IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 51 of 1960

Between:

1. HARIKISUNDAS MOTI RAM
2. DAYALJI NATHUBHAI PATEL Appellants

v.

COMPTROLLER OF CUSTOMS Respondent

Customs Ordinance (Cap. 166)—Customs Duties Ordinance (Cap. 167)—value " fixed " by Comptroller under s. 4 (1) (Cap. 167)—by implication —offence under s. 116 (Cap. 166)—absolute liability—offence under s. 63 (Cap. 166)—no demand for documents necessary.

The appellants were convicted before the Magistrate's Court of three offences under the Customs Ordinance (Cap. 166), namely, making a false entry in a Customs Import Entry Form required by a Customs Officer contrary to s. 116, neglecting to produce certain documents to a Customs Officer contrary to s. 63 (Count 2), and making a false declaration in a Customs Import Entry Form delivered to a Customs Officer contrary to s. 116 (Count 3).

The appellants appealed. As regards the first and third counts it was, *inter alia*, contended:

(*a*) that the appellants could not be shown to have put forward a false value for assessment of duty on the goods in question unless the correct value were ascertainable, and since under s. 4 (1) of the Ordinance the Comptroller of Customs had never " fixed " that correct value, this could not be done;

(*b*) that no " *mens rea* " had been established against the appellants in respect of these two charges.

Regarding count 2 it was, *inter alia*, contended by the appellants that no offence under s. 63 could be committed unless a demand had been made by a Customs Officer for the documents.

Held.—(1) By instituting this prosecution the Comptroller of Customs could be said to have " fixed " a value under s. 4 (1) of the Customs Duties Ordinance (Cap. 167) by necessary implication. Further, when duty is levied by the Comptroller upon a higher value than that submitted upon the Import Entry Form, the Comptroller has, by implication " fixed " that higher value.

(2) The offences charged in the first and third counts were offences of absolute liability, the prosecution did not have to establish the " *mens rea* ".

(3) To establish the offence charged in the second count it was not necessary for the prosecution to show that a demand had been made for the documents in question.

Case cited:

Attorney-General v. Gyani Das 4 F.L.R. 202.

A. Lateef for Appellants.

Justin Lewis, Solicitor-General, for Respondent.

KNOX-MAWER, Ag. J. (17th February, 1961).

The appellants were charged before the Magistrate's Court of the First Class with the following offences:

First Count

Statement of Offence

Making a false entry in Customs Import Entry, Form A, required by an officer of Customs—(Contrary to section 116 of the Customs Ordinance Cap. 166).

Particulars of Offence

Harikisandas Moti Ram son of Moti Ram trading as Harkisan Bros. but generally known as Harikisun Bros. of Renwick Road, Suva in the Colony of Fiji, and Dayalji Nathubhai Patel son of Nathubhai Patel, Customs Agent, of Pier Street, Suva in the Colony aforesaid, did on the 19th day of November, 1959 at Suva in the Colony of Fiji make a false entry in the Customs Import Entry, Form A required by an officer of Customs in respect of 14,000 yards of cotton and rayon piece goods imported by the said Harikisandas Moti Ram per ship *Chungking* which arrived at Suva on the 12th day of November 1959, in that instead of entering in the said Import Entry the total sum of £F1,045 19s. 10d. on which duty had to be assessed they entered the total sum of £F964 15s. 9d. only.

Second Count

Statement of Offence

Neglecting to produce to a Customs Officer certain documents (Contrary to section 63 of the Customs Ordinance Cap. 166).

Particulars of Offence

Harkisandas Moti Ram son of Moti Ram trading as Harkisan Bros. but generally known as Harikisun Bros. of Renwick Road, Suva in the Colony of Fiji and Dayalji Nathubhai Patel son of Nathubhai Patel, Customs Agent, of Pier Street, Suva in the Colony aforesaid, did on the 19th day of November, 1959 at Suva in the Colony of Fiji, neglect to produce to an officer of the Customs before the latter assessed the amount of duty payable on 14,000 yards of cotton and rayon piece goods imported by the said Harkisandas Moti Ram per ship *Chungking* which arrived at Suva on the 12th day of November, 1959, the following documents relating to the said goods, namely:

(*a*) Invoice No. 4712 of A. C. Berrill & Co. Ltd., of London dated the 15th October, 1959, showing the total amount as £Stg.905 5s. 3d.;

(*b*) Statement of the said A. C. Berrill & Co. Ltd., dated the 15th October, 1959, showing the total amount as £Stg.911 10s. 11d.; and

(*c*) Debit Note S C M dated the 13th October, 1959, amounting to £Stg.6 5s. 8d.

Third Count

Statement of Offence

Making a false declaration in the Import Entry Form A delivered to a Customs Officer (Contrary to section 116 of the Customs Ordinance Cap. 166).

Particulars of Offence

Harkisandas Moti Ram son of Moti Ram trading as Harkisan Bros. but generally known as Harikisun Bros. of Renwick Road, Suva, in the Colony of Fiji, and Dayalji Nathubhai Patel son of Nathubhai Patel, Customs Agent, of Pier Street, Suva in the Colony aforesaid, did on the 19th day of November, 1959 at Suva in the Colony of Fiji, make a false declaration in the Import Entry Form A delivered to the Customs Officer in respect of 14,000 yards of cotton and rayon piece goods imported by the said Harkisandas Moti Ram per ship " *Chungking* " which arrived at Suva on the 12th day of November, 1959 in that instead of declaring the true value of the said goods at £F1,045 19s. 10d., they declared the same at £F964 15s. 9d. only.

They were both convicted upon all three counts and received the following sentences:

Count I	Appellant I	Fined £75 or i/d 6 months
	II	Fined £50 or i/d 2 months
Count II	Appellant I	Fined £25 or i/d 6 weeks
	II	Fined £5 or i/d 14 days
Count III	Appellant I	Fined £75 or i/d 6 months
	II	Fined £50 or i/d 2 months

They have appealed against the convictions and sentences imposed.

With regard to counts I and III, the essential issue is whether or not, in this instance, £F1,045 19s. 10d. was the correct value for assessment of duty under section 4 (1) of the Customs Duty Ordinance Cap. 167. This subsection reads as follows:

> " When the rate of duty imposed by this Ordinance on any article is a percentage of the value of the article, that value shall, notwithstanding anything in the Customs Ordinance to the contrary, be taken as the price which an importer would give for the article (including the cost of packing, cartage, rail freight, dock and port charges, storage, ocean freight, insurance and similar charges) delivered on a wharf or into a lighter at the port of import, and duty shall be paid on such value as fixed by the Comptroller of Customs."

Learned Counsel for the appellants have contended *inter alia* that the value has never finally been " fixed " by the Comptroller of Customs as required by the last line of the subsection. I have given considerable thought to this contention. I have concluded that the Comptroller of Customs can be said to have " fixed " the value by necessary implication, in so far as he has instituted this prosecution wherein the first and third counts allege £F1,045 19s. 10d. as that value. The value is similarly " fixed " by implication, when the value stated in the Import Entry Form A is accepted, and duty levied thereon. Again, when the value as submitted in Form A is not accepted but duty is levied upon a higher value, then the Comptroller has " fixed ", by implication, that higher value.

I find therefore that the Comptroller of Customs has, by necessary implication, fixed the value at £F1,045 19s. 10d.

The next question is whether he was right in so doing. I do not find the relevant words of subsection 4 (1) easy to interpret in his connexion. There is in the Ordinance no definition of the word " price " in this subsection. According to the Shorter Oxford Dictionary " price " means " money or the

like paid for some thing ". The importer in this case was the first appellant and I do not see how it can be denied that the total sum which this importer had to pay for these goods, what he in fact expended to obtain them, was £F1,045 19s. 10d. All the charges in question, howsoever they may be termed, are in my view specifically referable to these goods. Learned Counsel for the appellants has advanced an interesting argument the other way, to persuade me that the additional charges in question cannot be included in the meaning to be given to " the price " in the subsection, but I find to the contrary.

Furthermore, it is impossible, in my opinion, to avoid the conclusion that the offences charged in the first and third counts are offences of absolute or strict liability. The word " false " means nothing more than erroneous (this, it may be remarked, is the first meaning given in the Shorter Oxford Dictionary). In the circumstances therefore, and after the most careful consideration of all the points raised by Counsel, I am satisfied that the learned trial Magistrate correctly found these two counts proved against both appellants.

I shall now turn to the second count. I cannot be denied that the first appellant, as owner of these goods, neglected to produce to the Collector or other proper officer of Customs these other documents, Exhibits F1, F2 and F3. I cannot agree with the appellants' submission that these documents did not " relate in any way to or show any charges or expenses of any description whatever on such goods up to the time of their being landed in the Colony " within the meaning of section 63 of the Customs Ordinance Cap. 166. Clearly these documents did fall within this category. Nor do I subscribe to the contention advanced before me that no offence is committed unless a demand has been made for these documents. I consider that the interpretation put upon the section by the learned trial Magistrate was the correct one. Under section 2 of the Customs Ordinance Cap. 166, " owner " means the actual owner of any goods or his agent or the consignee of any goods or his agent. Both appellants were properly convicted under this count.

The only remaining question is as to the sentences imposed. In my view the substantial offence for which the appellants have been convicted and duly sentenced is that of neglecting to produce these other documents to the Customs authorities. The learned Solicitor-General has conceded that count 3 constitutes substantially the same offence as count 1 and is therefore an alternative charge for the purposes of sentence. It is therefore necessary to consider what sentence is correct, in principle, upon count 1, having regard to such facts as have been conclusively established before the Court. The evidence has disclosed no more than that the appellants entered upon Customs Entry Form A, as the value for duty, a total figure corresponding to that of the original invoice (Exhibit A3). The learned Solicitor-General has conceded this latter document is the " genuine invoice " as defined in section 140 of the Customs Ordinance Cap. 166. Moreover, it is apparent from the evidence of Vincent Chong Hop, Customs Officer, and Hedley Morris Smeeton that there is a difference of opinion even within the Customs Department itself as to which charges should be included in " the price " under section 4 (1) of the Customs Duties Ordinance Cap. 167. Because of this (which derives from the difficulty of interpreting subsection 4 (1) (*supra*)), until the Comptroller of Customs has finally fixed the value, (usually, as I have observed, by implication), it is difficult to see how anybody could know which charges above the figure on the " genuine invoice " would be added.

These circumstances and the fact that the appellants have been convicted and fined under count 2 for the substantial offence in neglecting to produce the documents, serve to distinguish this case from *The Attorney-General v. Gyani Das* F.L.R. IV, p. 202. Accordingly the application of section 38 (1) of the Penal Code is here correct in principle in respect of count 1 and, it follows, in respect of count 3. I therefore substitute for the sentences imposed by the learned trial Magistrate upon these two counts an order under section 38 (1) of the Penal Code.

For future guidance I think it might be helpful if the Court adds the following comment. As I have indicated, a wide range of charges referable to the imported goods in question can be said to form part of " the price " within section 4 (1) of Cap. 167, and the Comptroller can properly include them when he finally " fixes " the " value " for duty. It is always possible therefore that an importer may enter upon Form A a value for duty which the Comptroller of Customs subsequently rejects and fixes a higher value by adding other charges. That importer has then committed the offences charged in counts 1 and 3. It is suggested, however, that if the erroneous figure has been bona fide entered by the importer in Form A and is supported for example by the genuine invoice, then provided all documents relating in any way to or showing any charges or expenses of any description whatever on the goods up to the time of their being landed in the Colony, are openly produced at the same time, the Comptroller of Customs will not deem it necessary to lay charges as in counts 1 and 3. Of course, when the Comptroller of Customs finally fixes the value for duty and that duty is levied, the importer, if dissatisfied with his decision, can always appeal to the Commissioners of Customs.