



**Court of Magistrates (Gozo)**  
**AS A COURT OF CRIMINAL JUDICATURE**

**Magistrate Dr. Jean Paul Grech B.A., LL.D**  
**M.Juris (Int. Law), Adv. Trib. Eccl. Melit**

**JUDGEMENT**

Today, Tuesday, the twenty-second (22<sup>nd</sup>) of October 2024

Case Number 65/2023

**The Police**

(Inspector Josef Gauci)

VS

**Simon John Holmes Blackburn**

The Court,

Having seen the charges brought against **Simon John Holmes Blackburn**, of British Nationality, and residing at “Secret Garden”, 8<sup>th</sup> December Street, Victoria, Gozo holder of identity card number 0267781(A) for

having on the nineteenth (19<sup>th</sup>) November 2020 and/or the previous days knowingly and/or negligently or carelessly made or gave or submitted or was instrumental in the making or the giving of any declaration, document or information to the Commissioner, that is false in any detail concerning Customs Documents LRN 2020 6038 59786 in connection with the importation of road wheels, such that an incorrect declaration was submitted regarding the HS Code, which HS Code should have read 870875050 instead of that declared as 870870910. This resulted following an inspection carried out by Customs Officials on the 28<sup>th</sup> of November 2020 at Hal Far Groupage Complex.

Therefore on the basis of this incorrect information, the merchandise in question was exempted from having to pay the amount of €4,476.00 for Anti Dumping Duty, while the paid Import Duty amounted to €602.00 and the paid Value Added Tax amounted to €3,721.00, when in reality they should have been €903.00 and €4,581.00 respectively. Thus the difference of €301.00 due for Import Duty and the amount of €860.00 due on Value Added Tax, were neither paid and/or secured.

This in contravention of Sections 18, 60(1)(k), 61 (1), 62(i)(k)(m), 62A(a)(c) of the Customs Ordinance Chapter 37, of the Laws of Malta.

Having seen that the case was assigned to this Court as presided following an order dated nineteenth (19<sup>th</sup>) day of February 2024 issued

by the Chief Justice in terms of Article 11(3) of Chapter 12 of the Laws of Malta and Article 520 of Chapter 9 of the Laws of Malta;

Having seen the evidence compiled, the documents exhibited and all acts of the proceedings;

Having heard the final submissions of the parties;

Considers:

The facts of the case are as follows: The accused imported a consignment of road wheels from China. His supplier sent him the relative HS Code for this consignment. However, this HS Code turned out not to be correct. Through his shipping agent, the accused was directed that he had to choose either of two (2) options provided to him by the shipping agent. On the basis of information he was provided by his agent, the accused chose an HS Code which was linked to a duty rate of 3% rather than the other HS Code which was subject to a 4.5% rate. Following an inspection, the Customs Officials concluded that the HS Code had been incorrectly quoted and that this result in a lesser amount of tax being paid. Legal action was taken against the accused. The items were also seized.

Considers:

As has been stated in numerous court judgments, in a criminal case the burden of proof lies with the Prosecution. It is the Prosecution which has to prove its case beyond reasonable doubt. Should this threshold not be met, the Court cannot do anything but acquit the accused. It is true that Chapter 37 in article 77 provides for a reversal of the burden of proof. In fact this article specifies that:

*“If, in any claim in respect of any goods seized for non-payment of duties, or any other cause of forfeiture, or in any prosecution for the recovery of any pecuniary penalty or otherwise under this Ordinance, any dispute arises whether the duties of customs have been paid in respect of such goods, or whether the same have been lawfully imported or lawfully transshipped or unshipped, or concerning the place from where such goods were brought, then and in every such case the proof thereof shall be on the person making such claim or on the defendant in such prosecution, as the case may be.”*

The effects of this article were explained in the appeal judgment in the names: **Il-Pulizija vs. Carmel sive Charles Azzopardi**<sup>1</sup>. In this case the defence had pleaded that the accused had not acted knowingly and that he lack the necessary mens rea which was essential for a finding of guilt. The Court had noted that:

*“Jigi osservat immedjetament rigward dan il-punt li huwa strettament ta’ natura legali, illi f’kazijiet precedenti fejn l-istess punt inqala’ u gie deciz, il-pozizzjoni illi hadet din il-Qorti kienet fis-sens li dak illi kien gie deciz mill-Imhallef Harding, President ta’ din il-Qorti fl-24 ta’ Novembru, 1945 in re. “Il-Pulizija vs. Anthony Preca”, fejn, ghall-fini tal-ispostament tal-oneru tal-prova minn fuq il-Prosekuzzjoni ghall-fuq l-imputat, kienet saret distinzjoni importanti bejn il-kaz fejn l-imputat ikun l-importatur u l-kaz l-iehor fejn l-imputat ma jkunx il-komplici tieghu imma jkun assista fl-iskarika tal-merkanzija. F’dik is-sentenza, li giet imbaghad sussegwentement segwita b’diversi sentenzi ohra fosthom dik in re “Il-Pulizija kontra Joseph Farrugia” deciza minn din il-Qorti fis-7 ta’ Jannar, 1991, kien gie deciz li ghalkemm huwa*

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<sup>1</sup> Decided on the 22nd September 1993 by the Court of Criminal Appeal.

veru li skond il-ligi f'akkuza ta' pussess ta' oggett li dwaru ma jkunx thallas id-dazju, il-prova li d-dazju kien thallas ghandha ssir mill-imputat, cio' nonostante fil-materja ghandha ssir distinzjoni bejn il-kaz fejn l-imputat huwa l-importatur ta' dak l-oggett jew il-komplici tieghu jew l-esekutor immedjat tal-att ta' kuntrabandu u l-kaz li l-imputat ikun haddiehor. F'dan l-ahhar kaz jinhtieg ghall-kontravvenzjoni r-rekwizit tax-xjenza, igifieri li l-imputat kien jaf jew messu ragjonevolment ikun jaf li d-dazju dwar dak l-oggett ma jkunx gie imhallas." u "...ghaldaqstant meta c-cirkostanzi juru li l-imputat kellu ragjonevolment jahseb li d-dazju fuq oggetti minnu possedut ma kienx thallas, kellu r-rekwizit ta' dik ix-xjenza u allura huwa hati tal-kontravvenzjoni lilu addebitata. **Diversament huwa ezenti minn kull htija min ma kienx jaf u ma setax ragjonevolment ikun jaf li d-dazju ma kienx thallas jew min kien mic-cirkostanzi gustifikat jahseb li id-dazju thallas .....**Wiehed pero ' jrid joqghod attent f'sitwazzjoni simili billi ma jispostax l-ordni tal-logika ta' kif ghandhom isiru l-affarijiet u ma jinqabadx f'nasba ta'

*spostament ta' ragonament  
pseudologiku....Skond din il-Qorti l-ordni li  
ghandu jigi segwit huwa illi ghandu jigi stabilit l-  
ewwel u qabel kollox, x'tip ta' attivita' kienet qed  
issir mill-appellant. Ghal dan il-fini, din il-Qorti  
jidhrilha li originarjament il-prova inizjali illi l-  
imputat kien jew l-importatur ta' l-oggetti, jew il-  
komplici ... jew li almenu kellu element ta'  
konoxxenza ta' dak li kien qieghed isir, tinkombi  
fuq il-prosekuzzjoni, imbaghad una volta stabilit  
dan, cioe' li jew kien l-importatur jew kien il-  
komplici jew li kien fi kwalunkwe kaz jaf x'inhu  
jigri, l-oneru tal-prova jinkombi fuq l-imputat fit-  
termini tal-ligi. Pero' inizjalment kif inghad, il-  
prova trid issir mill-Prosekuzzjoni.” (court  
emphasis)*

In line with the above Court pronouncements, this Court considers that in order to benefit from the reversal of the burden of proof, the Prosecution had not only to indicate that there was a wrong indication of the HS Code; it had to specify the reasons why it had arrived to the conclusion that the HS Code was wrongly indicated and that the accused did this knowingly. The accused would have then to show otherwise to exclude criminal liability on his part. If one were to refer

to this case, what the Prosecution did was to summon Jeanne Farrugia from the Customs Department who exhibited the seizure note issued to the accused and Marjes Galea who exhibited a letter to prosecute issued by the Tax Commissioner. Farrugia was in no position to indicate the contents of what had actually been found and the reason for the HS Code classification made by the Tax Commissioner. Other than Farrugia and Galea, no further witnesses were produced by the Prosecution. The Customs Officers who inspected the items seized were not summoned to testify and furthermore it was not explained how these officials concluded that the HS Code had been incorrectly stated. The Court considers that this basic information had to be provided by the Prosecution so that the reversal of the burden of proof mechanism would come into play. The Prosecution's case is failing in this respect.

Secondly, even if one were to consider that the Prosecution did not need to summon anyone in view of what article 77 of Chapter 37 lays down, **the Court notes that from the evidence submitted the accused definitely lacked the intention to make a wrong declaration with a view to avoid the payment of the applicable taxes.** The Court arrived to this conclusion on the basis of the following considerations:

- (a) originally the HS Code was provided to the accused directly by his Chinese supplier. However, for some reason this HS Code



was not recognised in Malta. Hence the accused was instructed that he had to choose the code himself. It was for this reason that the accused got involved. It was not something he embarked on voluntarily. Had the HS Code provided by the supplier been recognised, there would have been no need for the accused to be involved in this whole issue. The documentation filed by the accused confirms this;<sup>2</sup>

(b) from the documentation submitted it is clear that both the HS Code which the accused declared and that which the Prosecution is stating that he should have declared were both provided to him by his shippers in Malta. It was not the accused who himself looked up and came up with the available HS codes which could have possibly applied for his shipment. The email on page 55 of the Acts is very clear in this respect. The options were provided to him by his shippers and the accused simply chose one of the options which his shipper indicated to him. Besides there was a reason why the accused chose the HS Code which had a duty tax rate of 3% as opposed that of 4.5%. From earlier correspondence which was exhibited,<sup>3</sup> the accused was given to understand that the duty on the items imported stood

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<sup>2</sup> Fol. 31 and 32.

<sup>3</sup> Fol. 33.

at 3%. Consequently, he chose option 1 which carried a 3% tax rate.

(c) from the outset the accused was always clear as regards the contents of his shipment. He did not attempt to hide or in any way mislead as regards the imported items. It is clear that this was a genuine mistake. This was the first time the accused was importing these items into Malta, so much so that he required guidance as regards the whole importation process. This clearly emerges from the documentation exhibited. Hence it cannot be argued that he was aware of the situation in view of previous imports, leading one to conclude that he had purposely wrongly indicated the code to gain some form of benefit.

- **Decide**

Therefore, for the reasons outlined above the Court **is not finding the accused guilty** of the charges brought against him and is consequently acquitting him of all charges.

(sgd) Dr. Jean Paul Grech  
Magistrate

(sgd) Diane Farrugia  
Deputy Registrar

True Copy

For The Registrar