

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E20 OF 1985

|         |                   |                  |
|---------|-------------------|------------------|
| BETWEEN | L.S. PANTON LTD.  | PLAINTIFF        |
| AND     | COLLECTOR GENERAL | FIRST DEFENDANT  |
| AND     | ATTORNEY GENERAL  | SECOND DEFENDANT |

W.K. Chin See Q.C. and Jerome Lee for Plaintiff.

Neville Fraser for the Defendants.

Heard: April 29, 1985 and October 17, 1986.

WOLFE J.

By an originating summons dated the 1st day of February 1985 the plaintiff sought the following reliefs:

1. A declaration that the plaintiff is entitled to the release of the said 217 Goodrich #639-395-1000x20x12 Ply Extra Miler Highway Design Tyres imported by it into Jamaica but held by Customs at the port of Kingston despite the demand by Customs and the payment by the plaintiff of all relevant duties in fulfilment of the said demand.
2. An order for the release of the said tyres to the plaintiff.
3. Damages
4. Costs
5. Such further and other relief as may be just.

The plaintiff in an affidavit sworn to by Errol Panton, a director of the plaintiff company, and dated the 1st February 1985 avers that in March 1984 it ordered a quantity of tyres for use by omnibuses, from Inter-Alliance Trading Corp. of 660 West 28th Street, Hialeah, Florida 33010 in the United States of America. In pursuance of the said order two hundred and seven-

teen Dollars \$217) Goodrich #639-395-1000x20x12 Ply Extra Miler Hwy Design Tyres and seventy (70) Goodrich #639-316-900x20x12 Ply Extra Miler Hwy Design Tyres were consigned to the plaintiff in Kingston on the 5th October, 1984 by the said Inter-Alliance Trading Corp. See Exhibit "EPI". It is further stated that the goods mentioned above were assessed for the following payments by or on behalf of the Collector General as set out hereunder:

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|------------------|------------------|
| Duty             | \$39,094.74      |
| Consumption Duty | 25,411.58        |
| Stamp Duty       | <u>19,482.21</u> |
|                  | \$83,988.53      |

The plaintiff duly paid the assessed amount to the first named Defendant as is evidenced by Exhibit "EP2".

Notwithstanding the payment of the said assessed sum by the plaintiff the first defendant has neglected and/or refused to release the tyres to the plaintiff. As a result of the neglect and/or refusal the plaintiff contends that it has been denied the use and enjoyment of the goods and has continued to incur loss having to pay storage and other consequential charges at the wharf.

By a supplemental affidavit dated the 4th day of March 1985 the plaintiff disclosed that the goods referred to herein were released to it on the 8th day of February 1985 and that as a result of the detention the plaintiff incurred loss amounting to nine thousand dollars (\$9,000.00).

It should now be evident from the recited facts that when the matter came on for hearing on the 29th April 1985 the reliefs sought in paragraphs one and two of the originating summons were no longer issues between the

3.

parties.

The first defendant, the Collector General in an affidavit sworn to on the 24th day of April 1985 contended that the Invoice No.1-4800 from Inter-Alliance Trading Corporation consigning the goods to the plaintiff was in conflict with the trade licence granted to the plaintiff by the Trade Administrator in that the licence was granted in respect of 900x20 tyres whereas the invoice referred to 1000x20 tyres. As a result of this discrepancy the Collector General contended that he was justified in detaining the goods and requiring the plaintiff to obtain a licence to cover the 217x1000x20x12 tyres.

The delivery of the tyres as already mentioned was authorised by the Trade Administrator.

Mr. Chin See Q.C. submitted "that the issue herein was whether the Collector General having been paid the amount assessed ought to have acted upon the orders and/or restrictions placed on the goods by a private company and in particular by a person styling himself as Trade Administrator".

The Learned Queen's Counsel submitted that the Minister was empowered by Section 8(1) of the Trade Act to prohibit the importation and exportation of goods and that the power vested in the minister was subject only to Section 8(2) of the said Act. This authority which the minister exercised was capable of being delegated by virtue of Section 12(1) which states:

"The minister may delegate to the Commission or the Trade Administrator or any other public officer such of the functions of the minister under this Act as he may specify".

(emphasis mine)

It is the contention of Learned Queen's Counsel that for the power to be properly delegated to the Trade Administrator he must come within the ambit of the definition of Public

Officer. Section 5 of the Interpretation Act states as follows:

"A reference in any Act to any public officer by the usual title of his office shall, if there be such an office customary in Jamaica and unless the contrary intention appears be read and construed as referring to the person for the time being holding or carrying out the duties of that office in Jamaica".

The Jamaica constitution chapter 1 section 1 (1) defines "public officer" as meaning "the holder of any public office and includes any person appointed to act in any such office". "Public office" is defined therein as meaning "any office of emolument in the public service". "Public service" is defined as meaning "subject to the provisions of subsections (5) and (6) of this section, the service of the crown in a civil capacity in respect of the Government of Jamaica (including service as a member of the Judicial Service Commission, the Public Service Commission or the Police Service Commission) and includes public service in respect of the former Colony of Jamaica".

The Plaintiff relying on Exhibit "EP8" referred to in the affidavit of Errol Panton dated 26th April 1985 invites the court to say that the person purporting to sign as Trade Administrator in Exhibit "EP8" is not one and the same as the Trade Administrator referred to in section 12 (1) of the Trade Act. The person purporting to sign for the Trade Administrator, argues the Plaintiff, is an officer of a Private Company registered under the Companies Act of Jamaica as evidenced by Exhibit "EP8" and therefore the Powers exercisable by the Minister under section 8 (1) of the Trade Act could not be properly delegated to such a person pursuant to section 12 (1) of the said Act. If this contention is sound, continues Mr. Chin See, then the Collector General was in error when

5.

acting upon the advice or restrictions of the "Trade Administrator" he refused to deliver up the goods.

Section 8 (1) (b) states as follows:

"Subject to the provisions of subsection (2) the Minister may by order provide for prohibiting the importation or exportation of goods or any class or description of goods from or to any country except under the authority of a licence granted by the Minister".

There is no complaint by the Plaintiff that the goods in question did not come within the provisions of section 8 (1) (b) of the Trade Act, in fact the Plaintiff applied for and obtained a licence under the said section as is evidenced by Exhibit "EBWA" licence Application No. 411330. The goods are described in the said licence as 900x20 tyres. The goods detained by the Collector General were described in the Invoice from Inter-Alliance Trading Corporation Exhibit "EBWB" as 1000x20 tyres and were in fact 1000x20 tyres. It is clear therefore that the goods which were imported did not comply with the terms of the licence granted by the Minister.

I understand the Plaintiff to be saying that notwithstanding the fact that the goods did not comply with the terms and condition of the licence once the Collector General demanded and collected the duty payable thereon he was not entitled to detain same. The duty of the Collector General under the Customs Act is to ensure that goods are not unlawfully imported into the island and further to ensure that all duty payable in respect of such goods is collected. It is not the function of the Collector General to grant import licences, that is a matter within the province of the Minister and such persons as he may delegate that function to pursuant to section 12 (1) of the Trade Act. The Collector General cannot waive the requirements of section 8 (1) (b) of the Trade Act neither can the collection of duty by the Collector General operate as a waiver of the licence requirement set out in section 8(1) (b). The goods imported

were in conflict with terms of the licence and therefore the Collector General was well within his rights to detain them pending the production of an import licence to cover the goods.

I am of the view that the letter dated 28th November 1984 Exhibit "EP8" is/no import in determining the issues which arise from the reliefs sought in the originating summons. Once it is conceded that the goods required a licence before they could be properly imported the Plaintiff was duty bound to produce a licence which corresponded in terms with the goods which were actually imported. Until the Plaintiff discharged this responsibility the Collector General was entitled to detain the goods. The Plaintiff is not entitled, in my view, to use what was an obvious error, on the part of the person collecting the duty, to circumvent the provisions of the Statute.

The argument of the Plaintiff as to whether or not the Trade Administrator or the person purporting to be the Trade Administrator in the letter dated 28th November 1984 is a person to whom the Minister could properly delegate his functions pursuant to section 12 (1) of the Trade Act is self defeating. In May 1984 the Plaintiff applied for and was granted the licence to import the goods. When the goods are detained by the Collector General the Plaintiff of its own initiative applies through its attorneys-at-law, to the Trade Board Limited to have the goods released. Upon refusal by that authority the Plaintiff now contends that the said authority had no locus standi in the matter. Why then did the Plaintiff apply to a person who could not properly exercise jurisdiction in the matter. The answer is obvious: that the Trade Administrator referred to in the letter dated 28th November 1984 and the Trade Administrator who granted the licence in May 1984 were one and the same person and a person

7.

to whom the Minister could properly delegate his functions pursuant to section 12 (1) of the Trade Act. The fact that the letter Exhibit "EP8" bears the address Trade Board Limited is to my mind irrelevant. The further contention that Trade Board Limited is a private company registered under the Companies Act of Jamaica is also in my view of no consequence. It is important to note that the subscribers to the Memorandum of Association of Trade Board Limited Exhibit "EP7" are the Accountant General of Jamaica and the Permanent Secretary - Ministry of Industry and Commerce in their official capacity.

Accordingly the reliefs sought at paragraphs 3, 4 and 5 of the Originating Summons are refused and there will be costs to the Defendants to be taxed if not agreed .