

New Zealand Customs Service questioned over acceptance of deposit pursuant to legislation

Legislation	Ombudsmen Act 1975, Customs Act 1966 (repealed)
Agency	New Zealand Customs Service
Ombudsman	Sir Brian Elwood
Case number(s)	W39721
Date	1999

Refusal to pay interest following resolution of dispute over Customs value of goods—whether relevant documentation provided at the time of importation—whether s 140 of the Customs Act 1966 (repealed) conferred authority on Department to take deposit—investigation discontinued following discovery that company did not exist as legal entity at the time complaint was made

The background to the complaint was that the complainant company had been required to pay additional duty in accordance with a determination made by the then Customs Department in respect of the Customs value of a shipment of used Japanese motor vehicles which the company had imported in 1991. The customs broker acting for the company had wanted the Department to accept a deposit, in lieu of amending the import entry, pending the resolution of the dispute over the value of the goods. The Department had been of the view that it was not open to it to accept a deposit under the relevant provision of the Customs Act 1966 (now repealed). The company had eventually agreed to amend the import entry, and paid the amount deemed to be due.

In 1995, evidence was produced by the company which enabled the Department to accept the company's original claim, and a refund was issued. Upon receipt of the refund, the broker sought interest on the disputed amount paid in 1991, on the grounds that a deposit should have been taken at the time, and that the company would, in such circumstances, have automatically received interest on the deposit. The Department, for its part, maintained that it had acted correctly in declining to accept a deposit, and that there was no legal basis for interest to be paid in the circumstances pertaining to the case.

In 1998, the broker sought an investigation into the Department's refusal to pay interest. The complaint was notified to the New Zealand Customs Service (which had replaced the Department). Two lines of inquiry developed in the course of the investigation. The first line of inquiry related to whether relevant information supporting the company's original claim had been provided to the Department in 1991. The Service advised that the Department had attempted unsuccessfully to obtain such information from the company and overseas parties, but that sufficient evidence substantiating the company's claim was only provided in 1995. The Service took the view that if the documents requested had been produced at the time of importation or shortly thereafter, instead of four years later, the complaint would not have arisen. The broker rejected this view, claiming that information supporting the company's claim had been produced in 1991, and that the information was similar to that produced by one other importer whose claims were accepted by the Department.

Notwithstanding the differing views over when the relevant information was provided the question still arose as to whether the Department could have accepted a deposit pursuant to section 140 of the Customs Act. This was the second line of inquiry pursued in the investigation.

In the event, neither the question of when the information was provided, nor whether it was open to the Department to have accepted a deposit, was resolved by the investigation as it transpired that the company had been struck off the companies register in 1996, and did not exist as a legal entity at the time the complaint was made. The broker, who had made the complaint purportedly on the company's behalf, was asked to clarify the situation. It transpired that the broker had been of the view that any refund obtained from the Service could be payable to the former directors of the company, notwithstanding that the company no longer existed as a legal entity. It was explained to the broker that the company was a legal person in its own right, as distinct from its shareholders and directors and that it was only where such former directors could establish that the relevant refund was in respect of duty paid by them, on behalf of the former company, that it seemed that any issue of the directors' entitlement could arise. The broker did not dispute this reasoning.

Although some of the issues relating to the investigation remained unresolved, it was considered inappropriate to commit further resources to the complaint, which now appeared to be of academic interest only, and the investigation was discontinued. The Service was advised that in the event that the same or similar issues were to arise in a different context, the discussion could, if necessary, be reopened at that stage.

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