

SUMMARY OF APPEAL DECISION

APPEAL NO. TRK (J) 1-2007

FACTS

1. The Appellant is a private limited company incorporated on 14 July 1987. The Appellant is in the business of importing Smart Cards (Kad Pintar) since 1988 for supply to institutions of higher education and banking institutions. During importation, the Appellant had used the tariff code 8542. 12 000 which was subject to a sales tax of 10%. However, the tariff code was changed (date not stated) to 8542.10 000 which was not subject to any import duty or sales tax. Beginning from 2004 until 2006 the Appellant had used the tariff code 8542. 10 000 for importation of the Smart Cards.
2. On 3 August 2006 the Technical Services Division, Post Clearance Audit Branch, Federal Territory of Kuala Lumpur carried out an audit on the Appellant's company. The audit finding was that the Appellant had declared the Smart Cards as a non-dutiable good (tariff code 8542.10 000) whereas the correct tariff code should be 8543.81 000 which was subject to a sales tax of 10%. A Bill of Demand for the period of 2004 to 2006 amounting to RM372,701.06 was issued to the Appellant for payment. The Appellant was dissatisfied with the Bill of Demand and applied for a Customs Ruling under section 11B Sales Tax Act 1972.
3. The Director General of Customs decided in the Customs Ruling dated 31 July 2007 that the Smart Card is under tariff code 8543.89 000 which is subject to a sales tax of 10%. The Appellant was aggrieved with the decision of the Director General of Customs and filed a Notice of Appeal at the Customs Appeal Tribunal on 29 November 2007.

ISSUE

The ground for appeal is that the Smart Card is of a hybrid type which combines contact (90%) and contactless (10%) elements whereas the tariff code under the Sales Tax Order does not contain any code which can accommodate this type of hybrid card. The Appellant is also of the opinion that the Smart card is under tariff code 8542.10 000 and is not subject to any import duty or sales tax because the contactless element of the card is only at the antenna which is 10% of the entire price of the card.

(After the appeal was filed the parties negotiated for settlement as provided under section 141P Customs Act 1967. As a result of the negotiations, an agreement was reached where the Appellant agreed with the tariff code of 8523.52 000 as determined by the Customs Department whereby the Smart Card is not subject to any import duty or sales tax)

DECISION

The Tribunal recorded the decision with the agreement of both parties under regulation 13(2), Customs (Appeal Tribunal) Regulations 2007 by making an order that the importation of a Smart Card with a single chip or more is under tariff code 8523.52 200 which is not subject to any import duty or sales tax. The appeal was dismissed.

20 May 2008