

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.14 OF 2003

BETWEEN:

[1] THE ATTORNEY GENERAL OF ST. LUCIA
[2] COMPTROLLER OF CUSTOMS

Appellants

and

VANCE CHITOLIE

Respondent

Before:

The Hon. Mr. Brian Alleyne, SC
The Hon. Mr. Michael Gordon, QC
The Hon. Madam Suzie d'Auvergne

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mrs. Georges Taylor-Alexander with Mr. Deale Lee for the Appellants
Mr. Alvin St. Clair for the Respondent

2004: October 18;
2005: January 10.

JUDGMENT

[1] **GORDON, J.A.:** This is an appeal by the Attorney General and the Comptroller of Customs, who, for the purposes of this appeal have identical interests, against the judgment of Hariprashad-Charles J wherein she granted certain reliefs against the Appellants.

[2] The facts as found by the learned trial Judge are as follows: On or about September 2001 the Respondent in the course of surfing the net visited the website of Japan Vehicle where he saw a used red 1996 3 door Escudo, 1600 cc, manual transmission of grade 3 condition (hereafter in this judgment referred to as "the Vehicle"). No price was advertised on the website so the Respondent telephoned the company and negotiated a price for the Vehicle. The Respondent tendered a price for the Vehicle C.I.F St. Lucia of US\$2,050.00.

The company accepted the offer and subsequently shipped the Vehicle which arrived in St. Lucia in October 2001. On 30th November 2001 the Respondent made a money transfer of the US\$2,050.00 to the company through the Royal Bank of Canada.

- [3] The learned trial Judge further found that the Respondent then sought to clear the Vehicle from Customs where a two stage system is in place. The first stage is the payment of duties based on the value declared by the importer and the second stage is for the Valuation Department of Customs to verify and inspect the Vehicle. At this second stage, the Customs officer suspected that the declared value of the Vehicle was an under-valuation. In his affidavit filed on behalf of the Appellants in the Court below, he stated that on comparing identical goods of similar ages from the same supplier and other suppliers he determined that the value declared by the Respondent was inordinately low. As a result the Comptroller of Customs rejected the value declared by the Respondent on the basis that the declared value was not the transaction value in accordance with paragraph 3 (1) of the Second Schedule of the Customs Control and Management Act of 1990. (hereafter "the Customs Act").
- [4] The duty paid by the Respondent based on the value declared by him amounted to \$4,827.88 and was paid on 6th December 2001. According to an Affidavit filed on behalf of the Appellant the C.I.F. value of the Vehicle, on which duties are calculated, as assessed by the second Appellant was US\$7,000.00. The Second Appellant refused to release the Vehicle from its care and control unless the Respondent paid either the duty calculated on the higher amount, or paid a deposit equivalent to the difference between the duty the Respondent had already paid and the duty as calculated on the higher CIF value ascribed to the Vehicle by the second Appellant. The Respondent in his affidavit stated "I was never told how much was required to be paid as I, from the outset, refused to pay this deposit."
- [5] The Respondent filed a Fixed Date Claim against the Appellants in which he sought the following reliefs:
1. An order that the Vehicle be delivered to him
 2. Damages for loss of use of the Vehicle from the 7th December 2001 to the date of delivery thereof to the Respondent

3. An order that all rent due to the Saint Lucia Air and Sea Ports Authority to the Vehicle be paid by the Appellants
4. The costs of the action

[6] After the trial of the action the learned trial Judge made the following orders in favour of the Respondent:

1. That the Vehicle be released by the Comptroller of Customs forthwith;
2. That the Appellants do pay all rents due to the Saint Lucia Air and Sea Ports Authority with respect to the Vehicle
3. That the Appellants pay to the Respondent a sum to be agreed upon by both parties representing loss of use of the Vehicle from 10th December 2001 to the date of its release;
4. No order as to costs was made by agreement of the parties

[7] The Appellants appealed against this decision and raised a number of grounds of appeal. The first ground was that the learned trial Judge was mistaken in her conclusion that the Appellants abandoned the issue of the lack of jurisdiction of the Court. That ground is amplified in the Notice of Appeal by a short argument that the Appellants in their submissions before the learned trial Judge challenged the jurisdiction of the Court to determine the matter based on the alternative dispute resolution mechanisms contained in Part XII of the Customs Act. At the hearing before this Court this Ground was not argued, nor was it withdrawn and so remains a live issue. It could well be that the learned trial Judge came to her conclusion based on the paucity of pleading in the defence as to jurisdiction. Jurisdiction, however, goes to the very source of the right of the court to deal with a matter.

[8] Part XII of the Customs Act is headed "Determination of Disputes" and codifies the procedure for the determination of disputes concerning the amount of duty demanded. Part XII of the Customs Act is reproduced substantially so that it can be appreciated that not only does it give rights to an importer, but also sets out in some detail how those rights are to be exercised.

"136.(1) Where any amount of duty demanded by an officer is disputed by the person required to pay that amount, that person shall pay that amount but then may, at any time before the expiration of three months from the date of payment,

require the Comptroller, by a notice in writing under the is sub-section, to reconsider the amount of duty demanded.

(2) A notice under subsection (1) shall state the grounds of disputing the amount of duty demanded.

(3) The Comptroller, after reconsidering the amount demanded and taking into account the grounds contained in the notice, may increase, decrease or confirm that amount, and shall notify the person who paid the amount demanded of his decision.

Section 137 deals with the authority to appoint Customs Appeal Commissioners and with procedures to be followed by them in their deliberations.

138.(1) Any person notified of a decision under section 136 (hereinafter in this Part referred to as "the appellant") may, subject to subsection (2), appeal against that decision to the Commissioners by serving a notice of appeal on the Secretary to the Commissioners by serving a notice of appeal on the Secretary to the Commissioners and the Comptroller within thirty days of the notification or such longer period as the Commissioners may permit.

(2) No appeal may be made under subsection (1), unless the amount notified as the duty due by the decision of the Comptroller has been paid.

(3) A notice of appeal under subsection (1) shall be written and must state:

- (a) The date of the decision of the Comptroller which is appealed against;
- (b) The name and address of the person to whom the decision appealed against was sent;
- (c) The amount of duty in dispute; and
- (d) The grounds for claiming that the amount of duty in dispute is not due and payable.

(4) At least thirty days or such shorter time as the parties may agree before the date fixed for the hearing of an appeal, the Secretary of the Commissioners shall, be noticed in writing, advise the Comptroller and the appellant of the time at which, the date of which and the place where the appeal is set down for hearing.

(5) The hearing of appeal under subsection (1) shall be in public unless a Chairman presiding at the hearing shall otherwise direct.

(6) At any hearing of appeal under subsection (1)

- (a) The Comptroller and the appellant shall be entitled to appear in person or by a representative;
- (b) The burden of proof on any matter shall lie with the appellant; and

- (c) The Comptroller and the appellant shall bear their own cost unless the Commissioners for special cause, otherwise direct.

(7) On the hearing of the appeal, the Commissioner may increase, decrease or confirm the amount of duty due and shall notify the Comptroller and the appellant of their decision.

(8) Any decision of the Commissioners under this section shall be published, except that where a direction has been given under subsection (5) that the hearing of the appeal shall be in private, such details of the decision shall be omitted as the Chairman considers it necessary to preserve the privacy that the private hearing was considered necessary to protect.

139.(1) The Comptroller or the appellant may appeal to the High Court against the decision of the Commissioners which involves any questions of law, including a question of mixed fact and law.

(2) The Comptroller or appellant may appeal to the Court of Appeal against any decision of the High Court, being a decision of an appeal from the Commissioners, which involves a question of law, including a question of mixed fact or law.

(3) On an appeal to the High Court or the Court of Appeal under this section, that court shall have the power to:

- (a) increase, decrease or confirm the amount of duty;
- (b) make any such other order as it thinks fit; and
- (c) make such order as to cost as it thinks fit.

140.(1) Subject to subsection (2), where a decision of the Commissioners, of the High Court or Court of Appeal on an appeal under this part is:

- (a) that the amount of duty should be increased, the appellant shall pay the amount of the increase to the Comptroller; and
- (b) the amount of duty should be decreased, the Comptroller shall pay the amount of the decrease to the appellant, within thirty days of the decision

(2) Where the decision referred to subsection (1) is that of the Commissioners or the High Court no amount shall be payable if, within the thirty day time limit provided by the subsection, and appeal against that decision is lodged within the High Court or the Court of Appeal, as the case may be.

[9] Want of jurisdiction cannot be cured by consent. The case of **Wilkinson v Barking Corporation**¹ is illustrative. By Section 35 of the Local Government Act, 1937 of England

¹ [1948] 1 K.B. 721

“Any question concerning the rights and liabilities of an employee of a local authority...shall be decided in the first instance by the authority concerned, and if the employee is dissatisfied with any such decision...shall be determined by the Minister, and the Minister's determination shall be final...” The Plaintiff was refused a superannuation allowance by the local authority by which he had been employed. He brought an action against the authority claiming a declaration that he was entitled to such an allowance under the Superannuation Act 1937. The Defendant entered an unconditional appearance and pleaded in their defence that any question as to the Plaintiff's right to a superannuation allowance was required to be determined by the Minister in the event of the Plaintiff being dissatisfied with the decision of the local authority and that the Plaintiff therefore had no cause of action. It was contended for the Plaintiff, *inter alia*, that the Defendant having entered an unconditional appearance to the writ, could not demur to the jurisdiction of the court to entertain the action. Asquith LJ in the course of his judgment in the Court of Appeal said the following:

“It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to the remedy or that tribunal, and not to others. As the House of Lords ruled in *Pasmore v Oswaldtwistle U.D.C.*² (Per Lord Halsbury): ‘The principle that where a specific remedy is given by statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law’...The real answer to the Plaintiff's contention under this head can be put in several ways: No act of the parties can create in the courts a jurisdiction which parliament has said will vest, not in the courts, but exclusively in some other body. Nor again can a party submit to, so as to make effective, a jurisdiction which does not exist: which is perhaps another way of saying the same thing.”

- [10] It is clear to me that in this case, the importer has been given a statutory right to challenge the determination by the second Appellant of a value of imported goods, but that such challenge can only be mounted within the constraints of the Customs Act. This the Respondent has failed to do and I am clear that neither this Court, nor the High Court has the original jurisdiction to hear such challenge by the Respondent. Clearly, the High Court and the Court of Appeal have appellate jurisdiction as given by section 139 of the Customs Act, but only that.

² [1898] AC 387

[11] All of the reliefs sought by the Respondent/Claimant in his Statement of Claim are matters for which Part XII of the Customs Act makes provision. In the circumstances I will allow the appeal, vacate the Order of the learned trial Judge and dismiss the claim of the Respondent. I will make no order as to costs.

Michael Gordon, QC
Justice of Appeal

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

[Sgd.]
Suzie d'Auvergne
Justice of Appeal [Ag]