

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.SLUHCV2019/0571

BETWEEN:

FAUSTINUS VENOID GEORGE

Claimant

And

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Mr. Alvin St. Clair of Counsel for the Claimant

Ms. Kozel Creese, Crown Counsel, Attorney General's Chambers of Counsel for the Defendant

2022: November 18;
2023: July 7.

Trespass to goods – Detinue – Claimant alleging goods imported unlawfully detained by officers – Officers claiming that goods lawfully detained in the exercise of their duty under the Customs (Control and Management) Act, Cap 15.05 (the 'Act') and not in the exercise of any power of seizure conferred under section 130(1) of the Act – Officers claiming to have reasonable suspicion that importer committed offences contrary to the Act for which the goods were liable to forfeiture – No notice of forfeiture issued – Officers issuing detention slip – Whether officers having power to merely detain goods where the goods were liable to forfeiture otherwise than by virtue of section 130(1) of the Act – Officers alleging that goods not seized but detained for the purpose of investigating alleged offences committed by importer contrary to the Act – Whether reasonable suspicion of the commission of offences under the Act – Whether officers had reasonable grounds for detention of goods – Whether detention of goods liable to forfeiture without notice of seizure reasonable exercise of officers' duty under the Act – Sections 65, 78, 102, 113, 116, 130(1),(4) and 133, Schedule 4 of the Act

The claimant was the importer of a motor vehicle. The motor vehicle was released to the claimant on 30th January 2019 pursuant to a deposit entry upon the payment of duties and charges assessed in accordance with the declared transaction value contained in an invoice from the supplier. The duties paid were deposited into a holding account pending the ascertainment of whether the imported vehicle was subject to a duty concession in respect of that class of vehicle.

On 13th March 2019, the claimant was summoned to a meeting by officers of the Customs and Excise Department. The officers demanded that he produce documentation related to the importation of the vehicle and the price paid to the supplier. The claimant was not forthcoming with the requested information at the material time. Consequently, the claimant's motor vehicle was detained by the officers and the claimant was issued with a detention slip. No notice of seizure was issued to the claimant in accordance with section 130 of the Customs (Control and Management) Act (the 'Act').

The claimant was subsequently served with a request for information by the Comptroller of Customs made pursuant to section 102 of the Act.

After the claimant had provided certain information to the officers regarding the importation of the motor vehicle to the satisfaction of the officers, on 11th June 2019 the vehicle was released by the Comptroller of Customs.

The claimant brought a claim for damages for the wrongful detention of the vehicle by the officers.

The defendant claimed that the claimant was not entitled to any award of damages as the claimant's vehicle had been lawfully detained by the officers and that since the vehicle was liable to forfeiture the officers were protected by the immunity provided by section 133 of the Act.

The officers claimed to have held the reasonable suspicion that the claimant had undervalued the price actually paid for the vehicle. This suspicion was based on the officers having visited the supplier's website where the same vehicle was advertised on auction at a higher price than that displayed on the invoice presented by the claimant at the time the entry on importation was made.

The defendant alleged that the officers were entitled to detain the claimant's vehicle otherwise than by virtue section 130 of the Act as they had reasonable grounds for suspecting that the claimant had contravened the provisions of sections 113 and 116 of the Act by virtue of which the vehicle was liable to forfeiture and that the vehicle was detained for the purpose of investigating whether the claimant had contravened the provisions of sections 113 and 116 of the Act. Therefore, the defendant claimed that the officers were entitled to detain the vehicle pending inquiries into the duty status of the vehicle or to ascertain whether the actual duties chargeable on importation had been paid. The defendant also claimed that the detention of the claimant's vehicle was reasonable and necessary in these circumstances; and therefore, the detention of the claimant's vehicle was not tortious.

Held: the court finding in favour of the claimant that the officers' detention of the claimant's vehicle amounted to tortious conduct and making the orders at paragraph [246] of this judgment that:

1. The Customs (Control and Management) Act (the 'Act') does not expressly authorise the detention of goods liable to forfeiture otherwise than in accordance with the provisions of section 130(1) of the Act.

2. In order for the detention to be lawful it must be shown by the evidence that the goods were detained by an officer in the execution of his duty under the Act. Where the only reason which the officer gives for continuing to detain the goods was that the importer had committed an offence under the Act the only act which the officer was authorised by the Act to do where he reasonably suspected that such an offence had been committed was to seize the goods. However, it was accepted, according to the defendant's pleaded case, that the officers exercised no power of seizure under section 130(1) of the Act in the present case.
3. The claimant's vehicle having been returned to him meant that the vehicle could not have been detained under any power exercised by the officers pursuant to section 130(1) of the Act.
4. The power of detention exercised by the officers and not expressly conferred by the Act, may arise by necessary implication from the officers' statutory power to examine goods for the purpose of determining the duty payable or whether they were liable to forfeiture. It was not conditional upon the goods being liable to forfeiture. Whether the officers' suspicions were well grounded was not the question. It was sufficient, in order for the power of detention to be lawfully exercised outside of section 130(1) of the Act, that the officers should have, a real and honest doubt that the goods were liable to forfeiture. However, in the present case, the officers held the view that the goods were liable to forfeiture in light of what they claimed to be the reasonably held suspicion that the claimant had committed offences contrary to sections 113 and 116 of the Act.
5. Outside of the provisions of section 130(1) of the Act the officers were required to show demonstrably that the detention was necessary for the fulfillment of their duties under the Act. On the evidence presented it cannot be said that the officers satisfied this requirement.
6. The officers had the power to detain imported goods for the purpose of investigating their duty status. The officers were not carrying out a lawful inspection of the vehicle for the purpose of determining whether the appropriate duties had been paid, and did not have reasonable grounds to suspect that duty had not been paid. They were in the court's view, only entitled by virtue of the relevant provisions of the Act to detain the vehicle upon importation for a reasonable period in order to complete the inquiries necessary to make their determination as to whether duties had been paid or whether additional duties were payable.
7. The officers' detention of the claimant's vehicle after payment of duties payable in conformity with section 65 of the Act and after its subsequent release was unlawful to the extent that the act of detention was contrary to the provisions of section 65 of the Act, for the following reasons. Section 65 of the Act provides that no imported goods shall be delivered or removed

on importation until the importer has paid to the proper officer any duty chargeable thereon, and that duty shall, in the case of goods of which entry is made, be paid on making the entry. Therefore, it follows that duties are determined upon entry. Hence, at the time that the deposit entry was made the duties payable on the importation of the vehicle was not capable of being ascertained. The claimant's vehicle was released to him upon payment of the duties upon the deposit entry. Therefore, the duties could have been ascertained in a manner that did not require detention of the vehicle. In all the circumstances of the case, the detention of the claimant's vehicle was unreasonable and unnecessary for the ascertainment of the amount of duties payable.

8. The claimant having paid to the proper officer duties chargeable upon making an entry in accordance with section 65 subsections (1) & (2), had complied fully with the provisions of section 65 aforesaid, and, was therefore entitled to take delivery of and remove the goods. The entries and payment of duties was accepted by the proper officer. The Comptroller of Customs had not demanded the payment of any additional duties payable upon the entries submitted by the claimant. In any event, for reasons already stated, it did not appear that in light of the circumstances surrounding the deposit entry that the precise amount of duty chargeable was capable of being ascertained in the absence of verification of the applicability of the Cabinet Conclusion. Therefore, the officers could not have been satisfied whether on the basis of reasonable suspicion or otherwise that the claimant had failed to pay the full amount of duties chargeable on the importation of the vehicle. If in fact they did then there were other provisions under the Act of which they could have availed themselves without the necessity of detaining the claimant's vehicle after its release from customs.
9. However, the defendant was not authorised under the Act to detain goods for the purpose of conducting any investigation or inquiry into whether duties were chargeable or whether an importer had committed an offence contrary to the Act where the officer had reasonable grounds for suspecting that the importer had committed an offence by virtue of which the imported goods were liable to forfeiture.
10. In all the circumstances of the present case it was improper for the court to proceed on the basis that the goods were detained for the purpose of conducting an inquiry as to whether an offence had been committed under the Act. The real question for the court where the officer detained the goods on the basis that he had reasonable suspicion or reasonable cause to suspect that the importer had committed an offence under the Act was whether there was in fact such reasonable or probable cause for suspicion. In this instance the court found that the officers had no reasonable grounds for suspecting that the claimant had committed any offence under the Act.

Based on the evidence it appeared that all the officers held was a mere suspicion based on speculation.

11. The defendant was not entitled to the immunity provided for by section 133 of the Act. The protection is available only if it appears to the court that there was probable cause for such seizure or act. If the court is of that opinion, it shall so declare, and the person who effected the seizure or performed the act shall be immune from all proceedings on account of it. The court has made no such declaration in this instance. Therefore, the court holds that the provisions of section 133 of the Act are inapplicable to the present proceedings. As it stood the detention of the claimant's vehicle was not done pursuant to the statutory power of seizure where goods are liable to forfeiture under sections 113 and 116 of the Act.
12. This being an ordinary claim in detainee, a declaration of the breach of the claimant's constitutional right was not an appropriate remedy. Notwithstanding the claimant having sought declaratory relief with respect to the alleged breach of his rights guaranteed by section 6 of the Constitution, for all intents and purposes the claim was one in private law. The claimant's allusion to a breach of his rights guaranteed by section 6 was not advanced as a strict public law claim and the claimant did not plead that he was entitled to any form of redress under section 16 of the Constitution. He merely sought a declaration. In any event, it seemed that the case was confined strictly to a private law remedy.
13. Therefore, the claimant has obtained adequate redress in the realm of private law and that a declaration of the infringement of his constitutional right although sufficient and adequate vindication for the infringement of that right is not a declaration that the court is inclined to make in the present proceedings. Accordingly, the court makes no pronouncements regarding any breach of the claimant's constitutional rights save and except as already made on the substantive issue canvassed in the proceedings.
14. The claimant had improperly joined the administrative claim to his private law claim as an alternative cause of action. The question related to the section 6 of the Constitution was dealt with at the trial purely in respect of whether the officers had any lawful authority outside of the Act to detain the vehicle. The claimant had not sought redress by way of an administrative claim.
15. The constitutional motion procedure under section 16(1) of the Constitution was appropriate only in cases where the facts were not in dispute and only questions of law arose; once the officers had asserted a valid reason to detain the vehicle, the case was no longer suitable for the section 16(1) procedure as the choice between constitutional redress and a remedy under the common law or statute was not at large, and any attempt to use the procedure under section 16(1) as a general substitute for normal

procedures in this case, an action in detinue which were available constituted an abuse of process; and where as in these proceedings the inappropriateness of the section 16(1) procedure only became evident after the claim had been filed the claim for redress under the Constitution ought to have been withdrawn.

JUDGMENT

- [1] **INNOCENT, J.:** The claimant was the importer of a motor vehicle which cleared customs and was subsequently released and registered in his name.

- [2] On 13th March 2019, while the vehicle was in the claimant's possession, it was taken possession of and detained by officers of the Customs and Exercise Department. After various exchanges ensued between the claimant and officers regarding the price paid by the claimant to the supplier of the vehicle, the vehicle was released into the claimant's custody on 12th June 2019.

- [3] The claimant alleged that at the time of its importation on 7th January 2019 the vehicle was damaged and that he had made the required entry having submitted the necessary documentation and paid the duties assessed which lead to the clearance of the vehicle.

- [4] In his pleaded case, the claimant alleged that the action of the officers in taking possession and control of his vehicle and the subsequent detention thereof resulted in his being unlawfully deprived of the possession of his property as the officers had no lawful right or authority to deprive him of the possession of the same; and that in all the circumstances of the case, the detention of the vehicle deprived him of his constitutional right not to be deprived of his property otherwise than in accordance with the due process of law and amounted to an unlawful trespass or interference with his private property by the officers.

- [5] The claimant further alleged that as a result of the unlawful conduct of the officers he suffered loss and damage.

- [6] On the foregoing basis, the claimant sought an order declaring that the detention of his vehicle by the officers was unlawful; damages for trespass and unlawful

interference with his private goods or property. He claimed special damages in the sum of \$50,898.36, general damages and aggravated and or exemplary damages together with interest and costs.

- [7] Quite expectedly, the officers denied that they had seized the claimant's vehicle or that they acted unlawfully by taking the same into their possession and detaining it.
- [8] By way of defence the officers relied on the following factual argument. They alleged that the invoice for the purchase of the vehicle stated a purchase price of US\$8,000.00. They claimed that a deposit entry was prepared by the Customs and Excise Department. According, to their statement of case, the imported vehicle fell into the classification of a hybrid and at the time the Cabinet of Ministers were reviewing the concessions as it pertained to that classification of vehicle; accordingly, the claimant's vehicle was released pursuant to a deposit entry having been made pending confirmation of the Cabinet Conclusion 186 of 2017.
- [9] The relevance of the deposit entry mentioned in the preceding paragraph has special relevance for the purposes of the present case. The question of the deposit entry having been made is pertinent to the question of the reasonableness and necessity for the detention of the claimant's vehicle in light of what had been advanced as the substantial basis relied on for the justification of the actions of the officers.
- [10] It did not appear to the court that the officers placed any significant reliance on that factual contentions as establishing any legal basis or justification for their actions. In any event, this Cabinet Conclusion was not properly placed in evidence before the court and but was it relied on by the defendant as part of its pleaded case.
- [11] The defendant claimed that the sum of \$28,490.22 which the claimant paid to customs pursuant to the deposit entry represented the assessed duties and taxes payable on importation had the concession mentioned above not been granted. The court interpreted this assertion to mean that the full amount of the duties and taxes

payable on importation was paid by the claimant based on the declared transaction value of \$8,000.00 without the concession being applied.

[12] The defendant also claimed that the sum of \$28,490.22 was placed in a holding account pending resolution of the issue related to the applicability of the concessions and the proper entry being made and an examination conducted. The court is unsure that the vehicle fell within the classification of goods that required examination under the Act. The court also found it seemingly odd that the vehicle would have been released out of customs charge without any inspection; and in any event the court was also unsure whether there was any necessity in examining the vehicle for the purpose of ascertaining the amount of duty chargeable on the vehicle upon importation.

[13] The preceding evidence brought into focus the evidence of Mr. Yohan Auguste ('Mr. Auguste'). Mr. Auguste was the customs broker who cleared the vehicle on behalf of the claimant. He said that in preparing the Customs Entry he realized that the Hybrid concession had expired in December of 2018. He therefore proceeded to complete the documents without factoring the concession into the calculation of duties and charges to be paid. When seeking Customs clearance, it was recommended to him that a deposit entry be prepared to replace the original entry which he had prepared, to facilitate clearance whilst giving the claimant time to obtain the reinstatement of the concession.

[14] In the court's view, having considered the evidence, it meant that the claimant had made an entry in the case of dutiable goods which was not an entry for warehousing of imported goods which meant that the payment by the claimant to the proper officer of the full duties thereon, or the deposit of a sum of money as giving of security for the duties, as provided by law entitled him to the release of the vehicle. This was not a matter in dispute between the parties.

[15] The court interpreted the foregoing to mean that the claimant had paid more duty than would have been payable had the concession been in effect. It follows therefore, that should it have been later discovered that the concession was

applicable, then the claimant would have been entitled to a refund of the excess duties paid.

[16] The foregoing, in the court's view, meant that Customs and Excise Department had in their possession additional duties which they held on deposit as security. This begs the question as to the necessity for the detention of the claimant's vehicle while customs held security that could have been applied to the payment of any additional duties if any was found to be due. After all, this was the condition upon which the claimant's vehicle was cleared and released.

[17] It appeared to the court that the reason for the defendant's allusion to a deposit entry could only have been an attempt to make the point that the claimant's vehicle had been released conditionally and therefore it was still in the custody of customs and therefore they were entitled to detain the vehicle since the necessary declarations based on transaction value had not been made and entered on importation and clearance.

[18] However, this assumption fails entirely purely because there has not been any evidence provided in respect of the fulfillment of the conditions upon which the vehicle was released. It was not revealed whether the concessions were obtained by the claimant and subsequently applied. In addition, it did not appear from the evidence that any additional amount of duty was chargeable and no demand for the payment of additional duties was made. In any event, this was not the reason why the claimant's vehicle was detained. Therefore, the defendant cannot rely on these facts as justification for the detention of the claimant's vehicle.

[19] If the foregoing assertions are followed to their logical conclusion, it can be reasonably inferred that the claimant at the time of importation had paid the full amount of the duties and taxes assessed based on the declared transaction value of the vehicle and that the vehicle had been released by customs. As the court understood it, the vehicle was no longer in the custody of customs.

[20] The foregoing conclusion was evident in the evidence given by Mr. Auguste relative to the deposit entry where he said:

“These instructions were followed and further to payment of the deposit entry, the vehicle was cleared through the normal channels of examination and released. A gate pass was issued from SLASPA and the vehicle was transported off the port via a wrecker since it was not motorable due to faulty transmission as stated on the invoice.”

- [21] The defendant was adamant that no seizure of the vehicle occurred. This they said was the case as no notice of seizure was issued to the claimant. Instead, the defendant contended that the vehicle was detained pending further investigations as it was reasonably suspected that the claimant had given false information in relation to the value of the vehicle. In the premises, the defendant asserted that customs was lawfully entitled to detain the vehicle in accordance with the provisions of the Customs (Control and Management) Act (the ‘Act’) and in the circumstances a detention slip was issued to the claimant.
- [22] The court understood the defendant’s reliance on the foregoing assertions to mean that for all intents and purposes, the claimant’s vehicle was not “seized” within the meaning of the Act or in accordance with or pursuant to any of the provisions of the Act related to the seizure for the purposes of forfeiture and condemnation. Therefore, this begs the question of pursuant to the exercise of what powers under the Act did the officers detain the claimant’s vehicle. It appeared that this question laid at the crux of the dispute between the parties to the present proceedings.
- [23] It appeared that the basis upon which the defendant sought to establish reasonable suspicion that the claimant had made a false declaration regarding the purchase price of the vehicle and by extension the transaction value can be discerned from what is alleged in their pleaded case.
- [24] The court was deeply troubled by the fact that the officers sought to challenge the declared transaction value when by their own admission the requisite declarations required when an entry is made based on transaction value were not applied since the vehicle had been released on the basis of a deposit entry, and there being no ascertainment whether the concession was applicable.

- [25] It was more than passing strange that the ascertainment of transaction value would have been of concern to the officers at that stage because as it appeared from Mr. Leopold's evidence, that once the issue with respect to the applicability of the concession had been determined the claimant would have been required to lodge an entry with a declaration based on transaction value. There was no indication whether the position regarding the concession had been clarified at the time that the officers detained the claimant's vehicle.
- [26] In their pleaded case, the defendant stated, in respect of reasonable suspicion, that a visit to the supplier's website on 5th February 2019, revealed that a vehicle that matched the description of the vehicle imported by the claimant had been sold for US\$13,876.00. Therefore, the defendant contended that when the claimant's vehicle was detained on 13th March 2019, there was sufficient evidence to ground a suspicion that the claimant had provided false information in respect of the value and or the price paid for the vehicle.
- [27] In their pleadings the defendant referred to a letter dated 21st March 2019, delivered to the claimant requesting that he provide all relevant information pertaining to negotiations surrounding the purchase of the vehicle, the method of payment and confirmation of the price paid among other things.
- [28] It is worthy to note that this letter of request was preceded by the officer's detention of the vehicle. No explanation has been proffered by the defendant why the letter of request did not precede the detention of the claimant's vehicle. The relevance of this observation will become apparent later on in this judgment.
- [29] In his written evidence, the claimant stated that he started receiving calls at the beginning of March 2019 from an officer named Raymond Leopold ('Mr. Leopold') who asked him to produce proof of the payment for his vehicle to the investigations office of the Customs and Excise Department. According to the claimant he informed Mr. Leopold that he had submitted all the documents including the bank transfer for the payment to the supplier through his broker at the time of entry and clearance.

The claimant said that Mr. Leopold informed him that he just wanted to review the documents and so he agreed to bring them in.

- [30] The claimant said that when he arrived at the scheduled meeting on 13th March 2019, he met with Mr. Leopold and another officer Mr. Grantley Promesse ('Mr. Promesse') and he handed over to them a copy of the bank transfer and the invoice issued by the supplier for the vehicle.
- [31] He said that he was asked to account for the manner in which he negotiated the price paid for the vehicle. According to the claimant, he informed the officers that he had negotiated with the sales person at the supplier via telephone calls, emails and WhatsApp messages with respect to the price of the vehicle and the condition of the vehicle. The claimant said that he informed the officers that he was offered a vehicle with a faulty transmission. He said that he informed the officers that the sales agent sent him an invoice which stated that the vehicle had a faulty transmission.
- [32] The claimant's evidence was that the officers asked him to hand over his phone to them in order for them to review his WhatsApp messages and emails. He described the officers as having acted in a belligerent manner which included speaking to him in loud and aggressive tones and pointing their fingers in his face. The claimant said that he refused to hand over his mobile device to the officers because it contained private information. The claimant's evidence was that it was at that point that Mr. Promesse demanded that he handed over the keys to the vehicle as he was detaining the vehicle without any further explanation.
- [33] The claimant stated that he handed the keys to the vehicle to Mr. Promesse who in turn handed him a detention slip. He insisted that the officers gave him no explanation as to the reason for detaining his vehicle. He stated that he was informed by Mr. Promesse that police officers would be escorting him to his vehicle so that he could retrieve his personal items. The claimant stated that he was at a loss to understand why his vehicle was being detained presumably as no explanation was given to him by the officers.

- [34] On the basis of the evidence presented by the claimant it would seem that at the meeting of 13th March 2019, the officers did not inform the claimant of their suspicions regarding the declared value of the vehicle neither did they inform the claimant that they had reasonable cause or grounds for suspecting that he had committed any offence contrary to the Act.
- [35] The court also observed, assuming the veracity of the claimant's evidence, that the verbal request for information purportedly made pursuant to section 102 of the Act was not at the time of importation or entry of the vehicle but long after the vehicle had been cleared (it will be recalled that the vehicle was cleared pursuant to a deposit entry) seemingly at a meeting to which the claimant was summoned.
- [36] The court found it more than passing strange that the officers would have summoned the claimant to a meeting to demand the production of information purportedly under section 102 of the Act and thereafter issue a letter of request for the same information. In the court's view it does not seem unfair or unreasonable to infer from the surrounding circumstances that the sole purpose for convening the meeting of 13th March 2019 was to detain the claimant's vehicle. The court cannot derive any other reasonable explanation for the conduct of the officers taken within the context of section 102 of the Act.
- [37] It was also made to appear from the claimant's evidence that he attempted to produce the requested information at the meeting of 13th March 2019 by presenting the invoice and the wire transfer to the supplier. The officers dissatisfied with the production of this information made a request to search the claimant's mobile device and demanded further information without giving the claimant any time within which to comply.
- [38] It can be inferred, and the court is inclined to infer from these circumstances, particularly the degree of urgency exhibited by the officers in seeking the information from the claimant, that the detention of the claimant's vehicle served no other purpose than to coerce him into providing the information.

- [39] Clearly, it did not appear on the claimant's evidence presented at the trial that the officers informed him of any evidence which they had in their possession as amounting to reasonable grounds for suspecting that he had contravened any provision of the Act or that they were conducting an investigation into any such contravention. This appeared to be contrary to what Mr. Leopold stated in his written evidence where he stated that he informed the claimant that the investigation unit had information that provided reasonable grounds to doubt the truthfulness of the declaration made in entry number C991.¹
- [40] However, the court has discerned that no reference to informing the claimant of the evidence which the officers had in their possession was made in defendant's pleadings. Nowhere was it stated that they had informed the claimant that they had the evidence of the second transfer, the documents from the shipping agents, the document from the supplier's website, or the Goods Interchange Receipt ('GIR'), when they interviewed the claimant. In other words, the officers did not state with any specificity what information they had in their possession.
- [41] Therefore, based on the foregoing, it appeared to the court that at that stage the officers seemed to have already made up their minds that the claimant had committed an offence contrary to the Act. If that were indeed the case, then the officers ought to have executed a seizure of the vehicle. It is noteworthy that neither did the officers put this information to the claimant nor did they give him an opportunity to explain or respond.
- [42] In the premises, it appeared unusual to say the least that the officers would have sought to employ the provisions of section 102 of the Act and proceed to detain the vehicle bearing in mind that they had already concluded that they had reasonable grounds to suspect that the declaration was untrue. The court posed the question to itself that having arrived at the conclusion that they had "reasonable grounds to doubt the truthfulness of the declaration" whether it was necessary to make any further request of the claimant or detain his vehicle.

¹ At para 18

- [43] Additionally, assuming that the officers did in fact have “reasonable grounds to doubt” that the declaration was false which would have translated into the likely commission of an offence, namely the making of a false declaration contrary to section 113 of the Act, an offence for which the imported goods became liable to forfeiture, it seemed rather curious that the officers did not issue a notice of seizure but instead issued a detention slip in respect of goods that had already been cleared through customs and released.
- [44] In any event, the court found it difficult to fathom the necessity for detaining the claimant’s vehicle since it was unimaginable that it would have been required for the purpose of any inquiry, examination or investigation likely to be conducted by the officers. Additionally, it could not have been for the purpose of preserving the vehicle for the purpose of seizure and subsequent forfeiture as the defendants have been adamant throughout the proceedings that there was no seizure of the claimant’s vehicle.
- [45] In the court’s considered view, the detention of the claimant’s vehicle would have been quite understandable had it not yet been cleared and was still in the custody of the Customs and Excise Department and there had been some irregularity with respect to the declared value of the vehicle for the purposes of calculating the amount of duties payable on importation. However, this was not the case. The vehicle had been cleared shortly after the deposit entry was made on importation and duties had been paid thereon.
- [46] Notwithstanding all of the averments made by the defendants in these proceedings, it appeared that no explanation or justification for the detention of the claimant’s vehicle was proffered other than the vehicle was detained on the basis that the officers had formed a reasonable suspicion that the claimant had undervalued the price of the vehicle on entry and clearance. The defendants have yet to direct the court’s attention to any part of the Act that authorised the detention of goods otherwise than for the purpose of seizure with a view to forfeiture and disposition.

- [47] Additionally, it did not appear from the evidence at the trial that the defendant gave any explanation for the reason why a formal written request for information was not made as opposed to summoning the claimant to a meeting for that purpose. At the point when the officers detained the claimant's vehicle no demand for additional duties had been made and none had been calculated as unpaid.
- [48] Mr. Nestor's evidence largely mirrored that given by the claimant. However, the court observed that Mr. Promesse who featured prominently in the events giving rise to the detention of the claimant's vehicle was not called as a witness at the trial.
- [49] In any event, Mr. Leopold said in his written evidence that at the meeting of 13th March 2019, the claimant reiterated his position that he had paid exactly US\$8,000.00 for the vehicle and produced the following documentation² as proof of the payment: (1) FCIB bank statement showing two wire transfers to the supplier with an initial withdrawal of US\$8,073.74 on 1st November 2018 and a second transfer to the supplier in the sum of US\$6,588.74 dated 1st November 2018 and handwritten next to this entry was a note that read "Transmission Transfer"; a copy of the export certificate; supplier's commercial invoice and FCIB transfer remittance advice. Mr. Leopold stated that he did not see a copy of the remittance advice for the second transfer to the supplier.
- [50] According to Mr. Leopold, the investigation team considered all the information that was obtained at that point and determined that the vehicle should be detained pending further inquiry.
- [51] In stark contradiction to the claimant's assertions Mr. Leopold said in his written evidence that the claimant was informed that the officers had information which provided reasonable grounds to doubt the truthfulness of the declaration made on the entry number C991 dated 7th January 2019 and therefore the vehicle would be

² Exhibit RL7

detained for a reasonable period of time pending further inquiry into the matter. The claimant was issued with a detention slip.³

[52] In his written evidence Mr. Leopold made a rather surprising statement which the court thought it necessary to recite in extenso purely for the purpose of highlighting one of the fundamental issues that resided at the core of the present litigation. Mr. Leopold stated:

“All documentation and information obtained during the investigation indicated that the Black Toyota Crown appeared to be liable to forfeiture for the following reasons:

- (a) The importer ... caused to be made and caused to be delivered to the Customs Department an untrue declaration in respect of the costs of the transportation ... Consequently he also made a false declaration about the Customs value of the consignment.
- (b) The importer ... made an untrue declaration when he disclosed that the total sum paid ... for the Black Toyota Crown was only USD 8,000.00. Info obtained from the bank showed that a second payment of USD 6,515.00 was paid to the supplier for the same vehicle.
- (c) The importer ... used a falsified document to make an untrue declaration to Customs. ... On November 7, 2018 he used the said invoice to wire USD 8000... On January 7 2019 ... used a different invoice to make a declaration to Customs about the Black Toyota Crown...
- (d) The actions of the importer ... demonstrate that he was concerned in a fraudulent evasion of the duty chargeable on the Black Toyota Crown.”

[53] Mr. Leopold was cross-examined. He testified that based on information received and further investigation, the declaration appeared to be false. He said that the value declared at the time appeared to be incorrect.

[54] According to Mr. Leopold some of the information that he had in his possession were the documents from the shipping agents. He testified that the invoice submitted to customs showed freight in the sum of US\$1,800.00 whereas the one retrieved from the shipping agent quoted freight in excess of US\$2,000.00. He claimed that the claimant did not proof that he paid freight in the sum of \$1,800.00 and this was one of the circumstances that lead to the detention of the vehicle.

³ Exhibit RL8

- [55] Mr. Leopold made a surprising revelation which was not contained in his witness statement. He said that the officers had approached the Financial Intelligence Agency ('FIA') and made inquiries which revealed that two payments were made towards the vehicle. He agreed that at the meeting with the claimant on 13th March 2019 he did not tell the claimant about the second payment.
- [56] The foregoing evidence seemed to have gone against the grain of the defendant's pleaded case. This evidence only came to light for the first time in Mr. Leopold's written evidence. There was nothing in the defendant's pleaded case that suggested that the officers had such information in their possession or had knowledge of any such information on 13th March 2019.
- [57] Essentially, Mr. Leopold testified that it was not his decision to detain the vehicle. It mattered not whose decision it was to detain the vehicle; the simple point being that anything that was done by any one of the officers was done in the right and under the delegated authority of the Comptroller of Customs by virtue of the Act.
- [58] By letter dated 21st March 2019 the Acting Comptroller of Customs wrote to the claimant requesting the production of information related to the purchase and importation of his vehicle. It will be necessary to set out the full terms of this letter in this judgment for the purpose of exposition. The letter read:

"Re: Request for Information and the Production of Evidence – 2014 Toyota Crown

I wish to refer to the meeting held on Wednesday 13th March 2019 at 10:25 am with yourself and Customs Investigators Mr. Raymond Leopold and Mr. Grantley Promesse. The meeting was held to discuss the importation of a 2014 Toyota Crown (hereafter referred to as the vehicle) ... declared as per Customs Entry # C991 dated 07/01/2019 with attached invoice # BEL 82521 dated 06/11/2018.

During the meeting, you informed the Customs Investigators that all correspondence between you and your supplier ... was conducted via WhatsApp on your cell phone and email ... You added that the information that was conveyed via these mediums included: -

1. Price negotiations
2. Documents for the goods you imported
3. Confirmation of payments
4. Method of payments

The Customs Investigators asked you to present all conversations and emails between yourself and your suppliers in order to verify the truthfulness of your declaration but you denied them that access. You were then prompted to read section 102 of the Customs (Control and Management) Act Cap 15:05 ... which after reading you indicated that you understood, however afterward you still denied access to the information relating to your vehicle's importation."

The letter contained a recital of the provisions of section 102 of the Act and continued in the following terms:

"By Friday, 29th March 2019, you are hereby required to deliver to the Comptroller of Customs the following:

1. Access to all communications and correspondence between you and Jimex in relation to the vehicle which was imported into Saint Lucia;
2. Proof of payment for the vehicle including shipping; (e.g. Bank statements, wire transfers, copies of cheque(s) and
3. A copy of the Proper invoice that reflects the price paid for the vehicle..."

[59] It appeared from the claimant's written evidence that after several unsuccessful attempts had been made by his legal practitioner to convene a meeting with the officers, a meeting was eventually convened on 6th May 2019. The claimant's evidence was that at this meeting he handed over the requested information to the officers in the presence of his legal practitioner. He said that he was asked to disclose the emails with the supplier and he obliged. According to the claimant, one of the officers who was present examined the emails.

[60] The examination revealed a second payment to the supplier with respect to the same vehicle. The claimants' evidence was that he explained to the officers in the presence of his legal practitioner that the vehicle was delivered with a transmission fault and that he had made the separate payment to the supplier to enable them to source a replacement transmission. The claimant said that he also informed the officers that the vehicle had been transported from the port by a wrecker.

[61] The claimant said that subsequent to the meeting with the officers he contacted the supplier. The supplier subsequently refunded the sums paid for the transmission and remitted the funds to his account. The documentation regarding the request for

the refund and the remittance advice was disclosed to the officers on or about 28th May 2019.

- [62] The defendant also pleaded that on 10th April 2019, pursuant to a warrant issued by a magistrate of the District Court and executed on FirstCaribbean International Bank (Barbados) Limited ('FCIB'), officers sought to retrieve statements of accounts from the claimant's account held at that bank. According to the defendant, the information retrieved revealed that the sums of EC\$17,900.96 and \$21,935.56 making an aggregate of EC\$39,836.52 was remitted to the supplier of the vehicle from an account held jointly by the claimant and another individual.
- [63] It appeared from the defendant's pleadings that the claimant met with officers on 6th May 2019 and thereafter another meeting was convened on 22nd May 2019 where the claimant and his legal representative were present. The claimant's legal representative disclosed to the officers, copies of emails and messages exchanged between the claimant and the supplier which he asserted referred to the imported vehicle. The defendant claimed that a translation of the documents was necessary. They further alleged that at the meeting, the claimant's legal representative disclosed that at the time of purchase and importation the vehicle had issues with its transmission.
- [64] The defendant sought to refute the latter representation made by the claimant's legal representative by placing reliance on what they described as evidence related to the delivery documents and Saint Lucia Air and Seaports Authority ('Port Authority') gate personnel that the claimant drove the vehicle from the port. They maintained that this confirmed, contrary to the claimant's legal representative's assertion, that there was no indication that the vehicle had transmission issues.
- [65] Now no indication was given in the course of the trial as to precisely when the aforesaid information came within the knowledge of the officers. The court found itself inclined to accept that this explanation was arrived at and relied upon by the officers *ex post facto*.

- [66] To further buttress their argument that there were reasonable grounds for suspecting that the claimant made a false declaration at the time of customs clearance, the defendant relied on the fact that the amount of freight paid was undervalued by the claimant in the amount of \$200.00 to the extent that the invoice produced by the claimant stood in the sum of \$1,800.00.
- [67] The defendant further alleged that on 29th May 2019, the officers received a copy of a wire remittance from the claimant's legal representative which evidenced the remittance of the sum of EC\$17,473.12 credited to the name of the other individual named on the FCIB account held jointly with the claimant that represented a refund on account of the vehicle's defective transmission.
- [68] On 11th June 2019, the claimant was informed by letter under the hand of the Comptroller of Customs that his vehicle would be released.
- [69] It appeared that the defendant took the view, as can be deduced from their pleaded case, that it was not determined conclusively that the invoice presented by the claimant at the time of entry was not understated or false. In the circumstances, according to the defendant, the claimant was still required to furnish the defendant with further information upon request. This was evident from the tenor of the letter of 11th June 2019.
- [70] As a matter of mere observation, this latter contention on the part of the defendant appeared to suggest that the defendant wavered in its notion that they had reasonable grounds to suspect that the claimant had made a false declaration at the time of importation or that they had no conclusive evidence of that having been the case when they released the claimant's vehicle to him.
- [71] However, the foregoing appeared to run contrary to the numerous pronouncements made by the officers that they had reasonable grounds to suspect that the claimant had made a false declaration or had sought to evade the payment of duties on the imported vehicle.

- [72] It also begs the question whether at the time that the officers detained the claimant's vehicle it was necessary to conduct any further investigation or inquiry. Could such reasonable suspicion not have led them to the conclusion that the vehicle was liable to forfeiture, in which case they could have simply issued a notice of seizure.
- [73] Based on the officers' assertions that they had reasonable grounds to suspect it meant that the claimant's vehicle was liable to forfeiture and there was therefore no need to detain the vehicle for the purpose of ascertaining whether the vehicle was liable to forfeiture. As a matter of fact as will be seen later on in this judgment, one of the officers testified that the vehicle was liable to forfeiture.
- [74] Ultimately, the defendant alleged that in all the circumstances of the case, the claimant failed to establish that the officer's detention of his vehicle was unlawful and that the vehicle had been seized in the manner alleged by him.
- [75] It appeared from the pleadings that the pith and gravamen of the defendant's answer to the claimant's case was that the officers rightfully, lawfully and justifiably had the right to detain the claimant's vehicle as part of what they described as an ongoing investigation into false declarations and fraudulent evasion of duties on the part of the claimant.⁴ Therefore, it was the defendant's position that the claimant's vehicle was kept no longer than was necessary for the conduct of its investigations. In this regard the defendants seemed to have placed reliance on the provisions of section 6(6)(a) of the Constitution or otherwise that such authority was somehow implied by the Act itself. However, the latter justification was not specifically pleaded by the defendant and was not advanced at the trial.
- [76] The claimant took the position that the vehicle having been released by the officer upon payment of the duties and other charges, the defendant did not have the right to detain the vehicle. The claimant contended that having produced the invoice for the purchase of the vehicle and having presented a declaration form with the transaction value being the price actually paid for the vehicle meant that duties were

⁴ See: at paras 4.1 and 4.2 defendant's pretrial memorandum

to be determined on the transaction value of the imported vehicle calculated in accordance with the provisions of paragraph 3(1) of the Second Schedule of the Act.

[77] The court understood the claimant's argument to mean that possession of the vehicle had already passed to him and therefore any right or claim that the officers could have asserted to the possession of the vehicle had already passed by the time that the vehicle had been released from customs.

[78] To follow the claimant's argument to its logical conclusion meant that unlike goods that were warehoused under the Act and obviously in the possession of customs prior to their release, customs had a right to detain those goods temporarily or until they were cleared upon the making of the necessary entries and payment of duty to the satisfaction of customs. The court is clearly of the view that this was certainly not the case here.

[79] The claimant seemed to have been suggesting that the converse applied to the vehicle in the present case. Therefore, the claimant seemed to have suggested that there was no necessity to detain the vehicle for any of the purposes contemplated or authorised by the Act. Therefore, to that extent, the claimant claimed that the detention of the vehicle was unreasonable, unnecessary and unlawful.

[80] Additionally, the claimant took the position that at the time that the officers detained the vehicle there was no evidence which was capable of substantiating any reasonable suspicion that the claimant had committed any offence contrary to the Act which required that the vehicle be detained for the purpose of seizure and subsequent forfeiture under the Act.

[81] In short, the claimant contended that the officers had no lawful authority under the Act to detain his vehicle; therefore, in all the circumstances of the case the officers acted outside or in excess of any authority conferred on them by the Act thereby rendering the detention of the claimant's vehicle unlawful.

[82] In the court's view, the following issues arise for the court's consideration, namely: (1) whether the claimant's vehicle was lawfully detained by the officers; and by extension, whether the officers were authorised or empowered by any provisions under the Act or any other law in force to detain the claimant's vehicle; (2) whether the grounds alleged by the officers amounted to reasonable grounds to suspect that the claimant had committed any offence contrary to the Act which justified the detention of the claimant's vehicle without forfeiture; (3) what offence, if any, contrary to the Act did the officers have reasonable grounds to suspect that the claimant had committed; (4) whether any of the matters relied on by the defendant can be considered as giving rise to reasonable grounds to suspect that the claimant had committed any offence contrary to the Act; (5) whether, assuming that the defendant had reasonable grounds to suspect that the claimant had committed an offence contrary to the Act, justified the detention of the claimant's vehicle without any formal seizure under section 130 of the Act; (6) whether the officers' detention of the claimant's vehicle was reasonable having regard to the manner and timing of the same; and whether the said detention was necessary; (7) whether the actions of the officers in seizing and detaining the claimant's vehicle was unlawful or otherwise contrary to the spirit and provisions of the Act; by extension, whether in detaining the claimant's vehicle the officers exceeded the powers conferred on them by the Act.

[83] Before delving into the merits of the present case it will be necessary to examine the legislative scheme of the Act as it pertains to the issues already identified by the court. However, there is one discrete issue which the court must first deal with which unfortunately has not been canvassed or at the very least foreshadowed in the pleadings or submissions. This issue involves the question of what amounts to a seizure for the purposes of the law or under the Act itself. This is important because the defendant as part of the substance of its case denied that the officers either seized or purported to seize the claimant's vehicle. This raises the point of whether seizure is distinct from detention in a legal sense.

- [84] The court is tempted to find that perhaps the claimant's allusion to seizure may not have necessarily reflected its specific meaning under the Act but was intended by the claimant to refer to the officers' act of depriving him of the control and possession of his vehicle which was previously reposed in him. It is quite arguable that it is in this context that the claimant refers to "seizure".
- [85] It is also quite arguable that the claimant's case can be interpreted to mean that the act of depriving him of the possession and control of his vehicle was not in the exercise of any power of seizure and detention that the officers were authorised to exercise under the Act; and therefore, the act of depriving him of possession amounted to a seizure in its ordinary sense ('detention') not permitted by the Act in the circumstances that were extant.
- [86] Therefore, the court must consider the question of what constitutes "seizure" in law and what special meaning, if any, does the word "seizure" import under the Act. In the court's view, the defendant has sought to draw an artificial and perhaps false dichotomy between seizure and detention which in the court's view is not well founded and having no basis in law to the extent that in order to effect a seizure there must be a detention which deprived the real owner of the possession thereof. In other words, the detention must be for a specific purpose which includes seizure for the purpose of forfeiture and condemnation. Therefore, the question that arises if one accepts the defendant's definition of seizure is that of whether the officers had any lawful authority under the Act to take possession of and detain the claimant's vehicle for any other purpose than that of seizure for the purpose of forfeiture.
- [87] In the premises, it appeared that the defendant's position was that no seizure and detention of the claimant's vehicle was undertaken by the officers for the purpose of forfeiture proceedings under the Act. If the court accepts this argument then it seems that this quite likely leads to the question of what was the purpose of detaining the claimant's car, whether it was necessary to detain the claimant's vehicle; and more importantly, whether the officers had the lawful authority or were permitted by the Act to so detain.

- [88] The power of seizure is distinct in nature and purpose to that of detention and entirely different considerations are engaged. The two powers are not to be conflated. Under the scheme of the Act seizure is the first stage of the statutory process leading to forfeiture. Detention is the temporary assertion of control over property which does not necessarily involve any seizure with a view to forfeiture. In the former case, and by way of analogy, goods secured in a customs bonded warehouse that have not been cleared and released.
- [89] Having accepted the foregoing proposition, it seems necessary to see whether this proposition holds true in relation to the provisions of the Act.
- [90] Section 130 of the Act deals with the detention, seizure and condemnation of goods. Subsection (1) of section 130 provides that anything which is liable to forfeiture is seized or detained by any officer or police officer. Was the claimant's vehicle liable to forfeiture? Clearly, on the basis of the evidence relied on by the defendant in relation to the nature of the offences which it was alleged that the officers had reasonable grounds to suspect that the claimant committed and in particular, the evidence of Mr. Leopold, the officers held the view that the vehicle was "liable to forfeiture".
- [91] It was not disputed that the Act is specific as to the circumstances when goods may be liable to forfeiture, It is also not disputed that the claimant's vehicle was not seized and detained pursuant to section 130 of the Act. In the court's view, the real question in controversy in the present proceedings is whether the officers had any other right or authority to detain the claimant's vehicle otherwise than for the purpose of forfeiture. In the event that it is determined that the Act confers no other power or authority on the officers to detain goods other than in the specific instances set out under the Act, then clearly the officers would have acted unlawfully.
- [92] The officers have insisted throughout the proceedings that the claimant's vehicle was never seized but was in fact detained. This argument advanced by the defendant begs the question of the vehicle not having been seized for the purpose

of forfeiture, what then was the purpose for detaining same and what power was conferred on the officers to take such draconian action.

[93] This explanation given by the officers for their conduct in the court's view is nothing but a syllogistic argument which appears to have arisen ex post facto. The court will explain this finding later on in this judgment. The officers have not yet given a plausible answer to what authority was conferred on them under the Act which empowered them to detain the claimant's vehicle otherwise than for the purpose of forfeiture under the Act other than that they had a reasonable suspicion that he had committed an offence contrary to the Act.

[94] The explanation given by the defendant for the detention of the claimant's vehicle other than for the purpose of forfeiture appeared to have been premised on the argument that the purpose of the detention was to enable the officers to conduct their investigations and to make a determination whether to take proceedings to forfeit the property or to restore it. In other words, to determine whether the claimant had committed any offence contrary to the Act, notably offences contrary to the provisions of section 113 and 116 of the Act.

[95] In their written case, the defendant relied on the judgment of Smith J in **Econo Parts Ltd Mr. Parts Ltd v Comptroller of Customs and Excise**⁵ where the learned judge relied extensively on the decision in **R (Eastenders Cash & Carry plc and others) v Revenue and Customs Commissioners**. In the circumstances, the defendant submitted that the purpose of detaining goods without seizing them is to enable the goods to be examined or secured, pending investigations, which might lead to their seizure later. It is to enable the Comptroller to retain control over the goods temporarily until he had arrived at a conclusion as to the duty payable or as to whether the goods were liable to forfeiture. The defendant further submitted that the claimant's vehicle was not detained in keeping with section 130 (1) of the Act and that no notice of seizure was issued by the officers in accordance with paragraph 1 of Schedule 4 of the Act.

⁵ SLUHCV2014/0309; SLUHCV2016/0187 (10th May 2017)

- [96] The defendant sought credence for the foregoing submission in the decision in **Regina (Eastenders Cash & Carry plc and others) v Revenue and Customs Commissioners Regina (First Stop Wholesale Ltd) v Revenue and Customs Commissioners**⁶ which in their view supported the proposition that inherent in the power to detain was the right to assert temporary control over the goods to facilitate further inquiries into the amount of duties chargeable; and that the detention was lawful as long as it was executed pursuant to the Act. The defendant in further reliance on the **EastEnders** case submitted that the detention of the claimant's vehicle for so long as was reasonably necessary for such investigation and inquiry was in keeping with the provisions of section 130 of the Act. Unfortunately, section 130 of the Act confers no such power.
- [97] In the court's view, the question that immediately arises in respect of the foregoing argument advanced by the defendant is whether section 130 of the Act by its intent and operation empowered the officers to detain goods without seizing them for the specified purpose of inquiry or examination as opposed to the sole purpose of seizure for later forfeiture and condemnation where the goods are liable to forfeiture. It is the court's considered view section 130 of the Act is not amenable to such interpretation and application in the manner advanced by the defendant.
- [98] In the court's view, such an explanation may very well be consistent with the purport and effect of the provisions of section 6(6) of the Constitution save for the proviso that the seizure and detention is for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or in the present case, in fulfilment of the officer's obligations under the Act and that the exercise of the power was reasonably justifiable in a democratic society.
- [99] The foregoing argument which seemed to have been the one advanced by the defendant further interrogates the reasonableness of the detention in the absence of any intention to forfeit. In the court's view, the purpose for seizure and detention

⁶ [2015] AC 1101

and eventual forfeiture is a tool of enforcement under the Act and not an investigative tool.

[100] Therefore, it would lie ill in the mouths of the officers to suggest that the Act authorised them to do so or that when they detained the claimant's vehicle that they were acting in conformity with some power conferred on them by the Act. Any such suggestion is clearly unwise for indeed the Act has no such operation.

[101] In the court's considered view, the power of an officer to detain and seize imported goods is expressly provided for by the Act in certain specified circumstances, that is, where goods are "liable to forfeiture", and in the due observance of the procedure set out therein. Accordingly, section 130 grants no implied or express power to detain goods otherwise than for the purpose of effecting their seizure and subsequent forfeiture.

[102] In the case of **Bike World Ltd v Comptroller of Customs and others**⁷ a decision not cited by counsel in argument but which the court finds helpful in determining the current issue, the appellant, an importer, had inserted the wrong classification of imported goods on a declaration form upon making an entry for the imported goods. The respondent had taken the view that the appellant had knowingly misstated the classification of the goods which he submitted on the entry. The respondent held the view that the appellant had committed an offence in breach of the Act because of the incorrect classification. The imported goods were detained by the respondent. One of the consignments of goods was sold by the port authority without notice to the appellant. The appellant brought proceedings against the respondent seeking an order for the release of the remaining goods which were detained. The appellant also sought to recover the value of the property sold, loss of profit and general damages.

[103] In the above cited case, the appellant had never been prosecuted for any offence under the Act and the goods had not been seized under the provisions of the Act

⁷ [2003] UKPC 68

which made provisions for the seizure of goods. Clearly, the incorrect classification would have attracted a lower amount of duty.

[104] The respondents contended that the appellant's claim was about the detention of the goods, not their seizure and disposal, and that the provisions of the Constitution relied on by the appellant was inapplicable. The respondents contended that there was no infringement of the appellant's constitutional rights as they were permitted to detain the goods for long as was necessary for the purposes of any investigation, trial or inquiry. Therefore, it was not disputed that the respondent had detained the goods.

[105] The Privy Council determined that the question was whether it was shown by the evidence that the goods were detained by an officer in the execution of his duty under any customs law. The court held that the only reason which the respondent gave for continuing to detain the goods was that the appellant had committed an offence under the Act. The court reasoned that the only act which the officer was authorised by the Act to do where he reasonably suspected that such an offence had been committed was to seize the goods, and it was accepted that there was no seizure in the case.

[106] The Court of Appeal had proceeded entirely on the basis that there was no undisputed evidence that the respondent detained the goods in the conduct of an inquiry and not on the basis that the appellant had committed an offence. According to the Privy Council, it followed that the real question for the court of appeal ought to have been whether on that basis it was opened to the court to find that there was probable cause for the detention. The court found that the respondent had embarked on a course of conduct for which there was no probable cause.

[107] The judgment in **Bike World Ltd** established several propositions which can be gleaned from the reasons provided by the court.⁸ Firstly, that it must be shown by the evidence that the goods were detained by an officer in the execution of his duty

⁸ At paras [22] – [25]; [28] – [29]

under any customs law. Secondly, where the only reason which the officer gives for continuing to detain the goods was that the importer had committed an offence under the Act the only act which the officer was authorised by the Act to do where he reasonably suspected that such an offence had been committed was to seize the goods. Thirdly, that in such circumstances it was improper for the court to proceed on the basis that the goods were detained for the purpose of conducting an inquiry as to whether an offence had been committed under the Act. Fourthly, the real question for the court where the officer detained the goods on the basis that he had reasonable suspicion or reasonable cause to suspect that the importer had committed an offence under the Act was whether there was in fact such reasonable or probable cause for suspicion.

Discussion

[108] In the case of **Rambally Blocks Limited v The Comptroller of Customs and Excise**⁹ as in the present case, the claimant's goods were detained without any notice of seizure being issued. The defendant claimed that the goods were not seized. The defendant took the position that no notification of seizure was given to the claimant as their investigations did not reveal any breach of any provision of the Act by the claimant. Cenac-Phulgence J appeared to have placed reliance on the judgment of Smith J. in **Econo Parts** in determining the question whether the claimant's consignment had been detained under section 130 of the Act and the circumstances in which the power to detain ought to be exercised. Cenac-Phulgence J. made it clear that in order for the defendant to rely on the provisions of section 130 the defendant ought to have held the reasonable suspicion that the goods were "liable to forfeiture". The learned judge made the distinction between forfeiture and detention under 130 of the Act and detention for other purposes under the Act. Essentially, the learned judge found that the defendant could not avail themselves of section 130 of the Act as there was no reasonable grounds to suspect that the goods were liable to forfeiture and the fact that no notice of seizure was

⁹ [2019] ECSCJ No. 95

served on the claimant.¹⁰ The learned judge found that the detention was unlawful and did not find it necessary to deal with the question of the reasonableness of the detention otherwise than for the sake of completeness.¹¹ The learned judge then went on to consider the question of whether the power to detain goods was provided for under any other provision of the Act and the reasonableness of the detention.¹² The dicta of Cenac-Phulgence in relation to the section 6(6) of the Constitution is instructive, the learned judge said:

“... the power to detain property under section 130 of the Act, read with section 32(10) of the Interpretation Act, and bearing in mind the purpose of detention, is a law that makes provision for the taking possession of property for only so long as necessary for the purpose of investigation. However, for the reasons stated above the defendant has detained and continued detention of the claimant's Consignment in breach of section 130. In the circumstances, the defendant cannot be said to be acting under the authority of such a law as to fall within the section 6(6) exceptions. The claimant's constitutional right to protection of its property has therefore been infringed.”¹³

[109] It must be noted that in the present case, unlike the in the case of **Rambally Blocks**, the defendant did not point to or rely on any other provision under the Act that granted them the authority to detain goods lawfully otherwise than under section 130. In fact the defendant insisted that it was not relying on the provisions of section 130 of the Act since there was no seizure. It appeared that the defendant only placed significant reliance on the fact that the officers at the time had reasonable grounds to suspect that the claimant had committed offences contrary to sections 113 and 116 of the Act.

[110] The question that arises is whether “reasonable suspicion” of the commission of an offence under the Act could have provided the defendant with the lawful authority to detain goods outside of section 130(1) of the Act. By extension, the question of whether the defendant had any such reasonable suspicion also arises.

¹⁰ At paras [53] – [63]

¹¹ At para [64]

¹² At paras [65] – [80]

¹³ At para [82]

- [111] The court thinks not. The proper approach is that where there is reasonable suspicion that an importer had committed an offence contrary to section 113 or 116 of the Act, the goods become liable to forfeiture. Once the goods are liable to forfeiture then the next stage is to issue a notice of seizure and detain the goods for the purpose of forfeiture pursuant to section 130(1) of the Act.
- [112] It was incumbent on the officers in the present case to establish under what other authority under the Act that they were empowered to detain goods otherwise than under section 130(1) of the Act. In the court's considered view they have failed to establish the existence of any such power under the Act. This issue provides a convenient segue into the decision in **Eastenders** upon which the defendant has placed immense reliance.
- [113] However, before embarking on a discussion of the principles set out in the **Eastender's** case it is important to understand the pith and substance of the defendant's reliance on that case. In fine, the defendant submitted that the information that they had at the time of the detention raised the belief that the claimant may have attempted to evade the payment of duties in contravention of section 116 and made a false declaration in contravention of section 113. According to the defendant's submissions:
- "These offences under the Act rendered the vehicle liable to forfeiture. That the defendant detained the vehicle pending the further inquiries with a view to seizure and forfeiture."¹⁴
- [114] In the court's view, the defendant having taken the position that there was reasonable grounds to suspect that the claimant had committed any of the subject offences and that the vehicle was liable to forfeiture, it begs the question why no notice of seizure was issued and any further investigations or inquiries which were necessary conducted while the vehicle was so seized and detained pursuant to section 130(1) of the Act as opposed to detaining same for the purpose of inquiry and investigation.

¹⁴ At para 20 defendant's written closing submissions

[115] The court has also formed the view that outside of section 130(1) of the Act the officers were required to show that the act of detention was necessary for the fulfillment of their duties under the Act. On the evidence presented it did not appear that this was in fact the case.

[116] It occurred to the court that the officers having recognised their blunder have now sought to tailor their case by attempting to fit the factual matrix within the ambit of the **Eastenders** case as justification for the detention. However, this approach appeared to be consistent with a misunderstanding or misinterpretation of the decision in the **Eastenders** case. This misunderstanding is exemplified by the defendant's submission in reliance on the decision of Smith J in **Econo Parts** that:

“The Defendant submits that pursuant to section 130(1) of the Act, the servants or agents of the Crown had reasonable cause to detain the vehicle whilst the suspected breaches of the Act were being investigated.”¹⁵

The simple point is that the officers could not have purported to detain the claimant's vehicle pursuant to section 130(1) of the Act not having issued any notice of seizure. It is also noteworthy that this argument was not advanced as part of the defendant's pleaded case but only arose within the context of their written closing submissions after the conclusion of the trial. Therefore, the defendant's reliance on section 130(1) of the Act was not only without merit but disingenuous.

[117] In **Econo Parts Ltd**, the court dealt with the question of the lawfulness of a seizure effected under section 130(1) of the Act and did not interrogate matters akin to circumstances present in the instant case. It appeared that great reliance was placed by the defendant on what is contained at paragraph [21] in the judgment of Smith J where he said:

“The order of certiorari has been granted quashing the notices of seizure on the ground that the notices were unlawfully issued. My reasons for so finding, which immediately follow, are based on the reasoning in **R (On the Application of Eastenders Cash and Carry plc and others (Respondents) v The Commissioners for Her Majesty's Revenue and Customs (Appellant); R (on the application of First Stop Wholesale Limited) (Appellant) v The Commissioners of Her Majesty's Revenue**

¹⁵ At para 22

and Customs (Respondent). In that 2014 judgment from the United Kingdom Supreme Court, Lord Sumption analyzed similar powers of seizure and detention under the United Kingdom's Customs and Excise Management Act. His analysis and reasoning appear to me to be wholly applicable to the interpretation of section 130 of the Act. The reasons for quashing the decision are therefore that:

- (1) Section 130 of the Act confers two distinct powers on the Comptroller, a power of seizure and a power of detention.
- (2) Detention is an alternative to the seizure of the goods in question. It differs from seizure in that it is a temporary assertion of control over goods which does not necessarily involve any seizure with a view to forfeiture. It does not trigger the commencement of proceedings for the condemnation of the goods.
- (3) The purpose of detaining goods without seizing them is to enable the goods to be examined or secured, pending investigations, which might lead to their seizure later. It is to enable the Comptroller to retain control over the goods temporarily until he has arrived at a conclusion as to the duty payable or as to whether the goods are liable to forfeiture.
- (4) The right to seize or detain property under section 130 of the Act is dependent on that property actually being liable to forfeiture. This turns on the objectively ascertained facts and not on the beliefs or suspicions of the Comptroller, however reasonable.
- (5) On the Defendant's own case, the Comptroller issued the notices of seizure based on a reasonable belief that breaches had occurred. The fact that the Defendant voluntarily states that it could not bring condemnation proceedings because it was researching the "true value" and because of "limited resources" to facilitate the investigation demonstrate that the decision to issue the notices of seizure was based on suspicion – or even a reasonable belief – but not on having ascertained that the goods were in fact actually liable to forfeiture.
- (6) It is not in dispute that the goods in question were seized as opposed to detained. But even if it was only detained, the detention of goods for a period of three and a half years in order to complete the investigation necessary to make a determination of whether to seize can hardly be considered reasonable, especially given the wide investigative powers of the customs department under the Act."

- [118] Having now for the first time, and outside their pleaded case, made the bold assertion that the claimant's vehicle was liable to forfeiture, suggest that the defendant is no longer relying on the proposition that they had reasonable grounds for detaining the vehicle pending investigation and inquiry. This cannot be correct. Either the defendants are attempting to mix chalk and cheese or are conflating detention outside of section 130(1) with detention after seizure and prior to forfeiture under section 130(1). Section 130(1) does not authorise detention under that provision unless the goods have been seized as liable to forfeiture. Section 130(1) does not authorise the detention of goods without seizure for the purpose of making a determination whether they are liable to forfeiture. To that extent the case of **Econo Parts Ltd** is distinguishable from the present case.
- [119] Therefore, the defendant appeared to have misapplied the reasoning of Smith J in **Econo Parts Ltd** and by extension the decision in **Eastenders**. In **Econo Parts Ltd** the learned judge was dealing with the action of the officers prior to forfeiture and in the context of section 130(1) of the Act. In **Econo Parts Ltd** Smith J held that the defendants had reasonable grounds for detaining the claimant's goods but fell into error by having gone on to issue notice of seizure on the basis of its belief that before its investigations were concluded, without ascertaining that the goods were actually liable to forfeiture.¹⁶ The learned judge accepted that it was not disputed that the containers were seized as opposed to detained and that if they were detained their prolonged detention was unreasonable and unlawful.
- [120] The simple point was that there was no seizure within the meaning of section 130(1) of the Act in the present case. Therefore, the only issue to which the defendant ought to have addressed its mind was whether the detention of the claimant's vehicle was lawful under the Act otherwise than by virtue of section 130(1) of the Act. To put it another way, whether the defendant was capable of relying on a general non-statutory power to detain the claimant's vehicle.

¹⁶ At para [26]

- [121] The court will now examine the decision in **Eastenders** in relation to this issue. The discrete issue in **Eastenders** to which the court will now focus its attention is whether it is correct to conclude that the purported exercise of the power to detain goods was unlawful in public law terms because there was no relevant provision in the Act which provided that a thing was liable to forfeiture “pending further inquiries”.
- [122] In **Eastenders** customs officers visited the claimants’ warehouses where they inspected consignments of alcoholic goods and decided that they had doubts as to whether duty had been paid on them. They consequently purported to exercise their powers under section 139(1) of the Customs and Excise Management Act 1979 in relation to anything “liable to forfeiture” to detain some of the goods pending further inquiries to determine whether duty had been paid. Following those inquiries, customs concluded that duty had not been paid on some of the goods and exercised their distinct power under section 139(1) of the 1979 Act to seize those goods with a view to their forfeiture. Some weeks later they released the remainder of the goods to the claimants, having been unable to determine within a reasonable time whether duty had been paid on them.
- [123] In respect of the power of seizure and detention by officers under the section 139(1) of the UK legislation which is equivalent to section 130(1) of the Act, the court in **Eastenders** held that the right to seize or detain property under section 139(1) of the Customs and Excise Management Act 1979 was dependent on that property actually being liable to forfeiture under one of the various forfeiture provisions of the 1979 Act; that such liability turned on the objectively ascertained facts rather than the beliefs or suspicions of customs officers; and that it followed that the goods which had been returned to the claimants could not have been detained under any power exercised pursuant to section 139(1).¹⁷
- [124] On the question of the existence of any other power of detention that officers had under the Act outside of section 130(1) the court in **Eastenders** held that customs officers had always had a power of detention arising by necessary implication from

¹⁷ at paras 23-24, 44, 49

their statutory powers to examine goods to ascertain whether they were liable to forfeiture; that such examination extended beyond visual inspection of the goods to the making of such inquiries as were necessary to determine whether duty had been paid; that that ancillary power of detention was not conditional on the goods being liable to forfeiture but was available where there were reasonable grounds for suspecting that they were so liable; that when Parliament had passed legislation, such as section 139(1) of the 1979 Act, specifically allowing for the detention of goods liable for forfeiture it had not by implication abolished the pre-existing power of detention ancillary to examination of goods; and that, accordingly, the customs officers had had power to detain the claimants' goods pending determination of their duty status.¹⁸

[125] At paragraph 19 their Lordships recognised that there were no corresponding provisions relating to the power to detain goods as under section 139(1). Indeed the Act contained no provisions at all dealing with the procedure for detaining property or its consequences. They reasoned that there can, however, be little doubt about what detention involved. Detention is a temporary assertion of control over the goods, which does not necessarily involve any seizure with a view to ultimate forfeiture. On the question of the purpose of detaining goods without seizing them the court found that the obvious answer was to enable the goods to be examined, or secured pending investigations which might lead to their seizure later.

[126] Having reviewed the decided cases, the court subscribed to the view that the detention of the goods was lawful because there had been no abuse of authority on the part of the officers; and there had been no such abuse because their authority to examine the goods in order to determine the duty payable, or (by implication) whether the goods were liable to forfeiture, carried with it, by necessary implication, an authority to detain the goods for such time as was reasonably necessary in order to make that determination. Where the determination required the making of inquiries, going beyond an inspection of the goods themselves, it was lawful to

¹⁸ at paras 35-38, 44, 45, 49, 51, 52, 56

detain the goods for such time as was reasonably necessary to make those inquiries.¹⁹

[127] The court accepted that the power of detention was not expressly conferred by the customs and excise legislation, but arose by necessary implication from the officers' statutory power to examine goods for the purpose of determining the duty payable or whether they were liable to forfeiture. It was not conditional upon the goods being liable to forfeiture. Whether the officers' suspicions were well grounded was not the question. It was sufficient, in order for the power of detention to be lawfully exercised, that the officers should have, a real and honest doubt that the goods were liable to forfeiture. The protection from liability in damages or costs which was conferred on customs officers where goods had been mistakenly seized as liable to forfeiture had nothing to do with such detention and did not feature in the case and since the detention was impliedly authorised by statute, it could not constitute a tort.²⁰

[128] The court found that the important question for present purposes was whether, when Parliament created the power to detain goods liable to forfeiture, it by implication abolished the power of detention which had previously been held to arise by necessary implication from statutory powers of examination. The court held that no such implication followed. The reasons expressed for that conclusion were that the powers of detention and that of forfeiture are distinct. The process of examination precedes the reaching of a conclusion whether goods are liable to forfeiture. In terms of purpose, the powers are equally distinct. The purpose for which the power to detain, as an incident of examination, may be exercised is to enable the officers to retain control over the goods temporarily until they have arrived at a conclusion as to the duty payable or as to whether the goods are liable to forfeiture. The purpose for which goods may be detained after such a conclusion has been reached is plainly different.

¹⁹ At para 35

²⁰ At para 37

- [129] The court concluded that there is no necessary implication that the enactment of a power to detain goods liable to forfeiture entailed the abrogation of the existing power to detain as part of the process of examination. The court also reasoned that it is difficult to conceive why Parliament should have conferred upon the commissioners and their officers a wider range of intrusive investigatory powers than any other public body, but should at the same time have chosen to deprive them of a means of preventing goods from being disposed of until they have completed their examination and decided whether the goods should be seized.²¹
- [130] In the **Eastenders** case, there was no dispute that the officers were entitled to inspect the goods in question in accordance with Act, and to require the production of documents under the relevant section of the Act. It is also not in dispute that the officers had reasonable grounds to suspect that duty had not been paid on the goods. The court reasoned that officers were unable to fulfil the object of the inspection, by determining whether the appropriate duties had been paid, without making further inquiries into the provenance of the goods. They detained the goods while those inquiries were made. It was not in dispute that the period during which the goods were detained did not exceed a reasonable period of time.²²
- [131] The court also accepted that since the goods were not in fact liable to forfeiture, their detention did not fall within the scope of section 139(1). However, it did not follow that the officers had no power to detain the goods for the purpose of investigating their duty status. Since the officers were carrying out a lawful inspection of the goods for the purpose of determining whether the appropriate duties had been paid, and had reasonable grounds to suspect that duty had not been paid, they were in our view entitled by virtue of the relevant provision of the Act to detain the goods for a reasonable period in order to complete the inquiries necessary to make their determination.²³

²¹ At para 46

²² At para 47

²³ At para 49

- [132] The court in **Eastenders** also held that the examination was not completed until the necessary inquiries had been made, and that the power of examination impliedly included an ancillary power of detention for a reasonable time while those inquiries were made. Additionally, that the lawfulness of the detention of the goods depended upon whether the officers possessed the power to detain them, not on whether they accurately identified the statutory source of that power. The detention of the goods “pending further inquiries into their duty status”, although certainly not expansive, were sufficient to enable them to exercise their rights, as indeed they did.²⁴
- [133] The defendant’s allusion to the provisions of section 32 of the Act is unfortunate. The present proceedings do not interrogate anything allegedly done by the claimant contrary to the provisions of section 32(1)(e) and 32(3)(b) of the Act. In any event, the defendant did not rely on there being reasonable grounds for suspecting that the defendant had committed any offence contrary to the abovementioned provisions of the Act. The allusion to section 32 of the Act was merely inserted into the defendant’s submissions and not relied on in their pleaded case or written evidence.
- [134] The court in **Eastenders** also found that the defendant was not authorised under the Act to detain goods for the purpose of conducting any investigation or inquiry into whether duties were chargeable or whether an importer had committed an offence contrary to the Act where the officer had reasonable grounds for suspecting that the importer had committed an offence by virtue of which the imported goods were liable to forfeiture. It must be recalled that in the present case the defendant had affirmed repeatedly that the officers had reasonable suspicion for believing that the claimant had committed offense contrary to the Act.
- [135] Earlier on in this judgment the court would have alluded to the fact that the claimant’s vehicle had already left the custody of the Customs and Excise Department. Accordingly, the court failed to see the merit in the issuance of a detention slip. If it were indeed the case that the officers had reasonable suspicion that the claimant

²⁴ At paras 52 - 52

had committed an offence under the Act for which the vehicle was liable to forfeiture under section 130(1) then they ought to have issued a notice of seizure.

Reasonableness of the detention

- [136] It will be recalled that in their pleaded case the defendant alluded to the reasonable suspicion of the claimant having committed an offence of providing a false declaration or fraudulent evasion of duties; offences canvassed by the provisions of section 113 and 116 respectively of the Act.
- [137] Section 113 of the Act, under the rubric “untrue declarations” provides that: if any person makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document being a document or statement produced or made for any purpose of any assigned matter, which is untrue in a material particular, he or she commits an offence and is liable to a fine of \$5,000, and any goods in relation to which the document or statement was made are liable to forfeiture;²⁵ and if any person knowingly or recklessly makes or signs, or causes to be made or signed or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document being a document or statement produced or made for any purpose of an assigned matter, which is untrue in a material particular, he or she commits an offence and is liable to a fine of \$10,000, or to imprisonment for 2 years, or to both, and may be arrested, and any goods in relation to which the document or statement was made are liable to forfeiture.²⁶
- [138] Section 116 of the Act provides, under the rubric “fraudulent evasion” provides that: without prejudice to any other provision of any customs enactment, if any person knowingly acquires possession of any of the following goods, that is to say (i) goods which have been unlawfully removed from a warehouse or a customs warehouse, or (ii) goods which are chargeable with a duty which has not been paid, or (iii) goods with respect to the importation, exportation or carriage coastwise of which there is

²⁵ Section 113(1)(a)

²⁶ Section 113(2)(a)

any prohibition or restriction in force; or is in any way knowingly concerned in carrying, removing, depositing, landing, harbouring, keeping or concealing or in any manner dealing with any such goods, and does so with fraudulent intent, he or she commits an offence and is liable to a fine of \$10,000, or 3 times the value of the goods, whichever is the greater, or to imprisonment for 5 years, or to both, and may be arrested, and the goods in respect of which the offence was committed are liable to forfeiture.

[139] The court is reminded of the testimony of Mr. Leopold where he said that the vehicle was liable to forfeiture and gave reasons why he had formed that view. It seems rather surprising that despite the numerous protestations and denials made by the defendant in its pleadings that the vehicle was not detained for the purpose of forfeiture under the Act, it seemed more than passing strange that Mr. Leopold would have boldly stated that the goods were liable to forfeiture.

[140] Assuming that the court accepts Mr. Leopold's evidence on this point, then clearly, it begs the question why the vehicle was not seized in accordance with the procedure under section 130 of the Act. Surely, Mr. Leopold must have based his opinion on the fact that he had reasonable grounds to suspect that the claimant had committed an offence contrary to the Act for which the vehicle was liable to forfeiture.

[141] Therefore, if he held such a suspicion then the failure to issue the claimant with notice of seizure in respect of the vehicle seems rather inexplicable. It certainly causes one to question whether Mr. Leopold or the other officers had any such reasonable suspicion in the first place or whether the detention was for the reasons that they indicated or whether the detention was unlawful not having been authorised by the Act.

[142] If the court finds that the detention of the claimant's vehicle was unlawful, and having accepted Mr. Leopold's testimony that the vehicle was liable to forfeiture, and considering that no notice of seizure was issued, the only conclusion that the court

could arrive at in these circumstances was that the fact that no notice of seizure was issued meant that the detention was unlawful.

[143] In other words, the officers having formed the reasonable suspicion that the claimant had committed offences contrary to sections 113 and 116 of the Act which made the vehicle liable to forfeiture begs the question as to why no notice of seizure was issued as opposed to merely asserting that the vehicle was detained pending investigations.

[144] In the court's view, the allusion to the mere detention as opposed to issuance of a notice of seizure appeared to have been an attempt by the officers to elude the unlawfulness of the unlawful seizure by the shroud of mere detention. Indeed, the fact that Mr. Leopold held the view that the vehicle was liable to forfeiture because of the suspected infractions of the law committed by the claimant imposed a duty upon him under the Act to issue a notice of seizure which he failed to adhere to. Consequently, the failure to issue a notice of seizure rendered the detention of the claimant's vehicle unlawful for the purposes of section 130(1) in the absence of any other exercise of lawful authority under the Act to detain.

[145] The defendant did not appear to have provided any explanation for the failure to issue a notice of seizure. Could it have been that they simply did not have any reasonable grounds for suspecting that the claimant had committed any offence contrary to the Act, or could it have been that the allusion to the commission of offences by the claimant was conceived ex post facto upon the realization that the detention was ipso facto unlawful and unreasonable in all the circumstances of the case.

[146] It may be arguable that where goods are "liable to forfeiture" officers may find it necessary to detain the goods for the purpose of their preservation. The question is however, whether the Act makes any provision empowering the officers to detain goods that are liable to forfeiture for the purpose of preserving them in the event that there is a conviction. In order to accomplish this there must be a seizure of the goods. Also, assuming that the officers had the power to detain the claimant's

vehicle pending investigations what would have been a reasonable time for them to do so. The answer to this question is fact sensitive.

[147] Another issue arising in the present case was whether the actions of the officers in detaining the claimant's vehicle otherwise than for the purpose of detention pending investigations or the determination of duties actually due or for the purpose of seizure and forfeiture in the usual course of things was reasonable and grounded on a reasonable suspicion that the claimant had contravened any provision of the Act.

[148] The court has considered the question of reasonable suspicion in respect of the offence of fraudulent evasion created by section 116 of the Act. It is clear that the factual matrix relied on by the defendant did not satisfy the elements of this offence. Although the defendant seemed to have relied on this offence as an afterthought, it did not appear that they gave any serious consideration to whether the evidence available to them at the material time was sufficient to satisfy the elements of the offence of fraudulent evasion or provide reasonable suspicion of the commission of that offence.

[149] Clearly, if there was no such evidence in existence, then the defendants could not have held a reasonable suspicion that the claimant had committed that offence. The claimant did not knowingly acquired possession of the vehicle by unlawfully removing the same from any customs bond or warehouse or other restricted area; he had not failed to pay for chargeable duties – indeed the claimant had paid the duties chargeable before the vehicle was released; the vehicle was not a prohibited or restricted item under the Act; the vehicle was not kept, concealed or dealt with by the claimant with any fraudulent intent to avoid paying duties on the same.

[150] The question arising for the court's consideration is whether the officers at the time of the detention of the claimant's vehicle had reasonable grounds for suspecting that the claimant had committed either of the two offences created by sections 113 and 116 respectively which justified the detention of the vehicle for the purpose of inquiry, investigation or examination. In order to ascertain whether such reasonable

grounds for suspicion existed at the material time the court is forced to embark on an in-depth critical analysis of the law in light of the factual matrix that existed at the time.

[151] In the present case the claimant had paid the duties assessed on importation of the vehicle and the vehicle was released to him on the payment of the assessed duties on a deposit entry which has already been described in this judgment. This was clearly distinguishable from a case where the importer had declared the value of goods with which the officer was not satisfied and had reason to doubt the declared transaction value of the goods and as a result detained the goods upon further inquiries being made or the furnishing of additional information. In this instance the duties were paid and the goods cleared from customs the officer having accepted the deposit entry made by the claimant.

[152] The court found no favour with the rather nebulous argument relied on by the officers that they were awaiting confirmation of a certain Cabinet Conclusion. If this was indeed the case, and the court accepts what is contained in the defendant's pleadings, then clearly this implies that the claimant would have paid more duties than would have been payable had it been ascertained that the concession granted by Cabinet in respect of hybrid vehicles was in operation.

[153] It is therefore also necessary to consider the question of whether the officers had any valid or cogent reason to doubt the transaction value of the claimant's vehicle which would have raised or grounded reasonable suspicion that the claimant had committed any offence contrary to the Act prior to or at the time they detained the vehicle.

[154] The following facts can be gleaned from the evidence. The officer claimed that the value declared by the claimant was significantly lower than the value of a similar vehicle matching the description of the vehicle imported by the claimant. The officer claimed that the differences in value gave him reasons to doubt the truth and accuracy of the value declared by the claimant. As a result they requested a meeting with the claimant to obtain more information from him on the statements made by

him in his declaration as to the declared value. The Claimant was asked to provide additional information to substantiate the value declared by him.

[155] The claimant produced a bank wire transfer receipt and presented that the vehicle had been sold at a discounted price because it had transmission problems. The Claimant also produced a pro forma invoice dated 6th November 2018.

[156] The officers claimed to have been of the opinion that the additional information produced by the Claimant did not remove the doubt held with respect to the truth and accuracy of the declared value. In fact, if one accepts the evidence of the officers it created more suspicion and doubt about the declared value.

[157] However, in the court's view there was evidence of the vehicle having been sold to the claimant at a discounted price by the exporter. However, the claimant was not specifically asked to provide documentary proof to substantiate the condition of the transmission to account for the discount in price.

[158] The officers did not seek to obtain a mechanical inspection of the claimant's vehicle to determine the existence of transmission failure. Therefore, the suggestion that the vehicle was detained for inspection or examination seems absurd. In any event, to add to the absurdity, a mechanical inspection was not one of the methods of determining transaction value under the Act.

[159] It did not appear from the evidence that the allegation made by the officer that the claimant had made a false declaration as to transaction value, or that the claimant had undervalued the price paid for the vehicle for the purpose of evading import duty been put to the claimant. The claimant was not and has not been charged with any infraction or any offence contrary to the Act in respect of that alleged conduct.

[160] The claimant, in his testimony at the trial was adamant that the time when the vehicle was cleared the officer gave him no indication that there was any discrepancy with the value of the vehicle or the price paid or that there was any discrepancy with respect to the stated value of the freight. He testified that he paid the duties based

on the value of US\$8,000.00 and that no additional duties were demanded of him. He also testified that what he produced was the invoice showing the price he paid for the vehicle and he retained the invoice related to the transmission.

[161] The Comptroller of Customs testified in person at the trial. He said that the matter was referred to him or brought to his attention. He said that he became aware that the claimant had declared a transaction value of US\$8,000.00 and that he paid duties based on that declared value.

[162] It did not appear that the Comptroller had significant personal knowledge of the events giving rise to the present claim. By his own admission, a number of assertions of fact which he attempted to rely on were based on matters reported to him. He was referred to his witness statement²⁷ where he stated that the claimant declared a value for the vehicle which appeared to be false and that he was not aware that the value was proven to be true.

[163] However, in response to a question put to him in respect of certain matters stated in his witness statement he testified that the officers briefed him and gave him the details of the matter. It did not appear from the evidence lead at the trial that Mr. Emmanuel in his capacity as Comptroller of Customs had any interaction with the claimant at the time that the claimant's vehicle was detained by the officers on 13th March 2019.

[164] The evidence that seemed to have shed greater light on the issues arising in the present case came from Mr. Leopold. This witness claimed that he was assigned as an investigator to the customs investigation unit. He said his main responsibility was the investigation of alleged breaches of the Act.

[165] In his written evidence Mr. Leopold said that on 16th January 2019 he made a report to Mr. Promesse who was the officer in charge of investigations concerning certain information that he obtained from what he described as a reliable confidential source

²⁷ At para 3

that the claimant may have made a false declaration in respect of the 'customs value' of the vehicle in question.

[166] He stated that he presented Mr. Promesse a copy of an unpaid entry No. C991 dated 7th January 2019 along with deposit entry No. 33319 dated 30th January 2019.²⁸ He also stated that the Single Administrative Document ('SAD') with reference number C991 dated 7th January 2019 showed that the value of the vehicle declared was EC\$21,735.20 or US\$8,000.00. He also gave a breakdown of the import duty, service charge, excise duty, VAT and other charges. Attached to the SAD was an invoice from the supplier dated 6th November 2018. The FOB was stated to be in the sum of US\$6,200.00 and freight was stated as US\$1,800.00 making a total transaction value of US\$8,000.00. He said that the invoice had affixed to it a note which read "Note: Faulty Transmission".

[167] Now it is worth recalling that the claimant paid the duties on the deposit entry number 33319 dated 30th January 2019 and not on the unpaid entry number C991. It appeared strange to the court, for reasons already stated in this judgment that the officers' primary focus seemed to have been in relation to the unpaid entry C991 and seemed to have had no quarrel with the deposit entry number 33319. There appeared to have been no explanation forthcoming from the evidence lead at the trial with respect to this deflected attention paid to entry C991.

[168] Mr. Leopold stated that attached to the entry number C991 was the invoice in the sum of US\$8,000.00, a copy of the export certificate with translation, a declaration with respect to a claim for exemption from import duty and excise tax which was not approved by customs, a deposit entry number 33318 dated 7th January 2019 in the sum of EC\$28,490.22 – the deposit entry was in respect of pending Cabinet re-approval of concessions with reference to Cabinet Conclusion No. 186 of 2017 and a customs receipt in the sum of EC\$28,490.22.

²⁸ Exhibit RL1

- [169] It also appeared from Mr. Leopold's written evidence that there was no declaration related to customs transaction value method on the prescribed form or a declaration related to particulars customs value method other than transaction value in the prescribed form attached to the entry. According to Mr. Leopold, both forms were necessary for the customs entry as they provided details of the terms and conditions of the sale and financial transactions between the importer and the exporter together with a declaration that the information provided is correct.
- [170] In light of the foregoing it seemed that Mr. Leopold may have lost sight of the fact that the vehicle had been cleared and released on the basis of the deposit entry. As the court understood the evidence the perfect entry which would have included the required declarations as to transaction value was conditional on the clarification with respect to the duty waiver concession. It may be recalled that no evidence was given regarding whether the clarification had been obtained. Therefore, the court failed to see the relevance of questioning or investigating any alleged irregularity with entry number C991. Mr. Leopold's assertions regarding entry number 33318 appeared to be bereft any logical explanation.
- [171] Mr. Leopold claimed to have obtained a web capture of the exporter's web site which showed that the vehicle was sold at auction at the price of US\$13,876.00 with a starting bid of US\$7,617.00.²⁹ This he claimed alerted his suspicion that the amount stated on the invoice did not represent transaction value.
- [172] Whereas the information on the supplier's website may have raised such a suspicion, it can hardly be considered sufficient to ground a reasonable suspicion that the claimant had committed any of the alleged offences. There was no information obtained directly from the supplier to substantiate the price quoted on the website was indeed the price at which the vehicle was sold. In fact, an examination of the document presented in evidence by the defendant showed that the vehicle was displayed on the supplier's website as up for auction at the price above the price stated on the supplier's invoice. It is not unusual for negotiations to

²⁹ Exhibit RL2

take place in vehicle sales by auction. In any event, the information displayed on the supplier's website could hardly have been considered an appropriate method of calculating transaction value for the purpose of the Act. Furthermore, the court had every reason to discount the evidential value of this evidence.

[173] Mr. Leopold then gave evidence surrounding the retrieval of the claimant's banking information from FCIB. Mr. Leopold did not indicate when this information was obtained; whether it was obtained prior or subsequent to the detention. He simply said that it was obtained during the course of his investigations. It is easy for the court to fill in this lacuna. The warrant³⁰ directed to FCIB was issued on 10th April 2019 and executed on the same day; this was subsequent to the detention of the claimant's vehicle and was lodged at the First District Court on 25th April 2019. The information requested in the warrant was provided by letter from FCIB dated 12th April 2019; that is subsequent to the detention of the claimant's vehicle.

[174] Mr. Leopold claimed to have obtained a GIR on 8th March 2019 from the Saint Lucia Air and Sea Ports Authority ('SLASPA') which chronicled the movement of the claimant's vehicle from the port. Mr. Leopold claimed that the GIR provided proof that the claimant had driven the vehicle from the port which was contrary to his assertion that it was transported by wrecker. The defendants seemed to have relied on this evidence as providing grounds for the reasonably held suspicion that the claimant falsely stated that the vehicle had transmission problems despite the note to that effect inscribed on the exporter's invoice.

[175] In respect of the GIR³¹ the defendant relied on the evidence of Mr. Geevan Nestor ('Mr. Nestor') an employee of SLASPA who held the position of senior operations clerk from March 2019. The defendant's relied on Mr. Nestor's evidence to support the contention that in order for the claimant's vehicle to have left the port certain documentation would have to be produced which included the GIR and an Out of Charge Note. His evidence was that when a vehicle is unable to leave the port due

³⁰ Exhibit RL10

³¹ Exhibit GN1

to mechanical failure and transportation by a wrecker is required the registration number of the wrecker and the name of its driver is written on the GIR. Mr. Nestor's evidence was that in the present case there was no other registration number written on the document which meant that the vehicle had been driven out as opposed to being transported on a wrecker.

[176] The foregoing evidence of Mr. Nestor was intended to infer that the claimant had given false information regarding the mechanical fitness of the vehicle imported by him; and by extension he had sought to undervalue the vehicle on that basis.

[177] Mr. Nestor's evidence was not unchallenged. Under cross-examination Mr. Nestor testified that he did not see when the claimant's vehicle left the port. He insisted that he starting working on the port in 2019; when pressed further he said he was unsure but it was early in 2019. Mr. Nestor seemed unsure whether he should have committed himself to any specific month in 2019.

[178] The claimant sought to make the point that the procedure that Mr. Nestor described as having been in place regarding the removal of vehicles from the port was not in place when the claimant took delivery of his vehicle and removed it from the port and that the allegation that the claimant's vehicle was driven from the port as opposed to being transported by wrecker was unfounded and unreliable at best. In support of his contention the claimant relied on the evidence of Mr. Auguste and Mr. Larry Bachu ('Mr. Bachu').

[179] Mr. Auguste testified that the procedure described by Mr. Nestor was not in place when he cleared the claimant's vehicle. He agreed that the procedure described by Mr. Nestor is what is currently in place but this procedure was not in place when he cleared the vehicle. He said that with the practice that was in place he obtained a gate pass which would not have the wrecker's registration number inscribed on it.

[180] Mr. Bachu was cross-examined and he testified that he transported the claimant's vehicle from the port. He said that he is familiar with the GIR form. He could not recall if the vehicle had a registration plate affixed to it at the time he transported it

from the port. He also said that the delivery documents were in the claimant's possession. Mr. Bachu also testified that he effected the repairs to the vehicle's transmission.

[181] It did not appear that based on the foregoing evidence that the defendant has made out its case that the claimant lied about the mechanical unsoundness of the vehicle which they held out as having raised reasonable suspicion that the claimant had falsely declared the value of the vehicle. It also did not appear that the defendants have taken any steps to verify the truth of this statement by conducting any inspection of the claimant's vehicle while it was detained by them. In any event, any such mechanical inspection would have been otiose since the repairs had already been conducted. Therefore, it seemed that the need to examine the vehicle could not have been relied on by the defendant as justification for detaining the vehicle. Furthermore, the mechanical soundness of the vehicle was not a prescribed factor in determining transaction value for the purposes of the Act.

[182] The transaction value of the vehicle for the purpose of ascertaining the import duty payable is still undetermined. There has been no assessment of or demand for the payment of additional duties by the officers to the claimant.

[183] There being no determination of the actual duties outstanding to be paid, if any, no demand was or could have been made by the officers for the payment of additional duties by the claimant. Therefore, had there been such a demand for additional duties payable, the claimant would have had the option of paying the amount of additional duty assessed in protest and then avail himself of the procedure under sections 136 – 138 of the Act if he were dissatisfied with the amount of additional duties charged.

[184] The officers did not serve notice of seizure on the claimant in the manner contemplated by Section 130 and Schedule 4 of the Act. The officers did not comply with the provisions of section 130 (4) and Schedule 4 of the Customs (Control & Management) Act. Therefore, the officers' detention of the vehicle was without any

lawful authority and contrary to the provisions of the Act that authorizes the detention or seizure of goods for the purpose of forfeiture for condemnation.

[185] Further, and in addition to the matters stated above the claimant has not been charged with neither has he been convicted or otherwise tried for any offence or contravention of any provision under the Act.

[186] In any event, there is no justification or lawful authority purportedly or otherwise existing under the Act that empowered the officers to detain the vehicle otherwise than for the purpose of seizure for eventual forfeiture and condemnation of the goods. In the court's view, the very assertion made by the defendant that the goods were not seized suggested that the goods were not liable to forfeiture. However, this flies in the face of Mr. Leopold's evidence that the vehicle was liable to forfeiture. Again, this begs the question of what was the necessity for detaining the goods and whether such detention was sanctioned by the Act.

[187] The officers' detention of the claimant's vehicle after payment of duties payable in conformity with section 65 of the Act and after its subsequent release was unlawful to the extent that the act of detention was contrary to the provisions of section 65 of the Act, for the following reasons. Section 65 of the Act provides that no imported goods shall be delivered or removed on importation until the importer has paid to the proper officer any duty chargeable thereon, and that duty shall, in the case of goods of which entry is made, be paid on making the entry. Therefore, it follows that duties are determined upon entry. Hence, at the time that the deposit entry was made the duties payable on the importation of the vehicle was not capable of being ascertained. The question then is whether the duties could have been ascertained in a manner that did not require detention of the vehicle. Alternatively, whether the detention of the claimant's vehicle was necessary for the ascertainment of the amount of duties payable.

[188] The claimant having paid to the proper officer duties chargeable upon making an entry in accordance with section 65 subsections (1) & (2), had complied fully with the provisions of section 65 aforesaid, and, was therefore entitled to take delivery of

and remove the goods. The entries and payment of duties was accepted by the proper officer. The Comptroller of Customs had not demanded the payment of any additional duties payable upon the entries submitted by the claimant. In any event. For reasons already stated, it did not appear that in light of the circumstances surrounding the deposit entry that the precise amount of duty payable was capable of being ascertained in the absence of verification of the applicability of the Cabinet Conclusion. Therefore, the officers could not have been satisfied whether on the basis of reasonable suspicion or otherwise that the claimant had committed any infraction under the Act.

[189] According to the provisions of the Act duties payable are calculable on transaction value. Section 78 (1) of the Act provides that where under any enactment relating to an assigned matter duty is chargeable on goods by reference to their value, that value shall in the case of imported goods be determined in accordance with the provisions of Schedule 2.

[190] Schedule 2 of the Act under the rubric “Value of Imported Goods” provides that customs value of imported goods means the value of goods for the purposes of levying ad valorem duties of customs on imported goods. The primary basis for customs value under our legislation is “transaction value” as defined in paragraph 3 of the Second Schedule. The customs value of imported goods is, as a general rule, taken to be the “transaction value”, that is, the price actually paid or payable for the goods when sold for export to Saint Lucia, subject to certain adjustments and exceptions: paragraph 3 of the Second Schedule. Where customs value cannot be determined under paragraph 3, paragraphs 8 to 9, inclusive, provide methods of determining the customs value.

[191] The law is clear, that the chargeable duty on an imported item is based on the invoice produced, and unless the officers had other cogent, objectively ascertainable information which may dispute that which the importer had produced, they must calculate duty on that invoice presented by the importer.³²

³² Dal Agencies Limited v The Attorney General of St. Lucia et al (High Court Civil Suit No. 93

- [192] It appeared that in the present case, the defendant had not provided any reasonable explanation why the transaction value of the claimant's vehicle ought to have been calculated otherwise than on the price paid for the vehicle or the basis upon which transaction value ought to have been calculated on some other basis under the Second Schedule of the Act.
- [193] If one accepts the assertions of the defendants herein it is clear that in disbelieving the value of the vehicle declared by the claimant it can reasonably be inferred that the officers sought to assess the duty chargeable on the claimant's vehicle otherwise than in accordance with the transaction value or by one of the methods endorsed in the Second Schedule of the Act.
- [194] Further, and in addition to the matters stated herein there was no reasonable and proper basis presented by the officers for challenging the transaction value of the claimants' goods based on any of the criteria set out in Schedule 2 of the Act.
- [195] The purported attempt by the officers to assess transaction value otherwise than in conformity with section 78 and Schedule 2 of the Act was unreasonable, arbitrary and contrary to the Act. Therefore, any decision made by the officers to reevaluate or reassess the transaction value of the goods for the purpose of determining the duties payable on the importation of the goods by the claimant not being authorized by the Act could not provide the basis for any reasonable suspicion which they claimed to have held. The reevaluation of the transaction value by a method otherwise contained in the Act was unlawful.
- [196] There was not in existence any objectively ascertainable fact or evidence available to the officers upon which they could rely as being likely or capable of arriving at the reasonably held suspicion that the price paid by the claimant to the exporter as per the entries submitted on payment of the duties did not constitute transaction value for the purposes of section 78 and Schedule 2 of the Act.
- [197] Therefore, the officer's detention of the claimant's vehicle thereby depriving him of the possession thereof based on an unlawful method of seeking to establish

transaction value amounted to an abuse of discretion, was irrational, unnecessary and based on irrelevant and immaterial considerations and therefore unreasonable in all the circumstances of the case.

[198] The unreasonableness of the officers' detention of the claimant's vehicle is highlighted by the provisions of section 102 of the Act. It appeared to the court that the officers maintained the view that the provisions of section 102 of the Act somehow conferred power on them to detain goods as a tool of enforcement or coercion by which to compel importers of goods to comply with request for information made pursuant to section 102. In the court's view, section 102 confers no such power. The only sanction imposed by section 102 for a failure to provide information pursuant to a request is that provided for by section 102(3).

[199] Section 102 of the Act provides that any officer may, at any time within 5 years of the importation of any goods, require any person concerned in that importation, to furnish to them in such form and manner as they may require, any information relating to the goods, and to produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or document relating to the goods;³³ the Comptroller may require evidence to be produced to his or her satisfaction in support of any information provided by virtue of subsection (1) or Parts 3 to 6 and 8, in respect of any goods imported, or in respect of which any repayment of duty is claimed;³⁴ and any person who without reasonable cause, fails to comply with any requirement imposed on him or her under subsection (1) or (2) commits an offence and is liable to a fine of \$5,000.³⁵

[200] In the court's considered view, a request for information made pursuant to section 102 of the Act does not and cannot provide any justification for the detention of goods after an entry has been made, duties paid and the goods are cleared and released. It confers no such discretion on an officer. It is purely an investigative tool

³³ Section 102(1)

³⁴ Section 102 (2)

³⁵ Section 102(3)

and not a method of enforcement. The court can hardly envision a situation where an officer would be permitted to detain goods for five years awaiting compliance with a request for information made pursuant to section 102 of the Act.

[201] Furthermore, section 102 of the Act prescribes a penalty for noncompliance which does not include detention of goods or make the goods liable to forfeiture. All section 102 of the Act does is permit the officer to obtain information from an importer for the purpose of carrying out any investigation or inquiry necessary for the purpose of determining whether the actual amount of duty chargeable on importation has been paid or determining whether additional duties chargeable ought to be paid. It is an investigative tool and does not go in hand with any power or discretion to detain or seize goods as though they were liable to forfeiture under the provisions of section 102 of the Act.

[202] The claimant having submitted the required documentation at the time of making the entry to the proper officer in the event that any other information that the claimant had in his possession was required to be produced the invocation of the provisions of section 102 by the officer was understandable for the purposes described in the previous paragraph.

[203] It appeared from the evidence presented by Mr. Leopold that he erroneously interpreted the provisions of section 102 to mean that the officers had the power conferred upon them pursuant to section 102 of the Act to demand the production of evidence and information relating to the importation of goods to include the power to inspect goods and to question the mechanical soundness or unsoundness of the same for the purpose of establishing the transaction value of the goods for the purpose of determining the duty chargeable thereon. This is quite evident from the defendant's reliance on the mechanical soundness of the vehicle the same they claimed was driven from the port contrary to the claimant's assertion that it was towed by a wrecker. An assertion in respect of which the defendant appeared incapable of providing satisfactory proof at the trial.

[204] Admittedly, the information required by the officers in the present case may have been necessary for the reassessment or computation of transaction value for the purposes of the Act. However, the court has formed the view that the detention of the vehicle was not required for that purpose. Having taken communication of the statement of account from FCIB it was plainly obvious that the claimant had paid the sum of US\$8,000.00 to the supplier. The other remittance ought to have alerted the officers to the possibility that this other remittance was with respect to another transaction. After all they were separate and distinct remittances. No inquiries were made regarding what the other remittance was for. Also, the claimant having submitted the invoice and the record of the transfer of funds which reflected the price paid should have coalesced to cement the conclusion that the price reflected on either document represented the price paid for the goods and accordingly transaction value.

[205] The officers appeared to have been alerted to what they considered a discrepancy in the price paid for the vehicle having visited the supplier's webpage where the price quoted for the vehicle exceeded the price stated on the pro forma invoice. This evidence by itself is inconclusive as to transaction value. It should have been obvious to the officers that in the used car market the price advertised on the sale of a used vehicle may not necessarily equate the price actually paid on the sale thereof. In the court's view this simple fact could not have by itself have grounded reasonable suspicion that the claimant had under invoiced and thereby made a false declaration or was seeking to evade duties. The officers should have made further inquiries.

[206] In the premises, at the stage at which the officers detained the claimant's vehicle there was insufficient evidence in their possession to have grounded a reasonable suspicion that the claimant had committed any offence contrary to the Act. The act of detaining the claimant's vehicle and then providing reasons for the same ex post facto cannot amount to reasonable suspicion of the commission of the offence. To the latter extent the court finds the conduct of the officers to be reprehensible to say the least.

- [207] In the premises, the detention of the claimant's vehicle was premature and unreasonable. The officers had they conducted a thorough investigation, could have ascertained the true circumstances behind the transaction which would not have necessitated the detention of the claimant's vehicle. If after their investigations they had found reasonable grounds to suspect that the claimant had committed an offence contrary to the Act for which the vehicle was liable to forfeiture, the next step would have been the issuance of notice of seizure.
- [208] In any event, the officers have not satisfied the court that the detention of the claimant's vehicle was necessary for the conduct of their investigation or the conducting of any examination as to the mechanical soundness of the vehicle to verify the assertions made by the claimant as to its fitness for purpose or the need to obtain information from the claimant pursuant to section 102 of the Act. The mechanical condition of the vehicle at the time of importation had no relevance to the determination transaction value pursuant to section 78 and the Second Schedule to the Act. Indeed, the officers had five years within which to conclude their investigation. In the court's view, the officers' over exuberance was thinly veiled as an assertion of reasonable suspicion.
- [209] The foregoing assessment is consistent with the court's evaluation of the testimony of the witnesses called on behalf of the defendant.
- [210] Mr. Emmanuel in his capacity as Comptroller of Customs was questioned with respect to the granting of time to the claimant to comply with any request for information as opposed to the detention of his vehicle without the giving of any such forbearance. Mr. Emmanuel testified that the granting of time for compliance with the provisions of section 102 of the Act was dependent on the circumstances. He sought to elucidate what those "circumstances" were. He said that if an individual is in possession of the information then the question of time would not arise. On the other hand if the information is not in their possession then the question of time would come into play. In the court's view, this witness's response apart from being cryptic was simply incomprehensible.

- [211] With respect to the exercise of forbearance in the present case, Mr. Emmanuel testified that as far as he was aware, the action of the officers in detaining the claimant's vehicle without giving him time to comply with a formal request made pursuant to section 102 was not unreasonable because in his view, the claimant was not forthcoming with the requested information and that there was evidence which strongly suggested that the information that he gave was false. He also testified that he was not aware that the claimant had asked for time to furnish the requested information.
- [212] A serious cause for concern was Mr. Emmanuel's testimony where he agreed that the detention of the claimant's vehicle occurred on the same day as the request for information made by the officers.
- [213] Now Mr. Emmanuel's evidence seems even more curious when he testified that customs had the right to detain goods under the Act if there is information that the declared value of the goods was incorrect. He qualified this statement by stating that when there is a "strong indication" that the value declared was false. In the court's view, Mr. Emmanuel by his testimony seemed to have been conflating the act of detention with the act of seizure. In the present case there was no "strong indication" that the value declared by the claimant was false at the time that the claimant's vehicle was detained by the officers. The court found Mr. Emmanuel's reasoning to be self-defeating.
- [214] The questions that arose in light of the foregoing testimony of Mr. Emmanuel are two-fold. Firstly, what was the information that was in the possession of the officers that the value or the declared value of the vehicle was false or that provided "a strong indication" that the value declared was false. Secondly, if the officers were in possession of such information what was the necessity of requesting information from the claimant purportedly pursuant to section 102. There are also other questions that arise from the assertion that there was a "strong indication" that the value declared was false. If it were indeed the case that the officers were possessed

of such information why wasn't the claimant charged with any offence and why wasn't a notice of seizure issued.

[215] Mr. Emmanuel declined to accept that the actions of the officers in detaining the claimant's vehicle was unreasonable or unlawful in the circumstances. He disagreed that the continued detention of the claimant's vehicle even after the claimant had provided the requested information was unreasonable or unlawful. According to Mr. Emmanuel, the reason for the continued detention beyond that time was to verify the documents submitted by the claimant. The short answer to that assertion is that it was not necessary to have detained the vehicle for the purpose of verification.

[216] The court finds that the officers got it all wrong from the start and that they should not have proceeded to detain the claimant's vehicle. The officers should have simply made the request for information pursuant to section 102, conducted their investigations; and if it was found that there were any additional chargeable duty make demand for the same; or if they found that their investigations revealed that the claimant had committed an offence contrary to the Act for which the vehicle was liable to forfeiture seize the vehicle after service of a notice of seizure.

[217] In addition, section 120 of the Act makes provision for the time limit within which proceedings for an offence under the Act may be commenced. The section provides that proceedings for an offence under any customs enactment may be commenced at any time within, but shall not commence later than, 5 years from the date of the commission of the offence. In the circumstances, the court found that the officers had ample time within which to commence proceedings if they were satisfied that the claimant had committed an offence contrary to the Act. Having so found it was then opened to them to seize the vehicle if the enactment under which the claimant was charged provided that the goods were liable to forfeiture.

[218] In any event, would the officers have contemplated detaining the claimant's vehicle for an extended period of 5 years until he had satisfied their queries or the officers had satisfied themselves that they had reasonable grounds for commencing proceedings against the claimant? The court thinks not. It would have been quite

imprudent, and an unreasonable exercise of discretion and power conferred by the Act on the officers to have proceeded in such a way.

- [219] A reading of the Act confirms that officers had wide powers under the Act to impose as a deposit any additionally duty demanded which deposit would be deemed to be the proper duty payable unless proceedings were commenced by the claimant after such deposit. Section 136(1) of the Act provides that 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 3 months from the date of payment, require the Comptroller, by a notice in writing under this subsection, to reconsider the amount of duty demanded.³⁶
- [220] Section 130(5)(a) of the Act also provides that although something seized as liable to forfeiture has not been condemned as forfeited, or considered to have been condemned as forfeited, the Comptroller may at any time if he or she sees fit deliver it up to any claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller's opinion represents the value of the thing, including any duty chargeable thereon which has not been paid.
- [221] Based on the foregoing it is obvious that separate and apart from detaining the claimant's vehicle the officers had a plethora of other options available to them under the Act that would have achieved the same purpose which was the fulfilment of their duty under the Act. However, no evidence was presented to the court in respect of the officers having considered or given any thought to the alternatives that were available to them. Clearly, the officers had a discretion which they were enjoined to exercise in a fair and reasonable manner. Indeed, where a statute imposes a duty on a public officer it is incumbent upon that officer to perform that duty in accordance with the enactment.

³⁶ See also section 138 of the Customs (Control and Management) Act as it relates to appeals to the Customs Appeal Commissioners

- [222] Assuming that the officers had reasonable grounds to suspect that the claimant had committed some infraction contrary to some provision of the Act by virtue of which the vehicle was liable to forfeiture and had proceeded to serve notice of seizure as opposed to unlawfully detaining the vehicle, the claimant would have had the option of availing himself of the provisions of section 130(5)(a) of the Act. The officers' failure to exercise this option deprived the claimant of any right to procedural fairness that he had under the Act and ultimately to the due process of law.
- [223] It would be wise for officers to heed the following note of caution that where the laws entrust them with powers, great care must be taken by them in the due exercise of these powers to ensure that they properly understand the basis on which those powers are entrusted and are to be exercised, for great hardship and embarrassment may be suffered by the citizenry if the powers are not exercised in accordance with the law as is the case here.
- [224] In the present case, the court found that having regard to the queries made by the officers, that officers had doubts that the declared value of the vehicle represented the total amount paid or payable. But it would seem to the court that the officers had a complete misapprehension as to what to do from that point on. It would seem to the court that the officers were entitled to ask for additional information from the claimant. The officers were entitled to ask the claimant for the production of documents and such further information as the officers may have required.
- [225] This they did and the claimant provided the officers with all the information that was in his possession. However, the officers by their action in detaining the claimant's vehicle and by the letter of 21st March 2019, led the claimant to believe that until such time as they were able to complete their investigation into the veracity of the claim that the price shown on the entry represented transaction value the vehicle would be detained. Implicit in that would be that nothing would be done until the officers had concluded their investigations.
- [226] It would seem to the court that in the instant case, if the officers continued to have doubts as to the declared value, the officers would have been obliged, before

reaching a final decision, to notify the claimant of the grounds for their doubts and would have been obliged to provide the applicant with a reasonable opportunity to respond. However, instead the officers flung into action by purporting to detain the claimant's vehicle. In the court's view, the officers had adequate time to carry out their investigations before proceeding to detain the vehicle. There is nothing contained in the defendant's written case that was capable of give the court cause to arrive at an alternative conclusion.

[227] In the premises, the court is inclined to find that the officers' detention of the claimant's vehicle was unlawful and that he had been deprived of the right to the enjoyment of his property and the right not to be deprived thereof except by due process of law. Therefore, the conduct of the officers in detaining the claimant's vehicle amounted to an actionable tort.

[228] The court must now go on to consider the appropriate remedy to which the claimant would be entitled after having found that the officers' detention of the claimant's vehicle was unlawful and that he had been deprived of his right to the enjoyment of his property otherwise than by due process of law.

[229] The defendant seemed to have erroneously sought refuge in the provisions of section 133 of the Act which makes provision for the protection of officers seizing and detaining goods. The section provides that where any proceedings are brought against the Government or the Comptroller on account of the seizure or detention of anything as liable to forfeiture, and judgment is given for the plaintiff or prosecutor, then if either a certificate relating to the seizure has been granted under subsection (1); or the court is satisfied that there were reasonable grounds for seizing or detaining that thing, the plaintiff or prosecutor shall not be entitled to recover any damages or costs.³⁷

[230] The court found it more than passing strange that the defendant would have relied on the provisions of section 133 of the Act when it had relied on the assertion that the claimant's vehicle was not seized on the basis that it was liable to forfeiture. The

³⁷ Section 133(2)

chapeau to section 133 is very specific. The section only operates in the case where there has been a seizure and detention in respect of goods which are liable to forfeiture. The defendant having maintained throughout the proceedings that there was no seizure within the context of section 130(1) of the Act means that the defendant cannot seek protection from an award of damages and costs being made against it under section 133.

[231] In **Bike World Ltd** the respondents had relied on section 50 of the 1988 Act which was equivalent to section 133 under the local legislation, which provided protection to an officer who seized any goods or performed any act in the execution of his duty under any customs laws. The protection is available if it appears to the court that there was probable cause for such seizure or act. If the court is of that opinion, it shall so declare, and the person who effected the seizure or performed the act shall be immune from all proceedings on account of it.

[232] The court in **Bike World Ltd** held that this analysis of the section shows that, if it is to apply, two things must be established by the evidence. First, the officer must have effected a “seizure” or have done an “act” in the execution of his duty under any customs laws. Secondly, he must have had “probable cause” for the seizure or the act, as the case may be.³⁸ In the present case, the court adopts the approach and reasoning of the Privy Council in **Bike World Ltd** and holds for the same reasons that the defendant is not entitled to take advantage of the immunity provided for in section 133.

[233] In any event, the court holds that the provisions of section 133 of the Act are inapplicable to the present proceedings. As it stood the detention of the claimant’s vehicle was not done pursuant to the statutory power of seizure where goods are liable to forfeiture under sections 113 and 116 of the Act.³⁹

³⁸ At para [21]

³⁹ *The Comptroller of Customs v China Town Inc* [2020] ECSCJ No. 400

- [234] In the circumstances, the court having found that there was tortious interference by the officers with the claimant's use and enjoyment of his vehicle will now consider the question of whether the claimant is entitled to an award of damages and to what amount.
- [235] The claimant pleaded that he was a taxi driver by profession. This fact was not disputed and appeared to be well established by the evidence.
- [236] The claimant outlined in the particulars of special damage the items of loss which he sought to recover. The claimant pleaded that the vehicle was imported for the purpose of performing contracts for the purpose of transporting persons from the airport to various hotels and resorts across the island. Therefore, the vehicle was an income earning asset in the conduct of the claimant's trade or business. He claimed that consequent on the detention of his vehicle by the officers between 13th March and 11th June 2019 he was unable to perform the various contracts that he was usually employed to perform and as a result these contracts were assigned to other drivers. According to the claimant, he suffered losses in the sum of \$39,398.36 as a result of the foregoing.
- [237] The claimant also sought to recover the sum of \$1,500.00 which he alleged to have expended on the detailing of the vehicle upon its release from customs as a result of the same having been exposed to the elements while in the possession of customs. The claimant did not provide any satisfactory proof of this loss; accordingly, the court declines to award this sum.
- [238] He also sought to recover the sum of \$10,000.00 representing legal fees incurred in attempting to have the vehicle released from detention. The court has formed the view that given the circumstances of the present case that it would be unfair to deprive the claimant of the reasonable legal expenses incurred in an attempt to secure the return of his vehicle. The evidence presented at the trial clearly showed the interventions made by the legal professional employed by him to that end. Therefore, the court will make the award of \$10,000.00 as special damages.

- [239] The claimant sought to recover in total the sum of \$50,898.36 in special damages. The defendant assumed the position that the claimant had only made bald assertions regarding the loss and damage that he suffered and accordingly, was only entitled to an award of nominal damages as he was unable to prove the loss and damage suffered by the production of any documentary or other evidence to support his assertions. The defendant's submission is not entirely accurate.
- [240] The court accepts the criticisms made by the defendant regarding the manner and form in which the documentary evidence regarding special damages suffered by the claimant was presented.⁴⁰ However, notwithstanding the unacceptability of the banking records provided by the claimant and his employer, the court is prepared to accept the employer's calculation of the loss of earnings incurred by the claimant as per its records.⁴¹ These were canvassed in the evidence of Mr. Carswell Francis. In the premises, the court is prepared to make the award of \$39,398.36 for loss of earnings suffered by the claimant during the period of the vehicle's detention.
- [241] The claimant also claimed general damages for trespass and the unlawful interference with possession of his property occasioned by the wrongful detention of the vehicle together with aggravated and exemplary damages as remedies for the tortious actions of the officers. Having regard to the findings of the court herein the court awards the nominal sum of \$5,000.00 as general damages for trespass to the claimant's property. In the court's view, this award is sufficient to compensate the claimant for the manner in which the officers exercised their authority and the manner in which the claimant's vehicle was taken possession of by the officers.
- [242] The claimant sought to recover damages for breach of his constitutional right guaranteed under section 6 of the Constitution. The defendant countered that since this was an ordinary claim in detainee, a declaration of the breach of the claimant's constitutional right was not an appropriate remedy.

⁴⁰ At paras 38(b)-(d)

⁴¹ Items 12-15 Claimant's List of Exhibits

[243] However, it appeared that notwithstanding the claimant having sought declaratory relief with respect to the alleged breach of his rights guaranteed by section 6 of the Constitution, for all intents and purposes the claim was one in private law. The claimant's allusion to a breach of his rights guaranteed by section 6 was not advanced as a strict public law claim and the claimant did not plead that he was entitled to any form of redress under section 16 of the Constitution. He merely sought a declaration. In any event, it seemed that the case was confined strictly to a private law remedy.

[244] Therefore, the court is confident that the claimant has obtained adequate redress in the realm of private law and that a declaration of the infringement of his constitutional right although sufficient and adequate vindication for the infringement of that right is not a declaration that the court is inclined to make in the present proceedings. Accordingly, the court makes no pronouncements regarding any breach of the claimant's constitutional rights save and except as already made on the substantive issue canvassed in the proceedings. Additionally, the court feels obliged to make the observation that the claimant had improperly joined the administrative claim to his private law claim as an alternative cause of action. However, the question related to the section 6 of the Constitution was dealt with at the trial purely in respect of whether the officers had any lawful authority outside of the Act to detain the vehicle. The claimant had not sought redress by way of an administrative claim.

[245] The constitutional motion procedure under section 16(1) of the Constitution was appropriate only in cases where the facts were not in dispute and only questions of law arose; once the officers had asserted a valid reason to detain the vehicle, the case was no longer suitable for the section 16(1) procedure as the choice between constitutional redress and a remedy under the common law or statute was not at large, and any attempt to use the procedure under section 16(1) as a general substitute for normal procedures in this case, an action in detinue which were available constituted an abuse of process; and where as in these proceedings the inappropriateness of the section 16(1) procedure only became evident after the

claim had been filed the claim for redress under the Constitution ought to have been withdrawn.⁴²

[246] In the circumstances, the court makes the following orders:

1. The defendant shall pay to the claimant the sum of \$5,000.00 as general damages with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment.
2. The defendant shall pay to the claimant the sum of \$39,398.36 with interest thereon at the rate of 3% per annum from 12th June 2019 to 2nd December 2019 and thereafter at the rate of 6% per annum from the date of judgment to the date of payment.
3. The defendant shall pay to the claimant the sum of \$10,000.00 with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment.
4. The defendant shall pay to the claimant prescribed costs in the sum of \$8,159.75.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar

⁴² Thakur Persad Jaroo v Attorney-General (2002) 59 WIR 519