

SUMMARY OF APPEAL DECISION

APPEAL NO. TRK (J) 4-2008

FACTS

1. The Appellant is a private limited company incorporated on 20 January 1976. The Appellant is a manufacturer of Metal Pallets which are used for transporting LPG Cylinders. On 28 May 2002, Royal Malaysia Customs Department (RMCD), Kuching, Sarawak classified Metal Pallets under tariff code 7308. 90 990 which is not subject to sales tax. On 22 August 2006, RMCD Kuching reclassified the product under tariff code 7326.90 900 which is subject to sales tax of 10%. Starting from 22 August 2006, the Appellant collected and paid sales tax of 10%.
2. On 13 March 2007, the Appellant received a Bill of Demand under Sales Tax Act 1972 from RMCD Kuching which demanded the Appellant to pay sales tax in the sum of RM356,776.36 which was calculated for three retrospective years. On 21 June 2007, RMCD Headquarters, Putrajaya confirmed the classification made by RMCD Kuching dated 22 August 2006. 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 3 September 2008. The Appellant is of the opinion that the correct tariff code is 7308.90 990. The Appellant is also of the opinion that he should not be made to pay sales tax for the three retrospective years because the Appellant did not pay sales tax before 22 August 2006 based on the first classification.

ISSUE

1. Whether the confirmation by RMCD Headquarters, Putrajaya dated 21 June 2007 on the classification of Metal Pallets is effective retrospectively or from the date of notification of the confirmation.

2. If retrospectively effective, the Appellant is disputing the classification and Tribunal has to decide whether the decision on classification dated 28 May 2002 or the decision on classification dated 21 June 2007 is correct.

(After the appeal was filed the parties negotiated for settlement as provided under section 141P Customs Act 1967. As a result of the negotiation for settlement, the Respondent agreed to refund RM21,325.27 to the Appellant and the Respondent also agreed to withdraw the demand on the retrospective tax. The Appellant agreed to pay the current sales tax and not to dispute the classification made)

DECISION

The Tribunal recorded the decision as agreed by both parties under regulation 13(2) Customs (Appeal Tribunal) Regulations 2007 by making an order for the Respondent to refund RM21,325.27 to the Appellant.

1 April 2009