



HIGH COURT OF AUSTRALIA

5 February 2020

COMPTROLLER-GENERAL OF CUSTOMS v PHARM-A-CARE LABORATORIES PTY LTD [2020] HCA 2

Today the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia concerning the classification of certain goods for the purpose of the *Customs Tariff Act 1995* (Cth) ("the Tariff Act").

The Tariff Act imposes duties of customs on goods imported into Australia. Chapter 30 of Sch 3 to the Tariff Act contains heading 3004 under which medicaments consisting of mixed products for therapeutic or prophylactic uses put up in measured doses are relevantly classifiable. Note 1(a) to Ch 30 states that the chapter does not cover "[f]oods ... such as ... food supplements".

Pharm-A-Care Laboratories Pty Ltd imports into Australia pastilles (referred to as "vitamin preparations" and "garcinia preparations") containing sucrose, glucose syrup, gelatin, flavours and other substances including vitamins of specified descriptions or a quantity of hydroxycitric acid. On an application for review under the *Customs Act 1901* (Cth), the Administrative Appeals Tribunal ("the Tribunal") found that the vitamin preparations and the garcinia preparations were classifiable under heading 3004, with the consequence that no duty was owed on the importation of the preparations.

The Comptroller-General of Customs ("the Comptroller-General") appealed from the decision of the Tribunal to the Federal Court on questions of law under the *Administrative Appeals Tribunal Act 1975* (Cth). The Comptroller-General contended that the vitamin preparations and the garcinia preparations were each classifiable as either a type of "sugar confectionery", under subheading 1704.90.00, or as "food preparations", under subheading 2106.90.90, so that each was dutiable at a rate of 5% or 4%. The Comptroller-General contended that the vitamin preparations and the garcinia preparations were excluded from heading 3004 because they answered the description of "food supplements" within Note 1(a) to Ch 30.

The Full Court of the Federal Court upheld the Tribunal's classification of the vitamin preparations and the garcinia preparations under heading 3004. By grant of special leave, the Comptroller-General appealed to the High Court.

The High Court unanimously found that, while the Tribunal made an error of law in considering that the vitamin preparations and the garcinia preparations had to answer the description not just of "food supplements" but also of "[f]oods" in order to be excluded from heading 3004 by Note 1(a) to Ch 30, the Tribunal was correct in law in independently concluding that the preparations fell outside the description of "food supplements". The Court further held that the Tribunal did not wrongly equate the expression "food preparations" in heading 2106 with the expressions "[f]oods" or "food supplements" in Note 1(a).

- *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.*