

**WASANA TRADING LANKA (PVT.) LTD
VS. DIRECTOR GENERAL OF CUSTOMS AND ANOTHER**

COURT OF APPEAL
SRISKANDARAJAH, J.
C.A. 1081/2005
JUNE 8, 22, 27, 2007
JULY 10, 2007
SEPTEMBER 20, 2007

Customs Ordinance - Section 10 - Section 47 - Importation of freezer vehicle - CUSDEC submitted - Refusal to accept - Requirement to classify the HS Code and enter the HS Code No. in Cusdec - Legality - Should the importer be asked to pay the duty corresponding to the HS Code determined by Customs? Could the Customs refuse to accept the CUSDEC?

The petitioner who is engaged in the importation of all kinds of used re-conditioned motor vehicles had submitted the CUSDEC to the customs for the payment of custom duty. The respondent refused to accept same and requested the petitioner to classify the vehicle under HS Code 8703. The petitioner contends that the declaration in the CUSDEC is in order and the refusal to accept the CUSDEC and the other important documents for processing is arbitrary and unreasonable and sought a writ of mandamus to compel the respondent to accept CUSDEC containing the classified HS Code 87.23 21.07.

Held

- (1) Under Section 47 a person entering any goods inwards whether it is liable for duty or not has a statutory duty to deliver to the Customs a bill of entry of such goods in the prescribed form (CUSDEC) with the necessary particulars required by the Customs in the said form. The particulars furnished in the bill of entry (CUSDEC) should be supported by documents. The particulars required to be furnished in the CUSDEC is not confined to the description of goods and the particulars that are contemplated and required to be furnished under Section 47, but also includes many other particulars some not directly related to their goods. The Director General is empowered to call for all additional particulars.

- (2) The requirement of Harmonized Commodity Description and Coding System (HS Code) in the CUSDEC is to classify products for the purpose of determining duties under Section 10, but is not contemplated in Section 47.
- (3) The goods that are declared and described as required under Section 47 could be classified under different commodity HS Code. The HS Code is a classification of commodities into a nomenclature given under Sch. A of Section 10 for the purpose of determining the duty rate.

Per Sriskandarajah, J.

“entering a HS Code in the CUSDEC is not a simple expression of an existing fact such as the physical description and characteristics of goods but it is an expression of opinion of the importer under which category his good could be classified based on the interpretative principles laid down in guide to the Harmonized System of Tariff Nomenclature, Tariff Guide and the explanatory Notes”.

- (4) It is mandatory that the declarant must have a firm believe that what he has declared to the best of his knowledge is correct. When a declarant classified his goods into one H. S. Code with the use of the interpretative principles, which he believes correct the Director General or for that matter any other person cannot force the declarant to enter a different HS Code in the CUSDEC which the Director General or any other person believes correct.
- (5) If the Director General disagrees with the HS Code and the duty calculated and entered in the CUSDEC by the declarant he could make a determination giving the correct classification of the goods with the reference of the HS Code and the duty payable by the importer and could demand and levy such duty on the article at the rate or rates so specified.
- (6) The Director General of Customs cannot direct the importer to accept the classification what he consider is correct without giving a hearing and without considering the declarant documents that made the declarant to form an opinion that goods fall into a particular HS Code, even if a determination is made after giving a hearing that the HS Code is different from the HS Code given in the CUSDEC the declarant cannot be asked to correct the CUSDEC to include the HS Code as determined by the Director General of

Customs, asked to pay the duty corresponding to the HS Code determined by the director General.

- (7) Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty in the performance of which the appellant has sufficient legal interest.

APPLICATION for a writ of mandamus.

Cases referred to:-

- (1) *Tokyo Cement Company (Lanka) Ltd. Vs. Director General of Customs and others* - 2005 - (BLR) 24 at 26
- (2) *Mulaffer and another vs. M. B. Dissanayake* - 1981 - 2 Sri LR 483
- (3) *Wijeyesekera and Co. Ltd vs. The Principal Collector of Customs* - (1951) 53 NLR 329 at 332
- (4) *Ratnayake and others vs. C. D. Perera and others* - 1982 - 2 Sri LR 451 at 456

K. Deekiriwewa with *L.M. Deekiriwewa* and *M. K. Hearth* for petitioner.
Farzana Jameel SSC for Respondent.

Cur.adv.vult

September 20th 2007

SRISKANDARAJAH, J.

The Petitioner a limited liability company incorporated under the Companies Act No 17 of 1982 is engaged in the importation of all kinds of used reconditioned motor vehicles mainly from Japan and Singapore. The Petitioner in October 2004 had imported one unit of used refrigerated van type vehicle (freezer vehicle) bearing chassis No. EE 102 0093270. The Petitioner submitted that when the import documents with duly filed Sri Lanka Customs - Goods Declaration Form (CUSDEC) was submitted to the customs, the 3rd Respondent has refused to accept the same for the payment of customs duty. The Petitioner contended that the CUSDEC was duly

filed with the correct classification of H.S. Code 87.04.21.07 for a Freezer Van type vehicle but the customs officers refused to accept these documents unless the Petitioner enters the HS Code 8703 in the said CUSDEC. The Respondents also admitted this position and submitted that after raising a query on the H.S. Code, the import documents and CUSDEC were given back to the Petitioner's clearing agent to classify the vehicle under HS code hearing 8703 or to obtain a ruling from the relevant authorities. The Petitioner contended that the declaration in the CUSDEC is in order and the refusal to accept the CUSDEC and the other import documents for processing is arbitrary and unreasonable and has sought a writ of Mandamus to compel the Respondents to accept the CUSDEC containing the classification of H.S. Code 87.04.21.07.

Under Section 47 of the Customs Ordinance, a person entering any goods inwards, whether it is liable for duty or not has a statutory duty to deliver to the Director General of Customs a bill of entry of such goods on the specified form (CUSDEC) with the necessary particulars required by the Director General of Customs in the said form. The Particulars furnished in the bill of entry (CUSDEC) shall be supported by documents. This section imposes a fine for the failure to deliver such bill of entry and the supporting documents.

It is necessary at this stage to consider the particulars that are required to be furnished in the CUSDEC in relation to the relevant provisions of the Customs Ordinance. Section 47 of the Customs ordinance provides:

47. The person entering any goods inwards, whether for payment of duty or to be warehoused, or for payment of duty upon the taking out of the warehouse, or whether

*such goods be free of duty, shall deliver to the Collector a bill of entry of such goods, on a form of such size and colour as may be specified in that behalf by the Collector by Notification published in the Gazette, and be fairly written in words at length, expressing the **name of the ship, and of the master of the ship in which the goods were imported, and of the place from which they were brought, and the description and situation of the warehouse, if they are to be warehoused, and the name of the person in whose name the goods are to be entered, and the quantity, value and description of the goods, and the number, dimensions, and denomination or description of the respective packages containing the goods, and such other particulars as the Collector by that or a subsequent Notification may require him to furnish, and in the margin of such bill shall delineate the respective marks and numbers of such packages. The particulars furnished in the bill of entry shall be supported by such documents containing such particulars as the Collector may, by Notification published in the Gazette, require if such person fails to deliver a bill of entry prepared, and supported by such documents, as aforesaid, he shall be liable to a penalty not exceeding one thousand rupees. Such person shall pay any duties and dues which may be payable upon the goods mentioned in such entry; and such person shall also deliver at the same time two or more duplicates of such bill, in which bill all sums and numbers shall be expressed in figures, and the particulars to be contained in such bill shall be legibly written and arranged in such form and manner, and the number of such duplicates shall be such, as the collector shall require, and such bill of entry when signed by the Collector, or person***

authorized by him, and transmitted to the proper officer, shall be the warrant to him for the examination and delivery of such goods; but if such goods shall not agree with the particulars in the bill of entry the same shall be forfeited, and such forfeiture shall include all other goods which shall be entered or packed with them as well as the packages in which they are contained (emphasis added)

Section 10(1) of the Custom Ordinance provides:

10(1) The several duties of customs, as the same are respectively inserted, described, and set forth in figures in the table of duties (Schedule A) shall be levied and paid upon all goods, wares, and merchandise imported into or exported from Sri Lanka : Provided that -*

Sarath N. Silva CJ observed in *Tokyo Cement Company (Lanka) Ltd v. Director General of Customs and four others*⁽¹⁾ at 26:

“In November 1993 the Department of Customs computerized the cargo entry system. The notification referred to earlier was made for the purpose of the Automated Customs Cargo Entry System of Sri Lanka, referred to as ACCESS. In this process the CUSDEC form was introduced to serve the purpose of a bill entry, in terms of Section 47 of the Customs Ordinance. ACCESS Guide was intended to facilitate this process”, and held “that provisions of a guide cannot supersede the provisions of law.”

It is important to note that the particulars required to be furnished in the CUSDEC which is introduced to serve the purpose of a bill entry and to facilitate Automated Customs Cargo Entry System of Sri Lanka (ACCESS), is not confined to the description of goods and the particulars that are

contemplated and required to be furnished under Section 47 but also includes many other particulars some are not directly related to the goods. But the Director General under the said section is empowered to call for these additional particulars.

When one examines the CUSDEC; CUSDEC I contains 54 cages and DUSDEC II contains 53 cages. These cages are arranged under five main heads horizontally divided. Namely: (1) Header Information, (2) Packages and description of goods, (3) Additional information/Documents, (4) Calculation of Taxes and (5) Office use

- (1) under Header Information the following information is requested; the name of the ship, and of the flag of ship in which the goods were imported, voyage number and the name of the person in whose name the goods are to be entered, exporter, consignee, declarant/representative, person responsible for financial settlement, under this head there are 28 cages that has to be filed. Some of the cages requires code number of different categories and one cage for exchange rates etc.
- (2) under Packages and description of goods there are 13 cages: quantity, value and description of the goods, and the number, dimensions, and denomination or description of the respective packages containing the goods, net mass, gross mass, H.S. Code, city of origin code, procedure code, previous documents, unit of measurement and quantity, item price etc.

The requirement of Harmonized Commodity Description and Coding System (H.S. Code) in the CUSDEC is to classify products for the purpose of determining duties under section 10 but it is not contemplated in Section 47. The Revenue

Protection Order which is published time to time in the Government Gazette contains the "Table of Duties" (Schedule A) to Section 10 of the Customs Ordinance, it provides as follows:

1. Schedule A being the "Table of Duties" is comprised of a nomenclature of commodities, or groups of commodities, and rates of duties prescribed for each commodity or group of commodities classified therein.
2. (i) The said nomenclature is in accordance with the "Harmonized Commodity Description and Coding System" (hereinafter referred to as the Harmonized System or H.S), comprising the heading and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System, set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System.
3. For the determination of the duty rate or rates applicable for any goods, wares or merchandise, herein after referred to as commodities, the same shall be classified in the said nomenclature.
4.
5.
-

The goods that are declared and described as required under Section 47 could be classified under different commodity H. S. Code. The H. S. Code is a classification of

commodities into a nomenclature given under Schedule A of Section 10 of the Customs Ordinance for the purpose of determining the duty rate. The fact that the CUSDEC has a column to enter the H. S. code does not mean that the H. S. Code is designated for the declaration of goods required under Section 47.

Entering a H. S. Code in the CUSDEC is not a simple expression of an existing fact such as the physical description and characteristics of goods but it is an expression of opinion of the importer, under which category his goods could be classified based on the interpretative principles which were laid down in 'Guide to the Harmonized System of Tariff Nomenclature, the Tariff Guide and the explanatory notes. This is buttressed by the submissions of the learned Senior State Counsel that the Customs Department itself has a unit in which the importer or any public could get a H.S. Code ruling for the purpose of entering the same in the CUSDEC. In cases where the customs officers are in doubt the ruling was obtained from a Nomenclature Committee.

In the case of *Mulaffer and Another v. M. B. Dissanayake*⁽²⁾ The Bills of Entry were framed by the petitioners on the basis that the goods imported by them came under Heading No. 64.05 and the duty payable was set out as Rs. 34,057/59. The Customs authorities however took a different view. A letter dated 13th June, 1979 (annexure "X2") signed on behalf of the respondent was sent to the petitioner informing him that these goods are correctly classifiable under B.T.N. No. 64.01 dutiable at Rs. 50/- per pair. The total duty payable on this consignment is Rs. 240,000/-. According to the two bills of entry only a sum of Rs. 34,057/59 has been entered by you in column 10 of the said entries.

You are hereby requested to take necessary action to pay the correct duty of Rs. 240,000/-, in respect of this consignment.

The 1st petitioner thereupon interviewed the respondent with his Counsel and thereafter wrote the letter "X3" of 28.6.79 requesting the respondent to refer the matter to the Attorney-General for his opinion, since a similar matter was pending before him, for his decision.

As no reply was received the Petitioner sought a writ of mandamus and the court considered the relevant classifications and held that the Petitioners (importers) had correctly categorised the imported consignment under the heading dealing with parts of footwear and given the correct particulars in the bill of entry.

The above facts and the decision reveal that the classification of goods under H. S. Code is not an expression of existing fact but an expression of opinion. It is important to note that the declarant of the CUSDEC signs the CUSDEC declaring that "I do hereby affirm that the particulars and the values entered by me true and correct." In view of this declaration that the particulars given in the CUSDEC whether it relates to the particulars of the goods or otherwise, it is mandatory that the declarant must have a firm belief that what he has declared to the best of his knowledge is correct. When a declarant classified his goods (which goods were already physically described in a different Column 2, Cage 31) into one H. S. Code with the use of the interpretative principles which were laid down in 'Guide to the Harmonized System of Tariff Nomenclature, the tariff Guide and the explanatory notes' which he believes correct, the Director General or for that matter any other person cannot force

the declarant to enter a different H. S. Code in the CUSDEC which the Director General or any other person believes correct. Merely because the Director General of Customs does not agree with the classification of goods and the duty calculation of the person submitting the CUSDEC he cannot refuse to accept the bill of entry or for that matter he cannot compel the person submitting the CUSDEC to correct the CUSDEC to fall in line with the classification of the Director General of Customs as condition precedent to accept the CUSDEC (bill of entry).

In *Wijeyesekera and Co. Ltd. v. The Principal Collector of Customs*⁽³⁾ at 332 Gratiaen J. observed:

“Admittedly, the respondent is charged with a public duty under section 59 of the Customs Ordinance to accept in proper form a bill of entry tendered by an exporter and containing true particulars as to the quantity, value, etc., of the intended consignment. It necessarily follows that to insist upon the bill of entry being incorrectly filled up in such a manner that, upon the face of the document, the exporter would be liable to pay a heavier export duty than was justly due, would amount to a refusal to perform a public duty. In that event, a mandamus would clearly lie.”

Section 47 provides that such person (the importer) **shall pay any duties and dues which may be payable upon the goods mentioned in such entry.** This provision clearly shows that the self declaration of the classification of goods (H. S. Code) and the corresponding duty calculated and entered in the CUSDEC by the importer has no significance as he has to **pay duties and dues which may be payable upon the goods mentioned in such entry. The duties and**

dues that are payable on the goods mentioned in that entry has to be determined by the Director General of Customs according to the Schedule published under Section 10. If the Director General of Customs disagrees with the HS Code and the duty calculated and entered in the CUSDEC by the declarant he could make a determination (on the description of the goods and/or by examining the goods) giving the correct classification of the goods with the reference of HS Code and the duty payable by the importer (declarant) and could demand and levy such duty on the article at the rate or rates so specified.

The Director General of Customs cannot direct the importer to accept the classification what he consider is correct without giving a hearing and without considering the documents of the declarant that made the declarant to form an opinion that the goods fall into a particular classification (HS Code). Even if a determination is made by the Director General of Customs after giving a hearing that the HS Code is different from the HS Code given in the CUSDEC the declarant cannot be asked to correct the CUSDEC to include the HS Code as determined by the Director General of Customs (for the reasons stated above) but declarant/importer may by an order of the Director General of Customs asked to pay the duty corresponding to the HS Code determined by the Director General of Customs.

This Court presided by (Sripavan J) made the following interim order on 28.10.2005;

“Court issued an interim relief directing the 1st to 7th Respondent to accept the duty difference between the categorizations claimed by the Petitioner and the catego-

rizations claimed by the customs authorities by way of an irrevocable bank guarantee acceptable to the customs.

Upon furnishing the required bank guarantee on the difference in the duty, the 1st to 7th Respondents are directed to release the vehicle.”

The customs authorities acted in total disregard of this order, submitted in their objection at paragraph 17 as follows;

“That your lordships court has made an order on 28.10.2005, ordering the release of the vehicle and directing the Petitioner to pay the difference between the amount claimed by the Petitioner as correct, and that claimed by the Customs Department. However, the Petitioner did not make the relevant declaration in order to clear the said vehicle. Without a CUSDEC being completed imported goods cannot be cleared.”

The position of the Respondents is that the Petitioner should correct the H. S. Code in the CUSDEC to make the CUSDEC complete for the Respondent to accept the same. As discussed above the Petitioner cannot be asked to sign and submit a CUSDEC declaring that “I do hereby affirm that the particulars and the values entered by me true and correct” which in his opinion contains a wrong H. S. Code.

In this instant case the Director General of Customs has refused to accept the bill of entry (CUSDEC) for the reason that he is not agreeing with the classification of goods made by the declarant. It is a right and a legal requirement for the importer to submit a bill of entry (CUSDEC) as provided by Section 47 and it is a legal duty on the part of the Director General of Customs to accept a bill of entry (CUSDEC) that

is in conformity with section 47. The classification of goods under Schedule A of Section 10 of the Customs Ordinance and the corresponding duty chargeable to the said goods are matters for the Director General of Customs as discussed above.

In *Ratnayake and others v. C. D. Perera and others*⁽⁴⁾ at 456 Sharvananda, J. with Victor Perera, J. and Colin - Thome, J. agreeing held;

“The general rule of Mandaus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest.”

For the aforesaid reasons this Court issues a mandamus directing the 1st Respondent to accept the CUSDEC submitted by the Petitioner, copies of which are marked and filed in this application as X3(ii) and X3(iii) and if the 1st Respondent is not agreeable to the classification of the goods (H.S. Code) and the corresponding duty declared by the Petitioners the 1st Respondent after giving a hearing to the Petitioner determine the correct classification of the goods and the corresponding duty payable by the Petitioner and could make an order to that effect. The application for the writ of mandamus is allowed with cost of Rs. 30,000/- payable by the 1st Respondent to the Petitioner.

application allowed.