

IN THE HIGH COURT OF AUSTRALIA

ORIGINAL

HER MAJESTY THE QUEEN AND THE
HONOURABLE NORMAN HENRY DENHAM HENTY
AND THE MINISTER OF STATE FOR CUSTOMS
AND EXCISE FOR THE COMMONWEALTH OF
AUSTRALIA

V.

HANIMEX PTY LIMITED AND JOHN DIETER
HANNES AND JOHN STEPHEN HOWIE

REASONS FOR JUDGMENT

ORIGINAL

Judgment delivered at SYDNEY

on FRIDAY, 22nd FEBRUARY 1963

HER MAJESTY THE QUEEN AND THE HONOURABLE
NORMAN HENRY DENHAM HENTY AND THE MINISTER
OF STATE FOR CUSTOMS AND EXCISE FOR THE
COMMONWEALTH OF AUSTRALIA

v.

HANIMEX PTY. LIMITED AND JOHN DIETER HANNES
AND JOHN STEPHEN HOWIE

ORDER

Declare that the defendants and each of them were guilty on each of the eight occasions specified in the First Schedule to the statement of claim of an offence against s. 234(d) of the Customs Act in that upon the dates respectively specified in Column 10 of the said schedule they made the entries therein specified which entries were respectively false in the particular that the country of origin of the subject goods was falsely stated.

Further declare that each such offence was committed with an intent to defraud the revenue.

Order that in respect of each such offence the defendant company pay to the Minister of State for Customs and Excise of the Commonwealth of Australia a penalty in the sum of £300 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty in the sum of £50.

Declare that the defendants and each of them were guilty on each of the six occasions specified in the Second Schedule to the statement of claim and identified by the letters "A", "E", "F", "G", "H", and "J" of an offence against s. 234(d) of the Customs Act in that upon the dates specified in Column 13 of the said schedule they and each of them made the entries therein specified which entries were respectively false in the particular that the value for duty of the subject goods was falsely stated.

Order that in respect of each such offence the defendant company pay to the said Minister a penalty in the sum of £50 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty in the sum of £25.

Declare that the defendants and each of them were guilty on the three occasions specified in the Second Schedule to the statement of claim and identified by the letters "B", "C" and "D" of an offence against s. 234(d) of the Customs Act in that upon the dates specified in Column 13 of the said schedule they and each of them made the entries therein specified which entries were respectively false in the particulars that the country of origin of the subject goods and their value for duty were falsely stated.

Order that in respect of each such lastmentioned offence the defendant company pay to the said Minister a penalty in the sum of £100 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty of £50.

Declare that the defendants and each of them were guilty on each of the three occasions specified in the Third Schedule to the statement of claim of an offence against s. 234(d) of the Customs Act in that upon the dates respectively specified in Column 13 of the schedule they and each of them made the entries therein specified which entries were respectively false in the particular that the country of origin and the value of the goods for duty were falsely stated.

Further declare that each such offence was committed with an intent to defraud the revenue. //

Order that in respect of each such offence the defendant company pay to the said Minister a penalty in the sum of £300 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in

respect of each such offence a penalty of £50.

Declare that the defendants and each of them were guilty on each of the two occasions specified in the Fifth Schedule to the statement of claim of an offence against s. 234(d) of the Customs Act in that upon the dates respectively specified in Column 13 of the said schedule they and each of them made the entries therein specified which entries were respectively false in the particular that the tariff item and rates of duty applicable to the subject goods were falsely stated.

Further declare that each such offence was committed by the defendants and each of them with an intent to defraud the revenue. L

Order that in respect of each such offence the defendant company pay to the said Minister a penalty in the sum of £300 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty in the sum of £50.

Declare that the defendants and each of them were guilty on each of the fifteen occasions specified in the Sixteenth Schedule to the statement of claim of an offence against s. 234(d) of the Customs Act in that upon the dates respectively specified in Column 14 of the said schedule ^{they} made the entries therein specified which entries were respectively false in the particular that the description of the subject goods was falsely stated.

Further declare that each such offence was committed with an intent to defraud the revenue.

Order that in respect of each such offence other than that relating to item "D" in the said schedule the defendant company pay to the said Minister a penalty in the sum of £100 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty in the sum of £25.

Order that in respect of the offence relating to item "D" in the said schedule the defendant company pay to the said Minister a penalty in the sum of £75 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty in the sum of £25.

Declare that the defendants and each of them were guilty on each of the thirty-five occasions specified in the Seventeenth Schedule to the statement of claim of an offence against s. 234(a) of the Customs Act in that upon the dates respectively specified in Column 15 of the said schedule they evaded payment of duty which was payable in respect of the importation of the goods specified in Column 4 of the said schedule.

Order that in respect of each such offence the defendant company pay to the said Minister a penalty in the sum of £100 and that the defendants John Dieter Hannes and John Stephen Howie each pay to the said Minister in respect of each such offence a penalty in the sum of £25.

Order that the defendants pay to the plaintiffs their costs of the action.

HER MAJESTY THE QUEEN AND THE HONOURABLE
NORMAN HENRY DENHAM HENTY AND THE MINISTER
OF STATE FOR CUSTOMS AND EXCISE FOR THE
COMMONWEALTH OF AUSTRALIA

v.

HANIMEX PTY. LIMITED AND JOHN DIETER HANNES
AND JOHN STEPHEN HOWIE

JUDGMENT

TAYLOR J.

HER MAJESTY THE QUEEN AND THE HONOURABLE
NORMAN HENRY DENHAM HENTY AND THE MINISTER
OF STATE FOR CUSTOMS AND EXCISE FOR THE
COMMONWEALTH OF AUSTRALIA

v.

HANIMEX PTY. LIMITED AND JOHN DIETER HANNES
AND JOHN STEPHEN HOWIE

This is an action pursuant to s. 245 of the Customs Act 1901-1960 for the recovery of penalties from the defendant company and from the defendants John Dieter Hannes and John Stephen Howie. At all material times the defendant company carried on in this country the business of an importer and wholesaler of cinematograph and photographic materials and goods and the defendants Hannes and Howie were the joint managing directors of the company. The statement of claim contains a great many allegations of offences on the part of the defendants against provisions of the Customs Act but it is unnecessary to review these in detail for the matter proceeded to trial in respect of seventy-two specific transactions the particulars of which were set out in the first, second, third, fifth, sixteenth and seventeenth schedules to the statement of claim. These transactions were the subject of a like number of charges which are now admitted by the defendants and the question of the appropriate penalties is the only matter for consideration.

The transactions took place between April 1953 and February 1954 and they were concerned with the importation of goods to the total value of approximately £33,000. The total duty initially avoided was approximately £5,394 but this amount was subsequently paid by the company. Of the seventy-two offences now admitted twenty-eight were committed with intent to defraud and it is convenient to deal first of all with this group of offences. These offences were those alleged in paragraphs 15(xv), 17(xviii), 19(xviii) and 30(xvii) of the statement of claim and

particulars of the relevant transactions are set out respectively in the first, third, fifth and sixteenth schedules.

By paragraph 15(xv) it was alleged that on each of the eight occasions specified in the first schedule the defendants and each of them made in respect of the importation of the goods specified in the schedule an entry which was false/in a particular that the country of origin of the said goods and the rate of duty were falsely stated, contrary to s. 234(d) of the Act. At the time when the offences were committed - namely between April and December 1953 - the goods, the subject of these charges, were subject to an ad valorem duty of 17½ per cent coming, as they did, from the German Democratic Republic (East Germany). But earlier, in September 1952, the intermediate tariff was made to apply to goods of this character which were the produce or manufacture of certain countries including the Federal Republic of Germany (West Germany) but not including the German Democratic Republic. The result was that such goods when imported from West Germany were not subject to duty. The falsity of the entry in each case consisted in the specification of the "Country of Origin" simply as Germany and the statement that the goods were free of duty. Quite clearly it was intended by the combined effect of these two statements to indicate that the country of origin in each case was the Federal Republic of Germany (West Germany) and each entry was accepted and passed on this understanding. That the deception was both calculated and deliberate appears clearly from the defendant company's letter of the 9th June 1953 by which it informed its representative in Berlin - A. Tschepper and Company - that it would be of advantage to the company if the supplier's name on invoices from the Deutscher Innen-Und-Aussenhandel - The East German Government Import and Export Agency commonly referred to as D.I.A. - could be "just stated as Messrs. Dia

and the country of origin was just stated as Germany".

"If this was done", it was said "there is a small possibility that our Customs may accept these goods as West German goods which would be to our joint advantage". In view of the fact that it is now admitted that the offences were committed and were committed with intent to defraud there is not much point in discussing the circumstances in detail. It is perhaps enough to repeat that the fraud was a calculated one and that the offences call for substantial penalties. In all, goods to the value of £7,757 were involved and the duty avoided amounted to £1,357 and I fix the penalty payable by the company in respect of each offence at £300 and by each of the other defendants at £50.

The third schedule is concerned with importations by parcels post of cameras from East Germany and it deals with the particulars of three offences committed with intent to defraud. The entry in each case specified Germany as the country of origin and stated that the goods were duty free. Additionally each entry was false in a further particular in as much as the value for duty was falsely stated. The defendant company had, as from the 1st July 1953, obtained from the D.I.A. in East Germany its agreement to a special deduction of $17\frac{1}{2}$ per cent of its normal prices, that deduction being equal to the duty payable on cameras from that country. In each entry the value of the goods or duty was stated without including the amount of the special deduction pursuant to s. 154 of the Act. Counsel for the defendants informed me that there is an outstanding dispute between the defendant company and the Collector of Customs concerning the application of s. 154 in such circumstances but in view of the fact that the other false statements in each entry made the value of the goods for duty an irrelevant consideration I have taken no account of this factor. The offences were of much the same

character as those dealt with in the first schedule and both groups of offences, both as to the value of the goods involved and the duty evaded, are comparable. In the circumstance I fix the penalty payable by the company and the other defendants at the same amount for each of these offences.

The fifth schedule deals with the particulars of two offences which it is now admitted were committed with intent to defraud. They were committed in relation to the importation from East Germany of quantities of photographic flash bulbs. On and after the 2nd March 1953 goods of this character were subject to duty at $12\frac{1}{2}$ per cent by virtue of a Customs by-law of that date. But that by-law was revoked on the 11th August 1953 and thereafter the appropriate duty was $17\frac{1}{2}$ per cent. Nevertheless, goods which were on firm order on the lastmentioned date and which should be actually imported before the end of the year were to be admitted at the lower rate of duty. What happened in these cases was that the defendant had prepared documents to show that the goods in question were on firm order prior to the 10th August 1953 whereas, in fact, they were not ordered until the 10th September 1953 as is shown by the original phonogram order which had been lodged by the defendant company at the General Post Office at Sydney. The substance of the offences alleged was that the entries falsely specified the tariff item under which the goods were dutiable and the rate of duty applicable. As a consequence duty was paid at the rate of $12\frac{1}{2}$ per centum. This amounted to £268 but the duty properly payable was £586. I take a serious view of the fact that false documents had been prepared by the defendants to aid in the perpetration of this fraud and I fix the penalties payable by the company for each of these offences at £300 and by the other defendants at £50 each.

The sixteenth schedule deals with the substance of the remaining offences - fifteen in all - which were charged

with intent to defraud. These were goods which came by parcels post from a number of manufacturers and merchants in West Germany and in respect of which Customs entries were required and made. The complaint is that each of the entries in question falsely described the goods in respect of which it was submitted. What happened was that the entries consistently described the goods as "cameras", "cameras and parts" or "camera spares" whereas, in fact, they consisted of a miscellany of photographic accessories and as such were dutiable at a rate of $17\frac{1}{2}$ per cent. The total value of the goods involved was £2,125 and the duty avoided was £618. The offences were committed between June and September 1953; they show a consistent fraudulent pattern and I fix the penalties payable by the company in respect of each offence other than that relating to item D at £100 and by each of the defendants at £25. In respect of the offence relating to item D the penalty upon the defendant company will be £75 and that on each of the other defendants, £25.

The forty-four offences in respect of which intent to defraud was not alleged are concerned with the transactions the subject matter of the second and seventeenth schedules to the statement of claim. The first of these schedules relates to nine transactions and these may be dealt with briefly. In each case the arrangement as to the special deduction of $17\frac{1}{2}$ per cent from the D.I.A.'s normal price, which has already been mentioned, applied and the value for duty was mis-stated in that the entry in each case specified only the net price and made no mention of the special deduction. Additionally in three cases (B, C and D) the country of origin of the subject goods, which were cameras, was stated to be Germany or West Germany and these were said to be free of duty but as the country of origin was East Germany, duty was payable at the rate of $17\frac{1}{2}$ per cent. In the result £1,054 was paid for duty whereas the amount properly chargeable was £1,839. In view of the fact that it is not alleged that there was an accompanying intent to defraud I

propose to fix the penalties for each of the offences the subject of items B, C and D in the second schedule at the sum of £100 for the company and £25 for each of the other defendants. In respect of the other six offences the subject of the remaining items in this schedule I fix the penalties at £50 for each offence by the company and £25 for each offence by each of the other defendants.

The final group of offences - thirty-five in all - are the subject of the entries contained in the seventeenth schedule. These relate to the importation by parcels post of thirty-five items of various kinds of photographic accessories. In these cases Customs entries were not required and the goods were released on the representations of the defendant company's representative concerning the character of the goods imported. The representations consistently made were that the goods consisted of "Printed Matter", "Printed Brochures" or "Technical Literature" and, as such, they would have been duty free. The total amount of duty avoided was £1,385 and although intent to defraud is not alleged the offences show a consistent and regular pattern from June 1953 to January 1954. Counsel for the defendants alleged that the employee of a company who was responsible for the misrepresentations made to the officers of Customs had in each case been provided with funds to pay the appropriate amount of duty and that having, for his own purposes, misrepresented the character of the goods in question, had misappropriated the moneys entrusted to him. But I was not prepared to accept this explanation and an invitation to substantiate it by evidence was declined. The offences alleged were that the company had evaded payment of the appropriate amount of duties and many of the offences were comparatively petty. But there were thirty-five offences of this character in a period of a little more than six months and having regard to the circumstances in which

they were committed substantial penalties are called for. In the circumstances I think justice would be done if I fix the penalty payable by the company in respect of each of these offences at the sum of £100 and the penalty in each case payable by each of the other defendants at the sum of £25.

In all these penalties amount, in the case of the defendant company, to £9,475 and, in the case of each of the other defendants, to £2,200. In fixing the penalties for each individual offence I have, of course, had regard to the overall picture of the transactions in question including their frequency, their magnitude and the amount of duty initially avoided. The question of fixing appropriate penalties is not without difficulty but having regard to all the circumstances of the case I do not think that I could reasonably have imposed any lesser penalties.