



HIGH COURT OF AUSTRALIA

14 November 2018

COMPTROLLER GENERAL OF CUSTOMS v DOMENIC ZAPPIA
[2018] HCA 54

Today the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia, which set aside a decision of the Administrative Appeals Tribunal.

A company, Zaps Transport (Aust) Pty Ltd ("Zaps"), operated a warehouse in which goods subject to "customs control" under the *Customs Act 1901* (Cth) ("the Act") were stored. To this end, Zaps held a warehouse licence issued under Pt V of the Act. The respondent was employed by Zaps as its general manager and warehouse manager. The respondent's father was Zaps' sole director. In May 2015, tobacco goods were stolen from Zaps' warehouse. The stolen goods were "dutiabable goods", and, at the time of the theft, they had not been "entered" for home consumption. Section 35A(1) of the Act provided, relevantly, that a person who "has, or has been entrusted with, the possession, custody or control" of dutiable goods subject to customs control, and who "fails to keep those goods safely", shall, on demand by a Collector, pay to the Commonwealth the amount of customs duty which would have been payable on those goods had they been entered for home consumption on the day of the demand. After the theft at Zaps' warehouse, a Collector made demands to each of the respondent, the respondent's father and Zaps under s 35A(1) of the Act.

The respondent, the respondent's father and Zaps applied to the Tribunal for review of the Collector's decisions to demand payment from each of them. The Tribunal affirmed each of the decisions. In relation to the respondent, the Tribunal found that he had directed what was to happen to the stolen goods on a day-to-day basis and concluded that he had exercised "control" over them. The respondent appealed to the Full Court of the Federal Court. A majority of that Court allowed the appeal, concluding that the "kind of control" over goods exercised by an employee of a warehouse licence holder, who acts in his or her capacity as an employee, does not meet the level of "control" required by s 35A(1).

By special leave, the Comptroller General of Customs appealed to the High Court. The High Court held that an employee of a warehouse licence holder is capable of being a person who "has, or has been entrusted with, the possession, custody or control" of the relevant goods. The reference in s 35A(1) to the "possession, custody or control" of goods is to the degree of power or authority that would enable a person to meet the obligations imposed by s 35A(1)(a) and (b). Those obligations are to keep the goods safely and, on request, to show the goods to a Collector or to satisfy a Collector that the goods have been dealt with in accordance with the Act. Any person who possesses this degree of power or authority, irrespective of the manner in which the person might exercise that power or authority, will be a person who "has" the possession, custody or control of goods. Such persons are not, therefore, limited to warehouse licence holders. The facts found by the Tribunal established that the respondent was a person who had the possession, custody or control of the stolen goods and who had failed to keep those goods safely. The demand issued to him was valid.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*