CUSTOMS ACT COURT OF REVIEW

Interlocutory Decision(Edited)

Section 177 *Customs Act 1986*

Title of Matter:	**FINEST LIQUOR (FIJI) LIMITED** **v** **FIJI REVENUE AND CUSTOMS AUTHORITY**	**(Appellant)** **(Respondent)**
Section:	**Section 101A(4) *Customs Act* (Cap 196)**	
Subject:	**Appeal against Amended Assessment**	
Matter Number(s):	**Matter No 6 of 2013**	
Appearances:	**Ms V Lidise, Young and Associates, Lautoka for the Appellant** **Ms T Rayawa, FRCA Legal Unit for the Respondent**	
Date of Hearing:	**29 October 2014**	
Before:	**Mr Andrew J See, Resident Magistrate**	
Date of Decision:	**4 November 2014**	

RECOVERY OF CUSTOMS DUTIES– Section 95(1)(a)- *Customs Act* (Cap 196); Time limitation on amendment of assessments; Section 101 A(2)(a) – Power to amend assessments

Background

1. The Appellant is the manufacturer of alcoholic and non-alcoholic beverages, made available for wholesale distribution. On 6 August 2012, the Collector of Customs on behalf of the Respondent, issued the Appellant a Short Payment Advice (SPA 19422) in the amount of $700,647.60, claiming an underpayment of duty relating to the importation of various ingredients used within the manufacturing process. The demand for payment,[1] pertains to nine separate customs clearances for goods, imported into the Fiji Islands during the period 21 January 2011 to 9 December 2011.

2. On 23 April 2013, the Respondent amended that original Short Payment Advice and reissued a demand for payment (SPA 19426) in the amount of $668,723.23. The reason given for the short payment both within the original and amended advices, was an incorrect tariff classification assessed by the Appellant.

[1] Within the payment advice the Appellant was given 14 days in which to pay that amount.

3. On 13 May 2013, the Appellant filed a Notice of Appeal in this Court, on two principal grounds.[2] The first, on the basis that five out of the nine customs clearances the subject of the demand, related to time periods outside of the 12 month time recovery window prescribed by Section 95(1)(a) of the Act. The second ground challenges the incorrect tariff classification that has been used by the Respondent in arriving at its Amended Assessment.

4. On the basis that there is a threshold 'prescribed period' argument to be considered, the parties have agreed to have this matter firstly adjudicated, prior to the substantive issue pertaining to the correct tariff classification being determined.

The Short Payment Advice dated 6 August 2012

5. At the centre of this dispute between the parties, are the nine shipments of various goods that are used in the manufacturing of alcoholic and non-alcoholic beverages.

6. The entry dates as recorded for those nine shipments into Fiji, are as follows:-

Date	Clearance Entry No
21 January 2011	C2834
9 February 2011	C2224
25 March 2011	C4580
21 April 2011	C6134
20 June 2011	C9480
10 August 2011	C12565
18 October 2011	C17225
15 November 2011	C63390
9 December 2011	C20818

7. The argument advanced by the Appellant is that five of these entries (21 January 2011 to 20 June 2011) should be excluded from any Short Payment Advice issued by the Respondent, on the basis that such demand is time barred in accordance with Section 95 (1)(a) of the Act.

8. On the other hand, the Respondent argues that the Comptroller of Customs and Excise is entitled to amend any assessment of duty made by any importers, exporters or licensee, by virtue of the combined powers that are found at Sections 114B and 101A of the Act.

What is an Assessment for the Purposes of the Act and Can it Be Amended?

9. Part 7 of the Act, deals with the Entry, Examination and Delivery of Goods. These stages in effect can be described as how the assessment process comes about.

10. It does not appear contentious as to how the goods entered the country, or at what stage their entry was deemed to be made.[3]

11. Section 32 (1)(a) of the Act, places the following burden on the importer, at that stage when entry is made:

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[2] There are in fact three identified grounds. Grounds Two and Three deal with the issue as to whether the correct tariff classification has been applied.

[3] See Section 30A of the Act as to the manner by which entry is recorded.

A person entering any goods shall-

(a) deliver to the Comptroller the entry of those goods in the prescribed form together with such copies as may be required by the proper officer or by means of an electronic message transmitted to the system;

(b) furnish such other particulars and documents as may be prescribed or as may be required by the proper officer, and

(c) at the same time, pay all duties due upon the goods, unless the goods are entered to be warehoused, or are for transhipment or are free of duty.[4]

12. In the present case, there also appears no dispute that the Appellant did in fact provide the Comptroller, with the prescribed forms and the coinciding payment of duty. [5]

13. It should be perhaps noted at this stage, that Section 34A of the Act, provides:-

34A.—(1) An entry for goods or a claim for refund or drawback in respect of goods made under this Act is deemed to be an assessment by the importer, exporter or licensee, as the case may be, as to the duty payable or refundable in respect of those goods.

(2) The Comptroller may approve a person who is required to pay any duty, fee, charge or penalty under the customs laws to pay the duty, fee, charge or penalty by electronic transfer of funds.

14. To make the point, the entry for goods is deemed to be an assessment by the importer, not the Comptroller. It is for that reason, that the combined effect of Section 114B and 101A of the Act is thereafter allowed to work. In the case of Section 114B, it has the role of allowing the Respondent to review the importer's assessment by ensuring access to all such entry records for a period of five years.

15. Section 114B provides:-

Powers of officers to examine business records

114B. If a person has exported, imported, warehoused, removed from a warehouse or transhipped any goods or has made a claim for refund or drawback dealing with part or all of the goods, an officer may—

(a) at all reasonable times within 5 years after the entry has been lodged or the claim for refund or drawback of duty has been made, for the purpose of this section enter and remain on the premises in which the records required under section 114A(1) are kept;

(b) have full and free access, at all reasonable times, to any relevant business document or other accounting book, record, report or document kept on the premises; and

(c) inspect, examine, make copies of, or take extracts from, any such document, book, record or report, for the purpose of verifying any information provided to the Customs and being satisfied that all entries, forms and declarations relating to the goods are an accurate and complete record of the matters required to be reported on.

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4 There is no suggestion by either party that the goods have been imported for warehousing.

5 It would seem that the Appellant initially submitted the amount of $155,808.52 as duty for this purpose.

16. The very purpose of Section 114B (c) would seem to be one of creating an environment where a system of auditing and review can take place, to ensure that the Importer's Assessment is made according to law. The subsequent role of Section 101A, is thereafter to enable the Comptroller to issue an amended assessment, should that person consider that the initial assessment made by the Importer was done so incorrectly. In this instance, Section 101A states as follows:-

> ***Power to amend assessments of duty made by importers, exporters or licensees***
>
> *101A. (1) If the Comptroller is satisfied, as a result of an investigation carried out under section 114B or for any other reason, that an assessment of duty payable or refundable made by an importer, exporter or licensee contravenes the customs laws or is for any other reason incorrect, the Comptroller may amend the assessment and demand any short-paid duty.*
>
> *(2) Notice in writing must be given to the importer, exporter or licensee of—*
>
> *(a) an amended assessment made under subsection (1); and*
>
> *(b) the basis for the amended assessment, and where applicable, the relevant provision of any written law.*
>
> *(3) Subsection (1) applies whether or not the goods have been released from the control of the Customs and whether or not any duty assessed has been paid.*
>
> *(4) An importer, exporter or licensee who is dissatisfied with a decision of the Comptroller under this section may, within 15 working days after the date on which notice of the decision was given, appeal the decision to the Court of Review.*

17. It would appear for this reason that the language of demand(ing) any short-paid duty, is contained within Section 101A(1). That is, as a consequence of the assessment amendment process.

Role of Part 16 of the Act and How the Duty is Calculated

18. Part 16 of the Act deals with Duties. Section 92(2) of the Act provides inter alia that :

> *export duty is payable on the goods and at the rates and in the circumstances specified in the Customs Tariff Act, 1986*

19. The duty payable on such goods, constitutes a debt upon its entry[6] and subject to some special provisions, is otherwise due and payable at that time.[7] Section 94 of the Act sets out the protocol for payment of a duty, where there is a dispute as to its calculation. The duty may be paid under protest and is thereafter capable of being pursued as a debt due in the case where such calculation causes an overpayment[8], or alternatively can be the subject of an arbitrated finding by this Court, in which case, a three month appeal window is provided. [9]
20. Counsel for the Appellant, argues that Section 95 of the Act, is in effect the statutory window by which a revised assessment (and the attendant demand) can be made. This in my view is an incorrect interpretation of the statutory scheme. The language of Section 95(1) of the Act must take some context from the heading of that Section entitled, "Recovery of Duties"[10]. Section 95(1) states:-

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6 See Section 92(3) of the Act.

7 See Section 92(5) of the Act.

8 See Section 94(2)(b) of the Act.

9 See Section 94(2)(a) of the Act.

10 See *Ragless v District Council of Prospect* [1922] SASR 299 at 311

95.—(1) The correct amount of any duty, charge or fee due and payable under this Act—
(a) may be demanded by the Comptroller at any time within one year from the date when such duty, charge or fee should have been paid;
(b) shall constitute a debt payable to the Government;
(c) is payable by the importer or exporter, as the case may be; and
(d) is recoverable in a court of competent jurisdiction in the name of the Comptroller.

21. The language of Section 95, having regard to its location following Section 94, that deals with arbitrated disputes within the courts,[11] would give this Section, a meaning for recovery of duties where a court has determined the "correct amount". To suggest otherwise would give Section 101A no work to do. The suggestion that otherwise the revision period was only 12 months, would also fly against the clear requirement that is Section 114B of the Act, making sure that the Importers Customs records are available for a period of five years, presumably on the basis that the Importer's Assessment may otherwise be incorrect.

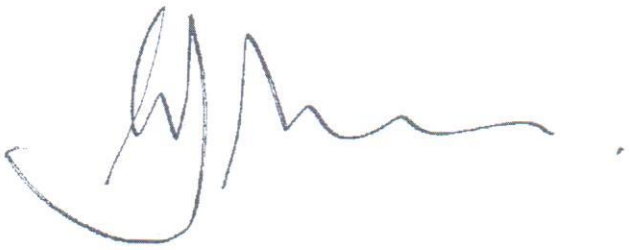
Conclusions

22. In light of the above, the Court finds that the Collector of Customs on behalf of the Respondent, was perfectly entitled to issues a Short Payment Advice (SPA) in accordance with Section 101A(1) of the Act. On that basis, all of the entries identified within the worksheet attached to SPA No 19426 dated 23 April 2013, are deemed to be intra viries the powers of the Comptroller to amend. For the above reasons, the first ground of the Appellant's Notice of Appeal must fail.

23. This matter will be relisted for mention on 3 December 2014 at 9.00am. A notice of listing will be issued to the parties in due course.

Decision

The Court rules that the first ground of Appeal within the Notice dated 13 May 2014, is struck out.



Mr Andrew J See
Resident Magistrate

[11] That is whether in a common law court, or the Customs Act Court of Review.