

Duty Tribunal Cases

Importation of DVT hosiery

The appellant company applied for tariff classification of 'in flight socks – compression socks to help avoid deep vein thrombosis on long flights ... for medical use'. Customs classified them as 6115. The appellant argued that they should be classified under 9021. Customs argued that even if the socks were medical appliances, they were outwith chapter 90 as support articles of textile material whose intended effect derived solely from their elasticity. The Tribunal agreed that no other attribute apart from elasticity carried out the purpose of the sock. Appeal dismissed.

HUGHES DVT CUSHIONS LIMITED
C00199 LON/03/7038

Repayment of import duty denied

Cartons of polyester fabric had been imported into the United Kingdom at Southampton port and stolen before removal from container. Customs clearance at Southampton occurs, and duty is paid, while the goods are still en route from the dock to the enhanced remote transit shed. Application was made for repayment of duty under Article 236 of the Community Customs Code. The Tribunal said that the duties were legally owed at and from the time of acceptance of the customs declaration, the goods being then in free circulation. Appeal dismissed.

RIMATEX LIMITED
C00200 LON/04/7031

Nail tips as beauty preparations

Customs had classified nail tips imported from California, also nail-bonding solution, under tariff headings attracting 6% duty. The nail tips were said to be

Gavin McFarlane of Temple Chambers, Cardiff, looks at the latest Duty Tribunal cases

articles of plastic and the solution prepared glue or adhesive. The appellant company claimed that the nail tips were beauty and make-up preparations and that both items should be duty-free. The Tribunal decided that the nail tips were a manicure preparation and under heading 3304 were duty-free. The solution, being not put up for retail sale and specifically prepared for the application of the tips, was also duty-free. Appeal allowed.

DESIGNER NAILS UK LIMITED
C00201 MAN/02/700002

No repayment of VAT on importation

Antique oriental works of art were sent to a trade fair in New York. 121 pieces remaining unsold were returned to the UK in May 2001. There was no Form c88, required to prove the original export of the goods. £19,471 was demanded by Customs and paid by the appellant under protest. The appellant was subsequently advised by Customs in December 2001 that production of import documentation to the USA would be sufficient. Nothing was done by the company until July 2004, when the matter was outside the three-year time limit. Appeal dismissed.

SIDNEY L MOSS, LIMITED
C00202 LON/05/7006

Importation of car into EU

The appellant was a UK citizen resident in Australia. He bought a car in Australia, which he imported into the EU. On Customs form C104A he declared that he was a returning resident and paid a total of £4,525 duty and VAT. He then left the country and sought repayment of these

sums under the head of temporary importation. The Tribunal decided that the time limit of one year's retrospective from date of application applied. The appellant had not been eligible for relief on temporary importation. Appeal dismissed.

LODDER, JAMES
C00203 LON/04/7058

Classification of security detection technology

Customs argued that three products using the appellant company's patented trap mobility spectrometer technology should attract tariff classification 9022 29 00. The products are designed for the detection of explosives and narcotics, for example on passengers at airports, by distinguishing target materials from other molecules. The appellant company argued that heading 9027 was more appropriate. The Tribunal considered it a more specific description to say that the apparatus is an instrument for chemical analysis rather than one based on beta radiation. Appeal allowed.

GE ION TRACK LIMITED
C00204 LON/05/7043

Ford Fairline classified as car

A 1959 Ford Fairline 500 Galaxie Skyliner Retractable automobile was imported from the USA. Customs claimed that its correct tariff classification was heading 8703 as a motor car designed for the transport of persons. The appellant contended that it fell under 9705 as a collectable item, on the basis that it was a rare vehicle of historic interest. The

Tribunal accepted that this might be the only model in the UK with the features described. But rarity did not fall to be determined by rarity in the UK. A truly collectable vehicle would have commanded a higher price than the appellant paid. Appeal dismissed.

BURFORD, ANDREW
C00205 MAN/04/7043

Classification of panasonic microphones

The appellant company argued that microphones manufactured by Panasonic which it imported were not subject to duty, as they fell within a frequency range of 300Hz to 3.4kHz, the range considered adequate to pick up a variety of speaking voices. Customs claimed that they did not, instead falling into a residual category attracting duty at 2.5%. Did 'having a frequency range' in the tariff mean just that, no more and no less? The Tribunal said that the question had been resolved by the fact that the microphones had the required frequency range. Appeal allowed.

PANASONIC INDUSTRIAL EUROPE GmbH
C00206 LON/04/7054

Contradictions between two officers' evidence

The appellant had been a foot passenger who had returned from Belgium by coach. The tobacco goods he was carrying had been seized and he had not contested condemnation proceedings in the Magistrates Court. He appealed against the review decision not to restore the goods. The Tribunal found that there were serious discrepancies between the evidence which had been given by the two customs officers who had interviewed him at Dover. Appeal allowed; matter remitted for further review.

EVANS, LAYTON
E00905 LON/04/8054

Were tanks on tractor units standard?

An appeal was brought by a haulage contractor against an assessment to £22,312 duty on fuel purchased duty paid in France. Were tanks fitted to two of his tractor units standard so as to qualify for relief from duty under HODA and were necessary conditions met? The position was unclear in relation to tanks in second hand units. The appeal was allowed in

relation to one unit, because its tank did not exceed 1,500 litres capacity but dismissed in relation to the second unit, because the tank capacity was in excess of that figure.

JONES, MICHAEL WALLACE, t/a JONA HAULAGE
E00906 MAN/01/8264

Gifts for services rendered

The appeal was brought against a decision of Customs on re-review not to restore a vehicle. It was said to have been carrying goods as gifts for services rendered by workmen. Had the issues of hardship and proportionality been properly considered? The appellant had attempted to conceal the quantity of goods being carried. The Tribunal found that there was no financial hardship which might be considered relevant to this appeal. Proportionality had been properly considered. Appeal dismissed.

SINGH, TAJ
E00907 MAN/05/8004

Ninth trip abroad

10,000 cigarettes and 800 grammes of hand-rolling tobacco were seized from the appellant on his return from Ibiza. Over the previous seven years he had been intercepted by Customs on his return to the UK in connection with the possession of excise goods at least nine times. On six occasions goods had been seized. He was familiar with customs procedures. Not being a well man, he could not smoke all the tobacco he was carrying. The Tribunal found his possession commercial. Appeal dismissed.

BURRELL, KENNETH
E00908 MAN/05/8005

London work covered trips abroad

The appellants contested the refusal to restore their third share each of 9.5 kilos of tobacco, 200 cigarettes, and 1,992 litres of beer. The van in which they were being carried had been restored on payment of £2,163. There was evidence that they had been on previous trips when the goods carried had not been seized. Visits to a contact in London to help him move house had afforded a base for trips to the continent. Appeal dismissed.

LAMPORT, GORDON KEVIN; EVANS, WILLIAM HENRY ALLAN
E00909 MAN/04/8107

Mistaken identity

Customs had refused to restore 50 kilos of tobacco and 4,800 litres of beer seized from the appellant at Dover when in a 3-ton truck with his brother and a friend. The Tribunal said that there was scope for the notebook entries of a customs officer to be inaccurate. Officers had wrongly assumed that the appellant had been stopped on a previous occasion. He had been mistakenly identified as his brother. The notebook of a second officer was inexplicably incomplete. Appeal allowed, with further review ordered.

DEAN, MUSHARAF AHMED
E00912 MAN/03/8151

Tractor used solely for agriculture

An appeal was brought in respect of duty on rebated diesel used by an agricultural tractor and two penalties for contravention of HODA. The Tribunal held that on the relevant occasion the tractor was being used solely for agriculture. There was no ancillary contract. The assessment was not saved by a single instance of improper use more than a year earlier. The Tribunal would not divide the assessment to rescue a small part of it. There was no evidence that red diesel had been taken in specifically for the journey in question. Appeal allowed.

ANDREW CLARK t/a ANDREW CLARK PLANT HIRE
E00913 EDN/04/8009

Cancellation of guarantee

The appeal was against a decision by Customs to 'lapse' (cancel) a guarantee under CEMA, s 157(2)(c). It was in respect of duties, charges and levies for which a haulage contractor might become liable. Beer had been unloaded duty unpaid but there had been no threat to the revenue. The Tribunal decided the decision by Customs which had already been acted on was unreasonable and directed that if the appellant applied for a new guarantee, Customs should not withhold consent on the basis of anything in this decision. Appeal allowed.

CHIP LOGISTICS LIMITED
E00914 MAN/04/8089

As a result of Gavin's decision to retire at Easter, these will be the last Duty Tribunals Cases.