

SUMMARY OF APPEAL DECISION

APPEAL NO. TRK (J) 2-2008

FACTS

1. The Appellant is a private limited company incorporated on 9 October 1987. The Appellant is an importer of toiletries and household products from other countries for sale or distribution in Malaysia. The Appellant was given the rights by Colgate-Palmolive Co. USA to distribute market and sell the goods by using its inventions, registered designs and trademarks in Malaysia under a Principal Royalty Agreement For Trademarks, Patents and Designs. There is also a Principal Royalty Agreement For Trademarks, Patents and Designs between Colgate-Palmolive Co. USA as Licensor and Colgate Palmolive Malaysia Sdn. Bhd. which is a manufacturing company under Colgate Palmolive group of companies. Under this agreement, Colgate Palmolive Malaysia Sdn. Bhd. is also given the rights by Colgate-Palmolive Co. USA to distribute market, manufacture and sell toiletries, detergents and household products using its patents and inventions, registered designs and trademarks in Malaysia.
2. In 2001, Post Clearance Audit Branch, Royal Malaysian Customs Department, Kuala Lumpur issued a Bill of Demand amounting to RM935,424.20 to the Appellant on the basis of `underpayment of import duty/sales tax because of addition of royalty adjustment to Customs Value under Regulation 5(1)(a)(iv) Customs (Rules of Valuation) Regulations 1999.` The Appellant settled the Bill of Demand.
3. On 28 October 2003, the Appellant, who was aggrieved with the Bill of Demand submitted an appeal to the Director General of Customs. On 28 December 2007 the Director General of Customs made the decision to reject the appeal.

ISSUE

1. The ground of appeal is that the amount of royalty should not be taken into account in deciding the transaction value of the imported goods because under the Agreement signed with Colgate-Palmolive Co.USA there is no term requiring the Appellant to pay royalty on importation of goods into Malaysia. According to the Appellant, the payment of royalty is only made on goods which are sold in the local market.
2. The issue raised is whether or not the royalty payment under the Royalty Agreement falls under Regulation 5(1)(a)(iv) Customs (Rules of Valuation) Regulations 1999 and needs to be added to the price paid or needs to be paid on imported goods in the determination of the transaction value of the goods.

(After the appeal was filed the parties negotiated for settlement as provided under section 141P Customs Act 1967 but negotiations were not successful. A full hearing was held on 28 and 29 May 2008)

DECISION

The Tribunal affirmed the decision of the Director General of Customs dated 28 December 2007 regarding the adjustment of royalty. The appeal is dismissed.

7 May 2008