

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Action No. 905 of 1961

Between:

THE ATTORNEY-GENERAL

Appellant

v.

KAPADIA & COMPANY

Respondents

Customs Ordinance (Cap. 166)—Section 71—ruling of Commissioners of Customs—whether final.

The respondents imported a quantity of transistor radio sets each contained in a leather case. The Comptroller of Customs assessed and charged a separate duty on the leather cases under Tariff Item 242 of the First Schedule of the Customs Duties Ordinance (Cap. 167). The respondents appealed against the Comptroller's decision to the Commissioners of Customs. The Commissioners ruled that, as the radios were complete without the cases, the Comptroller's decision was correct. The respondents then instituted civil proceedings against the Crown to recover the duty which they still maintained (on the same grounds as those unsuccessfully argued before the Commissioners) had been wrongly assessed on the leather cases. The Crown submitted that the court (the Magistrate's Court, Suva) had no jurisdiction to hear the case by reason of s. 71 of the Customs Ordinance (Cap. 166). S. 71 reads:

"71. Every ruling or decision of the Commissioners which is an interpretation of the nomenclature of the customs tariff shall be forthwith published in the *Gazette* and shall be deemed and taken for all purposes of this Ordinance and of any Ordinance imposing customs dues that is now in force or which hereafter may be in force in the Colony and to which such rulings apply to be final and binding upon any owner of any goods and upon the Customs Department."

The trial Magistrate overruled this submission. The Crown appealed.

Held.—Section 71 was not applicable because the ruling of the Commissioners was not an "interpretation of the nomenclature of the customs tariff". The Commissioners had merely decided a question of fact, namely, "were the radios complete without their cases?" Hence the magistrate's decision was correct.

Appeal dismissed.

Justin Lewis, Solicitor-General, for the Appellant.

D. M. N. McFarlane for the Respondent.

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KNOX-MAWER, Ag. J. (27th October, 1961).

The respondents imported certain portable transistor radio sets into the Colony. Each of these radios was contained in a leather case. The Comptroller of Customs assessed duty upon the radio sets under Item 118 (*d*) of the First Schedule to the Customs Duties Ordinance, Cap. 167. Item 118 (*d*) reads—"Radio receiving sets of all kinds . . . *ad val.* Preferential Tariff 25 per cent. General Tariff 45 per cent. Provided that, in cases where the value of a complete radio receiving set for duty purposes does not exceed £10, the duty shall be . . . *ad val.* Preferential Tariff Free. General Tariff 20 per cent."

The Comptroller assessed a separate duty upon the leather cases under Item 242, which reads—"All other goods not included under any other heading in this Schedule . . . *ad val.* Preferential Tariff 25 per cent. General Tariff 50 per cent."

Under section 67 of the Customs Ordinance, Cap. 166, the respondents appealed to the Board of Commissioners of Customs against the Comptroller's assessment, claiming that the portable transistor radio sets could not be regarded as complete without their leather cases. The respondents maintained therefore that duty should in each instance have been assessed on both radio set and case as one complete unit under Item 118 (*d*), and not separately under the two items 118 (*d*) and 242. The Board upheld the assessment made and dismissed the appeal. The ruling of the Board was as follows:—

"The Commissioners ruled that, as the transistor radio worked and was a complete radio set without a leather carrying case, the Comptroller of Customs' assessment of duty on the radio under item 118 (*d*) and on the leather carrying case under item 242 of the First Schedule to the Customs Duties Ordinance (Cap. 167) was correct. The appeal was therefore dismissed."

The respondents thereupon instituted an action in the Supreme Court claiming a refund of the excess duty which they alleged had been wrongly assessed by the Comptroller of Customs on the grounds unsuccessfully argued before the Commissioners. This action was transferred by the Supreme Court to the Magistrate's Court of the First Class, Suva. When the suit was called on before the Magistrate's Court, the learned Solicitor-General, appearing on behalf of the Comptroller of Customs, submitted that the court had no jurisdiction to hear the case by reason of section 71 of the Customs Ordinance, Cap. 166. Section 71 reads as follows:—

"Every ruling or decision of the Commissioners which is an interpretation of the nomenclature of the customs tariff shall be forthwith published in the Gazette and shall be deemed and taken for all purposes of this Ordinance and of any Ordinance imposing customs dues that is now in force or which hereafter may be in force in the Colony and to which such rulings apply to be final and binding upon any owner of any goods and upon the Customs Department."

The learned trial Magistrate overruled the submission. He held that section 71 of the Customs Ordinance must be read subject to section 157 thereof. He also stated in his judgment that a ruling of the Board of Commissioners is only final when the question of the amount of duty assessed does not arise. Against this decision the Attorney-General has now appealed.

In my view the decision of the learned trial Magistrate was correct although I do not entirely subscribe to the reasons he has given. Thus I do not think it follows that a ruling of the Board of Commissioners of Customs is final only when the question of amount of duty assessed does not arise.

In the opinion of this Court, the reason why section 71 is not applicable in this case is because the ruling or decision of the Commissioners was not an "interpretation of the nomenclature of the customs tariff". All that the Board of Commissioners did in this case was to decide a simple question of fact, namely, "were the particular radios in question complete or not without their cases?" No doubt the Commissioners saw one of the radios. After ascertaining that the radios were in fact complete without the carrying cases that was an end of the matter. The Commissioners were not called upon to "interpret the nomenclature of the customs tariff", as I understand these words.

I do not know whether in this connection the Customs Ordinance, as presently drafted, gives effect to the intention of the Legislature. It is unnecessary for the purposes of this judgment to lay down any general test as to when a ruling or decision of the Commissioners is final and binding, but in any event it would be difficult to do so. Each ruling or decision must be examined independently to decide whether it is in fact "an interpretation of the nomenclature of the customs tariff". I have decided that the instant ruling or decision was not.

The appeal is therefore dismissed.

The Commissioner of Customs... The learned trial Magistrate... section 71 of the Customs Ordinance... Every ruling or decision of the Commissioners which is an interpretation of the nomenclature of the customs tariff shall be forthwith published in the Gazette and shall be deemed and taken for all purposes of this Ordinance and of any Ordinance imposing customs duties that is now in force or which hereafter may be in force in the Colony and in which such duties apply to be final and binding upon any owner of any goods and upon the Customs Department.

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