SUMMARY OF APPEAL DECISION

APPEAL NO. TRK (K) 1-2008
APPEAL NO. TRK (K) 4-2008
(Joint Hearing)

FACTS

1. The Appellant is a private limited company incorporated on 16 June 1997. The Appellant`s main business is selling used forklifts imported from Japan. The Appellant will sell the used forklifts to local buyers or re-export them if purchased by overseas buyers.

2. On 13 April 2006 the Appellant imported a consignment of used forklifts and paid the imported duty. One forklift (first forklift) was re-exported on 11 October 2006 when it was purchased by an overseas buyer. On 20 April 2006 the Appellant imported another consignment of used forklifts and the import duty was paid. From this consignment too the Appellant re-exported one forklift (second forklift) on 17 October 2006. On 5 May 2006 the Appellant imported another consignment of used forklifts and the import duty was paid. From this consignment, the Appellant re-exported one forklift (third forklift) overseas on 3 July 2006.

3. All the three forklifts sold to the overseas buyers were kept at the Appellant`s premises in Malaysia within a period of six months from the date of import to the date of re-export. During that period all three forklifts were not used or registered with the Road Transport Department Malaysia. The Appellant applied for drawback of customs duty which had been paid under section 93 Customs Act 1967 but this application was rejected by the Respondent on the ground that the Appellant failed to prove that the Appellant had complied with the condition under section 93(1)(f) Customs Act 1967. The amount of import duty claimed on the

first forklift is RM535.87, on the second forklift is RM930.15 and on the third forklift is RM850.91.

4. The Appellant was aggrieved with the decision of the Director General of Customs dated 13 March 2007. The Appellant filed two Notices of Appeal at the Customs Appeal Tribunal dated 31 January 2008 and 31 March 2008. The Appellant`s reason is that the Appellant is entitled to the drawback of customs duty because all three forklifts had never been used while being in Malaysia.

ISSUE

1. Whether the appeal was filed within the specified time.

2. Whether a consultant can represent an Appellant in the hearing of an appeal in the Tribunal.

3. Whether the Appellant had breached the condition under section 93(1)(f) Customs Act 1967, that is whether the Appellant has used the three forklifts before re-export.

(After the appeal was filed the parties negotiated for settlement as provided under section 141P Customs Act 1967 but were not successful. Both appeals were heard together on 12 May 2008 as the same parties were involved)

DECISION

1. On the first issue, the Tribunal decided to allow the filing of the Notice of Appeal made after the specified period had lapsed because this appeal was filed during

the early stage of the Tribunal`s establishment during which time the public is still not aware of the Tribunal`s existence.

2. On the second issue, the Tribunal decided that a consultant can represent an Appellant during the hearing of an appeal because section 141Q Customs Act 1967 provides that only an advocate and solicitor is not allowed to represent an Appellant.

3. On the third issue, the Tribunal decided on a balance of probabilities that there is no evidence to show that the Appellant had used the three forklifts before re-export. As such, the Appellant did not breach the condition under section 93(1)(f) Customs Act 1967.

4. The Tribunal allowed the appeal and decided that the Appellant was entitled to the drawback of customs duty which had been paid.

16 June 2008