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IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

THE UNIVERSITY
OF
PAPUA & NEW GUINEA
THE LIBRARY

COLLECTOR OF CUSTOMS (RABAUL).

Appellant.

- and -

R.R. STEPHENSON (TRADING AS
BATTERY SERVICES)

Respondent.

J U D G M E N T

This is an appeal from the Stipendiary Magistrate at Rabaul. Customs duty amounting to the sum of £133.16.8., on certain battery lead plates, was paid by the Respondent under protest. The Respondent sued the Appellant for the recovery of the moneys so paid and the Magistrate gave judgment for the Respondent in the sum of £133.16.8. with costs.

The matter now comes on appeal to the Supreme Court on the following grounds:-

- "(1) That the judgment is wrong in law and that judgment should have been entered for the Defendant with costs against the Claimant.
- (2) That the Magistrate was wrong in law in holding that the battery lead plates in question were within the ambit of Item 50 (b) of the Schedule.
- (3) That the Magistrate was wrong in law in holding that the battery lead plates in question were "fittings" within the meaning of the said By-law.
- (4) That to the extent that the said By-law includes the word "fittings" it is: "ultra vires" the subordinate legislation and invalid.

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- (5) That on the proper construction of the Customs Tariff 1959 and the said By-law applied to the said battery plates, and in the relevant circumstances, judgment should have been entered for the Defendant and with costs against the Complainant."

The duties were sought to be collected under Customs Tariff 1959 and Item 50 (b) of the Second Schedule thereto and this Item reads as follows:-

"50(b) Industrial metals n.c.i. as prescribed by Departmental By-law."

Section 5 of the Ordinance provides that "notwithstanding anything contained in this Ordinance the Administrator-in-Council may, by notice in the Gazette exempt from duty any goods otherwise subject to duty under the Second Schedule to this Ordinance."

As appears from Government Gazette No. 31 of 16th July, 1959 the Executive Council made By-law No. 2 of 1959 under the powers given to it by Section 5 of the Ordinance with respect to Item 50 (b) of the Schedule. This By-law reads as follows:- "The following goods may be admitted free under Tariff Item 50 (b):-

Industrial metals as follows:-

Aluminium, bronze, brass, copper, lead, iron, steel, alloys and manufactures thereof, viz.

Angle, bar, rod, plate, sheet, block, tube, valves, ingots, tees, billets, blooms, hoop, slabs, loops, galvanized, pipes, fittings except part of machinery."

The question is one of interpretation to determine whether or not the articles imported, lead battery plates, come within the By-law and are consequently free of duty. If they do not then they are caught by Item 92 of the Second Schedule as being not elsewhere included and carry an ad valorem duty of 15 per cent.

Under Item 50 (b) of the Schedule "Industrial metals" are already free of duty and all the Executive Council has to do is to prescribe by By-law what such metals are to be admitted free. There is no definition of "Industrial metals" to be found but it is not surprising, for the expression, I think, is plain enough without a

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definition - metals used in industry is sufficient. Then the question turns on what are metals within the meaning of the By-law.

The By-law describes the metals as aluminium, bronze, brass, copper, lead, iron, steel, alloys and manufactures thereof and designates them particularly as angle, bar, rod, plate, sheet, block, tube, valves, ingots, tees, billets, blooms, hoop, slabs, loops, galvanized, pipes and fittings except parts of machinery.

The approach to interpretation is to ascertain what is meant by the words used. What does the Act or Regulation or By-law say.

Section 5 of the Ordinance gives the power to make By-laws with respect to any of the Items in the Second Schedule but the making of the By-law is restricted to the subject matter of the Item. I do not see, however, that there is a restriction as to the description of the articles under the By-law if such articles can be properly included under the general heading of the Item. In these descriptions there is a necessary latitude given.

The expression is "Industrial metals." To me the term denotes something more than raw metals - metals in their primary condition. Certain processing is to be carried out before they become metals to be used in industry.

In the consideration of what are industrial metals there will be some point reached when they cease to be such. It is left to the By-law making authority to determine the point at which they cease to be industrial metals and should come under other categories. It has determined this point, I think, by adding the words "except parts of machinery" which are dealt with by By-law No. 1 of 1959 with respect to Tariff Item 49 (a), and by the designation of the articles.

It has been argued that in certain respects the By-law under review is repugnant or invalid. The By-law must of necessity go beyond the Ordinance because it must enumerate or prescribe certain things which are not enumerated by the Ordinance. Gental v. Rapps (1902) 1 K.B. p. 160 at p.165. It is left to the By-law making authority to prescribe what articles are to come within the expression "Industrial metals." In my view the By-law is not invalid with respect to any part of it.

The question is then, upon an interpretation of the By-law, whether the lead battery plates come within its scope. I was invited in argument for the Respondent that as the Ordinance is an attaching statute it must be interpreted in favour of the subject. No doubt the Customs Ordinance, with which the Customs Tariff Ordinance is incorporated, contains penal sections, but this is a claim to recover customs duty paid under protest and the question is merely whether or not upon

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the interpretation of the By-law the Claimant is to recover the money paid, and the By-law is to be construed according to the fair common-sense meaning of the words used, like any other enactment.

It is a good rule of construction that where a charge is to be imposed on the subject, it ought to be done in clear and unambiguous language" (per Park J. in Casher v. Holmes E.R. 109 p. 1263). But what one has to do here is to find whether the lead battery plates come within the ambit of the By-law, for if they do not they are goods not elsewhere included and they are caught by Item 92 of the Schedule, which is clear enough.

The battery plates are lead alloys and merely as lead alloys they come within the description of metals in the first part of the By-law, but it is to be considered whether as battery plates they can come within the second part of the By-law. It is true that the battery plates as such are not designated among the particular items in the second part of the By-law.

The first part of the By-law, however, does in the list include "lead" so that in the particular list one may have lead bars, rods, plates, sheet, valves for example. The By-law must be read as a whole. It is accepted that the metals are not in the raw state but have undergone some degree of processing in order to become metals used in industry. Just as valves have undergone a change to some degree, so have the battery plates been fashioned by cutting as to size and the addition of lugs so that they may be used in the industry of making batteries.

To the term "fittings" there must be given some meaning. As there is no definition of the word one must look to the dictionary for the ordinary acceptance of its meaning. To my mind, and so far as I can gather from the dictionaries, "fittings" mean things used in fitting up. The battery plates are manufactures of lead alloy and come within the term "fittings," and so, being within the By-law are free goods.

I dismiss the Appeal with costs to be taxed.

J.

9:30 a.m. 19/7/61.