

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 144/20

Before

Indiren Sivaramen	Acting President
Vijay Kumar Mohit	Member
Rabin Gungoo	Member
Parmeshwar Burosee	Member

In the matter of:-

Mr Koolash Rajcurrun (Disputant)

And

Mauritius Revenue Authority (Respondent)

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). The parties were assisted by Counsel. The terms of reference of the points in dispute read as follows:

- 1. “Whether the decision of the Mauritius Revenue Authority (MRA) to refund the Disputant (its employee) only the excise duty and VAT paid at the time of import of a motor vehicle purchased by the Disputant is in breach of the Collective Agreement signed between the MRA and the Mauritius Revenue Authority Staff Associations (MRASA) in February 2019”.*
- 2. “Whether the decision of the MRA, in light of the aforementioned Collective Agreement, makes a wrongful distinction between the Disputant and a public officer in that particular context, whereby the Disputant is being unfairly penalized despite the main condition of the Collective Agreement being that “there will be no monetary difference in the amount of duty remitted, when compared to that when a duty certificate (sic) is issued”.*

3. *“Whether, when remitting duty as provided in the Collective Agreement, the decision of the MRA to differentiate between (a) excise duty and VAT payable at the time of import of a vehicle and (b) VAT payable on excise duty in showroom, is in breach of the Collective Agreement.”*

The Disputant deposed before the Tribunal and he stated that he retired as Team Leader at the Respondent. He was entitled to full duty remission on purchase of a car of up to 1500 cc. He produced a copy of an extract of a memo issued by the Respondent in relation to a collective agreement entered into between the relevant trade union and the Respondent (Doc A). Particular reference was made to paragraph 18(a) of Doc A which read as follows:

“The present system of ‘duty remission’ previously available at the MRA is being maintained on the basis that there will be no monetary difference in the amount of duty remitted, when compared to that when a duty free certificate is issued.”

Disputant stated that this was in line with paragraph 729 of the HR manual of the Respondent and he produced a copy of same. He stated that he had to pay the “duty paid price” of the vehicle and the Respondent then had to refund him duty and VAT. He also referred to “market value” of the vehicle and suggested that “duty paid price” is the showroom price he paid for the car. He stated that he paid Rs 1,998,000- for the car. He applied for refund of duty and VAT. When he was faced with this problem in relation to his application for refund, he went to the showroom and asked for a duty free quotation also. He produced copies of the quotations for allegedly the same car duty paid (Doc C) and duty free (Doc D). He averred that the duty free price of the car is Rs 1,395,000-. He stated that the actual difference between the two quotations amounted to around Rs 603,000- and that an officer in the public service benefiting from duty free on the same vehicle would benefit from duty and VAT remission in that sum.

Disputant averred that he was not refunded VAT he paid on excise duty in the showroom and which would amount to some Rs 69,592-. Disputant stated that the Respondent should have refunded him Rs 603,108- whereas he was refunded only some Rs 533,536- (actually Rs 533,535- as per Doc H). He then made a distinction between the duty paid value when a commodity is taken out from Customs and the duty paid price when someone buys from the market. He stated that his prejudice amounts to Rs 69,592- and that this represents VAT he would have paid on excise duty in the showroom. He produced a computation (Doc E) and a document he made which was allegedly based on the scenario that there was no profit at all for the car dealer (Doc F).

In cross-examination, Disputant identified a copy of his application for deferred duty free facility in the present case together with the Customs Declaration form and there was no objection to the production thereof (Doc G). Disputant agreed that his application for

duty remission will be based on the CIF (Cost, Insurance and Freight) value of the car which was Rs 927,887. He agreed that he received a cheque from the Respondent for an amount of Rs 533,535- (Doc H). He conceded that there was no mention that duty remission will be made on the showroom price. Disputant argued that for both a duty paid vehicle and a duty free vehicle there should be a profit. Then, he conceded that a car dealer is free to apply any relevant pricing strategy in selling vehicles. He agreed that the car dealer would add up any profit it would make to the CIF value of the vehicle before the vehicle is put in the showroom. He did not agree that the Respondent was to refund him only the duty remission on the CIF value of the car. He did not agree that in terms of duty remission there had not been any difference between an officer from Respondent and a civil servant.

Mr Mooruth, Technical Officer from the HR and Training Department of the Respondent then deposed and he identified Doc G (including the copy of the relevant Customs Declaration Form in this case) which was produced earlier. He also confirmed that a sum of Rs 533,535- was remitted to the Disputant. He stated that the duty remission is as regard the CIF value of the vehicle. He stated that the amount shown on the bill of entry will be the base amount on which the duty remittance will be calculated.

In cross-examination, Mr Mooruth stated that as per the conditions of service, the Respondent is not supposed to settle the difference between prices but has to ensure that there is no monetary difference in the amount of duty remitted to a staff of the Respondent as compared to when a duty free certificate is issued. He stated that according to him the Disputant has paid VAT only once in the showroom and would not have paid anything at the Customs level. VAT was paid on the price which the Disputant agreed with the car dealer. He stated that the Respondent as per paragraph 729 of the HR manual and the collective agreement, had to and did remit excise duty and VAT accrued on that excise duty to ensure that the staff of the Respondent was at par with someone eligible for a duty free certificate.

Mr Gaunpot, Section Head at the Respondent deposed at another sitting and he stated that Disputant had been refunded the exact amount which a civil servant eligible for 100% duty free exemption on the same vehicle would have been exempted if the bill of entry had been validated on the same day and at the same rate of exchange. He then confirmed that Doc K which was produced was a simulation if the bill of entry for exactly the same car had been validated at Customs on the very same day at the same rate of exchange for an officer of Respondent to whom a duty free certificate would have been issued. In cross-examination, he stated that he would not be able to comment on a quotation issued by an agent as he would not know the marketing strategy of the agent. He stated that the Respondent would have no control on a quotation issued by the car agent.

The Tribunal has examined all the evidence on record including the submissions of Counsel. The claim of the Disputant is based on a quotation he would have sought from the car agent in relation to what he averred will be the same vehicle that he bought except that the quotation this time was not for a duty paid car but for a 100% duty free car (Doc D). The entire case of the Disputant will rely on this duty free quotation (Doc D) where it is mentioned “(S.PRICE 100% D.FREE 1500CC)” next to the make and type of car. The Tribunal has not been impressed by the version of Disputant that duty remitted (underlining is ours) in his case should be calculated as per Doc D. Indeed, Doc D is a mere quotation and there is no indication at all as to how the price mentioned as “S.Price 100% D.Free 1500 CC” at Rs 1,161,304.35 has been arrived at. Though we do agree with the Disputant that in both cases, that is, a car purchased duty free and a car purchased duty paid there will be an element of profit, there is however no reliable evidence before us that the profit in each case is the same or must be the same. Though Doc D is itself dated 13 December 2019, the Tribunal bears in mind that the Duty Paid quotation dated 21 March 2019 (Doc C) does include at its page 3 the following: 100% Duty Free: Rs 1,395,000 on road. This is not enough however since remission of duty has little to do with sale price and much more with the CIF value of the vehicle *in lite*. Disputant conceded in cross-examination in no less than two occasions that his application as regards to duty remission will be based on the CIF value.

Also, Disputant who is entitled to Deferred Duty Free Facility has submitted a document which he made (Doc F) to show allegedly the difference in costs for an identical car which would be sold duty free as opposed to one sold duty paid. Disputant suggested that in the said document (Doc F) he proceeded on the basis that the car was sold with no profit/mark-up at all. This document is clearly incorrect and we would go as far as saying that it is misleading. Indeed, VAT at import is given as Rs 208,775- in the case of duty paid, that is, 15% of Rs 927,888 + Rs 463,944 (CIF + Excise duty as per Doc F). If we assume the incredible scenario that there is no profit or mark-up at all, then what is this ‘VAT in showroom on Excise duty’ which Disputant has worked out and which he puts at Rs 69,592. There is absolutely no explanation for same and there cannot be, if there is no mark-up and VAT has already been calculated at import on both CIF and excise duty. This is merely accounting twice for the value of Rs 69,592 when VAT is no doubt payable only once by the Disputant when he purchases his car. The own scenario drawn by the Disputant in Doc F shows the fallacy in his averments.

The document which was submitted on behalf of Respondent (Doc K) and which we do bear in mind is not a Customs validated document shows, however, in our opinion, an accurate representation of the duty exempted/remitted on the very same car if imported on the very same day and at the same relevant rate of exchange but with a duty free certificate. This document is in line with the version of Mr Gaunpot who has been adamant throughout his testimony that the amount of duty remitted in the case of

Disputant is exactly the same amount of duty which would have been exempted for an exactly similar car imported in exactly identical conditions but with a duty free certificate.

The Tribunal will also refer to the relevant provision in the collective agreement which reads as follows:

The present system of 'duty remission' previously available at the MRA is being maintained on the basis that there will be no monetary difference in the amount of duty remitted, when compared to that when a duty free certificate is issued.

The above provision has been drafted in clear terms and it refers to the amount of 'duty remitted'. Quite understandably it does not refer to cost or price since the Respondent would have absolutely no control on the cost or price of a vehicle whereby much will depend on the agent apart from other factors such as fluctuations in exchange rates. Very importantly, Disputant has not adduced any reliable evidence to show how much duty was actually remitted in the case of the 'duty free car' and Doc D certainly cannot be of much help on that issue. Doc E, the computation submitted by Disputant, is also based on the quotations from the car agent and does not shed light on the issue at hand. On the other hand, it seems to confirm that there is exactly the same "Amount Exempted" in the case of an officer of the Respondent as compared to a civil servant with a duty free certificate.

For all the reasons given above, the Tribunal finds that the decision of the Respondent to refund the Disputant the sum of Rs 533,535 (as per Doc H) is not in breach of the Collective Agreement signed between the Mauritius Revenue Authority Staff Associations and Respondent. The dispute under limb 1 of the terms of reference is thus set aside.

For all the reasons given above, the Tribunal finds that the Respondent does not make any wrongful distinction between the Disputant and a public officer who according to the evidence of Mr Gaunpot and as represented in Doc K, would have benefitted from exactly the same amount of duty remitted as in the case of Respondent if the public officer had purchased exactly the same car on the same day at the same exchange rate which was applied in the case of Disputant. The dispute under limb 2 is also set aside.

For the reasons given above, there is no breach whatsoever of the Collective Agreement since the amount of duty remitted in the present case is exactly the same as the duty which would have been remitted if Disputant had instead benefitted from a duty free certificate (as per Doc K), and the dispute under limb 3 is also set aside.

SD Indiren Sivaramen

Acting President

SD Vijay Kumar Mohit

Member

SD Rabin Gungoo

Member

SD Parmeshwar Burosee

Member

20 August 2021