mr Putsoane