

NMLS

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM HCV 0946 OF 2003**

BETWEEN	OSAKA AUTO PARTS	CLAIMANT
AND	THE ATTORNEY GENERAL	1 <sup>st</sup> DEFENDANT
AND	THE COLLECTOR OF CUSTOMS	2 <sup>nd</sup> DEFENDANT

Malcolm Arthurs and Miss Anna Gracie instructed by Rattray Patterson Rattray for the Claimant.

Curtis Cochrane and Miss Janice Neathly instructed by the Director of State Proceedings for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Heard 18<sup>th</sup>, 19<sup>th</sup> and 28<sup>th</sup> April, 2005

**M. McINTOSH, J:**

Osaka Auto Parts Ltd, a limited liability company under the laws of Jamaica, seeks a judicial review pursuant to Part 56 of the Supreme Court of Judicature Civil Procedure Rules 2002.

The Claimant's claim is for declarations and orders for mandamus and prohibition in relation to the importation of two containers into the island at the Kingston Wharves. The containers, it is claimed, contain various motor vehicle parts for assembly by the Claimant who is licensed by the Ministry of Industry Commerce and Technology to assemble motor vehicles from spare parts and knock down kits from Japan. The said

knock down kits and motor vehicle spare parts are treated as raw materials for the purpose of assessment of customs duties payable on such items imported into the island. The claimant has been prevented from clearing the containers from the Kingston Wharves by the Collector and Commissioner of Customs who have classified the said motor vehicle parts and knock down kits as imported motor vehicles and are holding that the rate of duty applicable to the said motor vehicle parts would be that which is charged on imported motor vehicles and further that the claimant would have to obtain the necessary import licence required for the importation of (assembled) motor vehicles.

The reliefs sought by the Claimant/Applicant are:

1. A declaration that the Claimant by virtue of the licence granted to it by the Ministry of Industry Commerce and Technology is authorised to import motor vehicle spare parts and/or disassemble motor vehicles for the manufacture and/or assembly of motor vehicles
2. A declaration by virtue of the manufacturer's status given to the Claimant and the concession given in relation to the deferred payment of G.C.T. on raw materials the motor vehicle spare parts and/or disassembled motor vehicles should be treated as raw materials for the purpose of assessing the customs duties payable thereon.
3. A declaration that the Claimant did not breach the Customs Act in the importation of 2 containers and in particular Section 210 of the Customs Act.
4. An order of Mandamus requiring the Collector and Commissioner of Customs to treat the contents of the 2 containers as raw materials for the purpose of assessing

the appropriate duties thereon and upon assessment of those duties and after payment of the appropriately assessed duties that the said containers be released forthwith to the Claimant.

The Claimant contends that the authority and discretion of the Customs Department to classify parts of a unit as the whole unit is to be used specifically to accurately assess, calculate and collect tax revenue and that the use of this authority and discretion for any other purpose is not contemplated by the legislation and as such is ultra vires.

To support this contention reference is made to section 2(a) of the Customs Tariff (Revision) (Amendment) Resolution 1999.

“Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished article has the essential character of the complete finished article. It shall also be taken to include a reference to that article complete or finished (or following to be classified as completed or finished by virtue of this rule), presented unassembled or disassembled”

The containers, subject matter of this action, are numbered ECMU903902-1 and TOLU160406-0 and the claimant's complaint is that the contents of these containers did not have the essential characteristics of a motor vehicle nor were the parts compatible such that a motor vehicle could have been assembled from these parts. Rule (2) of the Customs Tariff (Revision) (Amendment) Resolution 1999 specifically requires the parts

must have the essential characteristic of the whole unit or must be presented in a disassembled or unassembled form before Customs Department can classify parts of a unit as the whole unit. As such it is the contention of the Claimant that the Customs Department erred jurisdictionally in fact with regards to the contents of the said two containers and could not reasonably invite the discretion granted them.

The Defendants argue that the Trade Act, section 8(1)(a) and (b) provide that the Minister may prohibit the importation or export of any goods to any country or may require the importer or exporter to proceed under the authority of a licence granted by the Minister.

In addition, by virtue of section 12 of the Trade Act the Minister can delegate and has delegated his functions under the Act to the Trade Administrator.

The Defendants argue further that the Claimant had no licence under the Trade Act to import the goods in the containers and that the Commissioner of Customs is competent to inspect goods arriving in the island, classify them and assess the duty payable on them. In addition, if the Commissioner of Customs finds that the goods are not what the importer says they are, the Commissioner is entitled to reclassify them.

The Defendant's submission is that the Claimant's contention that it imported auto parts to the island for which no permit from the Trade Board is required but in fact the Collector of Customs found that the goods were not auto parts but were in fact disassembled motorcars, therefore they were properly classified as motorcars. As a result

of this reclassification of the contents of the containers as motor cars and in the absence of any permit from the Trade Board the Claimant was in breach of s210 of the Customs Act.

Section 10(2) of the trade Act provides –

“Where under any such order the importation of goods or of any class or description of goods, from any country is prohibited except under the authority of a licence granted by the Minister, any goods imported in breach of such prohibition shall be deemed to be prohibited goods within the meaning of the Customs Act, which have been imported contrary to the prohibition against their importation, and the provisions of section 210 of the said Act shall apply accordingly.”

Section 210(1) of the Customs Act provides –

“Every person who shall import or bring, or be concerned in importing or bringing into the island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload or assist or be otherwise concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession or be in any way knowingly concerned in carrying, removing,

depositing, concealing, or in any manner dealing with any goods with intent to defraud her majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of good, shall for each offence incur a penalty of not less than treble the import duties payable nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.”

The Claimant has produced a number of letters from the Minister of Industry Commerce and Technology to support his claim that he is the holder of a licence from this Ministry. The letters exhibited indicate that the Claimant “has been granted approval status to assemble knocked down kits imported from Japan for use as commercial vehicles” and does not constitute a licence under the Trade Act.

It is clear from the provisions of section 19 and other sections of the Customs Act that on the arrival of goods in the country the competent authority as regard classification and assessment of duty payable on such goods is the Commissioner of Customs or his nominee.

The Claimant claims that the goods it imported are auto parts for which no licence from the Trade Board is required.

However, the Collector of Customs on inspection of the goods concluded that the goods were not auto parts but were in fact disassembled motorcars.

Section 2(2)(a) of the General Provisions to the First Schedule of the Customs Tariff (Revision) (Amendment) Resolution 1999 allows the Collector of Customs to classify the contents of the containers as Motor Cars although they were disassembled. The Claimant in the circumstances was required to produce a licence from the Trade Board for presentation to the Collector of Customs and having failed to do so would not have complied with the provisions of Section 210 of the Customs Act. The Collector of Customs in requesting that the Claimant produce a Trade Board Licence was not acting “ultra vires” but was affording the Claimant the opportunity of removing the goods he imported from the category of prohibited or restricted goods and facilitating the release and clearing of these goods through Customs.

The claim is dismissed with costs to the defendants.