Chu Wai Kiu v Public Prosecutor
[2005] SGHC 32

Case Number : MA 126/2004

Decision Date : 14 February 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Go Kim Chuan Mark (Hin Tat Augustine and Partners) for the appellant; Leong Wing Tuck (Deputy Public Prosecutor) for the respondent

Parties : Chu Wai Kiu — Public Prosecutor

Criminal Law – Statutory offences – Customs Act – Appellant importing jewellery into Singapore – Jewellery subject to Goods and Services Tax (GST) – Failure to declare jewellery and pay GST – Whether offence of non-declaration made out – Sections 37, 128(1)(f) Customs Act (Cap 70, 2004 Rev Ed)

Criminal Law – Statutory offences – Customs Act – Appellant importing jewellery into Singapore – Jewellery subject to Goods and Services Tax (GST) – Whether appellant required to declare jewellery if GST liability suspended at time of importation

Criminal Procedure and Sentencing – Appeal – Appeal against order of forfeiture – Whether amounting to collateral attack against conviction – Whether more appropriate to institute revision proceedings

Revenue Law – Customs and excise – Forfeiture – Appellant importing jewellery into Singapore – Jewellery subject to Goods and Services Tax (GST) – Appellant failing to declare jewellery and pay GST – Whether dual elements for mandatory forfeiture of jewellery fulfilled – Section 123(2) Customs Act (Cap 70, 2004 Rev Ed)

Revenue Law – Goods and services tax (gst) – Whether obligation to declare imported dutiable goods applicable to imported goods subject to GST – Correlation between customs and GST regimes – Section 8(4) Goods and Services Tax Act (Cap 117A, 2001 Rev Ed)

14 February 2005

Yong Pung How CJ:

1 The appellant ("CWK") appealed against the order of the district judge ("the judge") that two lots of jewellery ("the jewellery") in his possession be forfeited to the Singapore customs for disposal. I dismissed his appeal against the order of forfeiture and I now set out my reasons.

Background

The Statement of Facts

2 CWK admitted without qualification to the following facts. On 6 June 2004 at about 6.30pm, he arrived in Singapore from Hong Kong on flight no CX 735. Whilst at the customs duty office at Terminal One of Singapore Changi International Airport, he produced a Goods and Services Tax ("GST") Inward Transhipment Permit for clearance of the goods in his possession.

3 Before tallying the goods produced against the permit and invoices attached, the customs officers asked him if he had any other goods to declare, to which CWK replied in the negative. After the customs officers tallied the goods, they asked him one more time if he had any other goods to declare. Again, CWK replied in the negative. Thereafter, the customs officers searched CWK's

possessions and found two lots of undeclared jewellery in a zipped compartment of CWK's sling bag.

4 When questioned by the customs officers, CWK admitted that he knew he was carrying the jewellery and he had no intention of declaring it. He was also aware that GST leviable on the jewellery was unpaid. The Statement of Facts also stated that the jewellery in CWK's possession should have been declared to the customs officers for payment of the GST leviable. It further revealed that CWK was arrested for failing to declare dutiable goods at about 11.00pm that night.

5 Investigations revealed that CWK had been in the employment of Jade Peace Ltd in Hong Kong for over three years and would deliver jewellery from Hong Kong to Singapore every two months. The jewellery was valued at $4,908.10 and the GST leviable on the jewellery was $245.40.

The charge

6 On 8 June 2004, CWK pleaded guilty to the following charge:

> You, Chu Wai Kiu (M/37 yrs) Hong Kong SAR Passport No: H 01828627 are charged that you, on or about the 6th day of June 2004, at about 7.15 pm did fail to make the declaration as required by Section 37 of the Customs Act, Cap 70 on importation of taxable goods from Hong Kong, to Singapore by Flight CX 735 at Singapore Customs Duty Office, Terminal 1, Singapore Changi International Airport, Singapore, to wit, 2 lots of assorted jewelleries, valued at **$4,908.10** on which the Goods & Services Tax of **$245.40** was not paid, and you have thereby, by virtue of sections 26 and 77 of the Goods and Services Tax (Cap 117A), paragraph 3 of the Goods and Services Tax (Application of Legislation Relating to Customs and Excise Duties) Order (Cap 117A, Order 4) and paragraph 2 of the Goods and Services (Application of Customs Act) (Provisions on Trials, Proceedings, Offences and Penalties) Order (Cap 117A, Order 5), committed an offence under Section 128(1)(f) of the Customs Act punishable under Section 128(1)(f) of the same Act.

The statutory provisions

7 At this juncture, it would be helpful to set out the salient provisions of the legislation referred to above. GST on imports is charged and collected using the provisions of the Customs Act (Cap 70, 2004 Rev Ed). The Goods and Services Tax Act (Cap 117A, 2001 Rev Ed) ("the GST Act") brings in the Customs Act by virtue of ss 26 and 77 of the GST Act, para 3 of the Goods and Services Tax (Application of Legislation Relating to Customs and Excise Duties) Order (Cap 117A, O 4, 2001 Rev Ed) ("GST Order 4") and para 2 of the Goods and Services Tax (Application of Customs Act) (Provision on Trials, Proceedings, Offences and Penalties) Order (Cap 117A, O 5, 2001 Rev Ed) ("GST Order 5").

8 These provisions are as follows:

(a) GST Act:

> **Application of Customs Legislation**
>
> 26.—(1) Except where the contrary intention appears, any written law relating to customs or excise duties on imported goods shall, with such exceptions, modifications and adaptations as the Minister may by order prescribe, apply (so far as relevant) in relation to any tax chargeable on the importation of goods as it applies in relation to any customs or excise duties.
>
> (2) Without prejudice to the generality of subsection (1), the Director-General of

Customs may, by virtue of that subsection, exercise any power conferred on him by any written law relating to customs or excise duties (including the power to issue permits and impose conditions on the import, export, transhipment and removal of goods) as if the reference to customs duty or excise duty in that written law included a reference to tax chargeable on the importation of goods.

(3) In this section, "any written law relating to customs or excise duties" means —

(a) the provisions of the Customs Act (Cap. 70);

(b) the provisions of the Postal Services Act (Cap. 237A) relating to customs or excise duties on postal articles; and

(c) any other provision of any written law relating generally to customs or excise duties on imported goods.

Proceedings for offences and penalties under Customs Act

77. Parts XIV and XV of the Customs Act (Cap. 70) (Provisions as to Trials and Proceedings; and Offences and Penalties) and such other related provisions of that Act as the Minister may by order specify shall apply, with such exceptions, adaptations and modifications as may be prescribed in that order, in relation to offences under this Act (which include any act or omission in respect of which a penalty is imposed) and penalties imposed under this Act as they apply in relation to offences and penalties under the Customs Act as defined in that Act; and accordingly in those provisions as it applies by virtue of this section the reference to customs duty or excise duty shall be construed as a reference to the tax.

(b) GST Order 4:

Application of Customs Act

3. The following provisions of the Customs Act (Cap. 70) shall, with such modifications and adaptations as are specified in paragraphs 4, 5, 6 and 7, apply to tax chargeable on the importation of goods as they apply in relation to customs or excise duties:

(a) Part I (except section 2 (a));

(b) Part II (all sections);

(c) Part III (only sections 11, 12, 16, 19, 20, 21, 27 and 28);

(d) Part IV (all sections);

(e) Part V (except sections 43 and 46);

(f) Part VI (except section 49);

(g) Part VII (only section 69);

(h) Part X ;

(i) Part XII (except section 100);

(j) Part XIII (all sections);

(k) Part XIV (all sections); and

(l) Part XV (except sections 131, 133, 134, 135, 136 and 136A).

(c) GST Order 5:

Application of Customs Act

2. Parts XIV and XV (with the exception of sections 131, 133, 134, 135, 136 and 136A) of the Customs Act (Cap. 70) shall apply to trials, proceedings, offences and penalties in relation to offences under the Act as they apply in relation to offences and penalties under the Customs Act as defined in that Act.

9 Under s 26 of the GST Act, the provisions of the Customs Act apply to any tax chargeable on the importation of goods as they apply in relation to any customs and excise duties, subject to any exceptions, modifications and adaptations as the Minister may prescribe. In relation to the germane provisions in the present appeal, sub-paras 3(d), (k) and (l) of GST Order 4 respectively provide that all of Parts IV and XIV as well as certain sections of Part XV of the Customs Act shall apply to GST on imported goods as they apply to customs or excise duties. As such, s 37 (the requirement to make a declaration on imported dutiable goods), s 123 (disposal of goods seized) and s 128 (penalties on making incorrect declarations and on falsifying documents) of the Customs Act are duly applicable to the GST regime.

10 The relevant sections of the Customs Act state:

Declaration

37. Every importer or exporter of dutiable goods and every person transhipping goods of a class dutiable on import shall, before removing any such goods or any part thereof from customs control or from any of the following places (whether or not the goods are under customs control):

(a) the vessel on which the goods arrived;

(b) the customs airport at which the goods arrived;

(c) the customs station along the railway at which the goods arrived;

(d) any customs station at Woodlands or Tuas if the goods were brought into Singapore by road; or

(e) the free trade zone in which the goods were deposited or landed,

make personally or by his agent to the proper officer of customs a declaration, in accordance with section 96, of the particulars of the goods imported or exported or to be transhipped.

Court to order disposal of goods seized

123.—(1) …

(2) An order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the goods were the subject-matter of, or were used in the commission of, the offence, notwithstanding that no person may have been convicted of the offence.

Penalty on making incorrect declarations and on falsifying documents

128.—(1) Any person who —

…

(f) being required by this Act to make a declaration of dutiable goods imported, exported or transhipped, fails to make the declaration as required; or

…

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or the equivalent of the exact amount of customs duty, excise duty or tax payable, whichever is the greater, or to imprisonment for a term not exceeding 12 months or to both.

11 In practice, GST on imports in Singapore is collected and administered by the Customs and Excise Department of the Immigration and Checkpoints Authority. This is not unique to Singapore. The learned annotators of the *Butterworths' Annotated Statutes of Singapore* vol 9(2) (Butterworths Asia, 2000) explain at p 21 that:

> For effective collection of the tax at the point of importation, VAT (or GST) regimes the world over collect the tax on importation of goods through their customs and excise authorities. This also makes sense because of administrative convenience and synergy that can be gained by harnessing the Customs' experience in administering duties and excise on imported goods.

The Director-General of Customs and Excise is also appointed as a Deputy Comptroller of GST.

The proceedings before the judge

12 After CWK pleaded guilty to the offence under s 128(1)(f) of the Customs Act read in conjunction with the GST Act and the subsidiary legislation thereunder ("the offence"), the judge convicted him and imposed a fine of $3,000, with one month's imprisonment in default ([2004] SGDC 265). CWK has since paid the fine and he has not appealed against the sentence meted out by the judge.

13 The next day, on 9 June 2004, the judge heard the Prosecution's application for the jewellery to be forfeited under s 123(2) of the Customs Act. At this hearing, the Prosecution called its first witness, the investigating officer for the case, Superintendent of Customs Teo Khai Ming ("PW1"), to the stand. PW1 testified that Senior Customs Officer Liew Chia Min ("PW2") had seized the jewellery from CWK. PW2 then handed the jewellery to PW1 for the purposes of conducting investigations with a view to seeking forfeiture of the jewellery once CWK was convicted in court.

14 CWK's counsel, who was only engaged from 9 June 2004 onwards, contested the application for forfeiture of the jewellery. As counsel requested for an adjournment of the hearing, the judge heard the forfeiture application again on 19 August 2004. At this hearing, PW2 testified that while he

was on duty on 6 June 2004, he seized two lots of undeclared jewellery each from two Hong Kong nationals, one of whom was CWK. PW2 informed both CWK and the other Hong Kong national that he was seizing the four lots of jewellery. PW2 then handed the four lots of jewellery to PW1 and prepared a record of the seized jewellery. The Prosecution's purpose in calling these two witnesses to the stand was to adduce the fact that the jewellery had been seized, because the fact of seizure was not recorded in the Statement of Facts.

15 CWK did not call any witnesses nor give any evidence during the course of the proceedings. During cross-examination of the Prosecution's witnesses, counsel for CWK did not challenge the fact that the jewellery was seized. However, he contended that GST on the jewellery had already been paid for previously. Apparently, the jewellery had been previously imported and delivered to Singapore, but various defective pieces were sent back to Hong Kong for repair and CWK was bringing back those pieces to be returned to their owners. In this respect, counsel did not provide any evidence to substantiate his assertions.

16 He proceeded to argue that the judge should not have ordered forfeiture of the jewellery on three grounds. First, he averred that CWK did not intend to commit fraud or to evade liability for GST on the jewellery. Second, there were little or no public policy considerations in this case warranting the forfeiture of the jewellery as it was not a dutiable good. The failure to declare the jewellery did not result in a loss of revenue to the government. Third, it was argued that in ordering forfeiture of the jewellery, CWK would effectively be punished twice over for his singular offence of failing to declare the jewellery.

The decision below

17 Based on the unchallenged evidence before him, the judge accepted the Prosecution's contention that the jewellery had been properly seized. The judge noted that the jewellery was a dutiable good by virtue of s 8(4) of the GST Act, and found that CWK had unreservedly pleaded guilty to the offence of failing to declare dutiable goods under s 128(1)(f) of the Customs Act, read with ss 26 and 77 of the GST Act.

18 The judge observed that under s 115 of the Customs Act, read with ss 26 and 77 of the GST Act, the burden of proof as to whether GST had been paid and whether the jewellery was exempt from GST lay on CWK. In this regard, the judge found that CWK had failed to adduce any admissible evidence to discharge this burden of proof. In the absence of any admissible evidence from CWK, the judge rejected counsel's arguments that the seized jewellery was not liable for GST and that CWK did not have the intention to commit the offence.

19 Regarding the court's power to forfeit under the Customs Act, the judge opined that under s 123(2) of the Customs Act, forfeiture was mandatory once the two elements of the provision were proved. In the premises, the judge found that both elements were satisfied. First, an offence under s 128(1)(f) of the Customs Act read in conjunction with the GST Act had been committed. Second, the jewellery was directly related and substantially connected to the commission of that offence, as it was concealed from the customs officers and not declared as required. The jewellery also formed the subject matter of the offence. Accordingly, it followed that forfeiture must be ordered.

The appeal against the order of forfeiture

20 Under s 123(2) of the Customs Act, the forfeiture of goods is mandatory once the following two conditions are met: first, that an offence under the Customs Act or any subsidiary legislation made thereunder has been committed; and second, that the goods are the subject matter of, or are

used in the commission of the offence. This has been affirmed time and again in a line of cases: *PP v M/s Serve You Motor Services* [1996] 1 SLR 669; *Magnum Finance Bhd v PP* [1996] 2 SLR 523; *Public Finance Bhd v PP* [1997] 3 SLR 354; *Moey Keng Kong v PP* [2001] 4 SLR 211.

21 As such, CWK did not dispute that the nature of the forfeiture regime under s 123(2) was mandatory. Instead, his grounds of appeal centred on attacking the judge's findings that the two requirements for forfeiture under s 123(2) were met. In essence, his contentions can be stated thus:

(a) The judge erred in finding that the offence was made out. In this respect, he queried:

(i) Whether the jewellery did not have to be declared because it was a non-dutiable good;

(ii) Whether the jewellery did not have to be declared even if it was a dutiable good, as the GST liability on the jewellery could have been suspended at the time of importation;

(iii) Whether the jewellery did not have to be declared even if it was a dutiable good because he had made a full declaration of the jewellery in the course of interrogation by the customs officers.

(b) The judge erred in holding that the jewellery was the subject matter of, or was used in the commission of, the offence.

22 I shall now deal with each ground of appeal in turn.

Whether the offence was made out

23 The primary contention under this ground of appeal was that CWK did not have to declare the jewellery. The main argument supporting this contention was that the jewellery was apparently a non-dutiable good, for which no declaration was required. Counsel argued that s 37 of the Customs Act only required the declaration of imported dutiable goods. Similarly, the offence under s 128(1)(f) of the Customs Act only arose in respect of non-declaration of dutiable goods. Thus, since there was ostensibly no need to make a declaration of the jewellery, the offence for non-declaration was not proved.

24 Before I proceed to evaluate the substantive arguments raised under the first ground of appeal, it would be appropriate to deal with a procedural point. What caused me concern was that counsel had argued that the offence was not made out, with scant regard for the fact that CWK had pleaded guilty to the offence. Since one of the requirements for forfeiture under s 123(2) of the Customs Act is that an offence under the Customs Act has been committed, it was obvious that counsel would set out to demolish any finding by the judge that an offence was committed. However, since CWK's plea of guilt plainly contradicted his contention that the offence was not made out, it would be necessary to consider how that plea might impinge on my assessment of the case.

25 As evinced from the established facts, CWK had made a plea of guilt which was valid, unequivocal and entirely voluntary. In the court below, the charge was read and explained to CWK in Cantonese and he had pleaded guilty. Section 180(b) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC") provides that before a plea of guilt is recorded, the court must ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him.

26 In this regard, it was clear from the notes of evidence that CWK understood the nature and consequences of the plea. In *Balasubramanian Palaniappa Vaiyapuri v PP* [2002] 1 SLR 314, I had noted that the "nature" of the plea meant that the accused must know exactly what he was being charged with. Since CWK comprehended, in particular, the nature of the plea, he would have known exactly what he was being charged with. Indeed, CWK admitted to all the averments contained in the charge and to the ingredients of the offence contained in the Statement of Facts. Notably, he had admitted in the Statement of Facts to being arrested on account of his failure to declare *dutiable* goods. It was never his position in the court below or on appeal that the Statement of Facts did not contain every element of the offence charged. In court, counsel argued that CWK was unrepresented when he made the plea. To my mind, this had no bearing on the validity of the plea as it is clear that pleas of guilt by unrepresented persons are not more easily vitiated than by those represented: *Packir Malim v PP* [1997] 3 SLR 429.

27 Against this background, I did not think that CWK should now, in an appeal against an order of forfeiture, be allowed to tergiversate and go behind his plea of guilt to argue that the offence was not made out. It was evident that the judge had found the commission of the offence to be intertwined with the plea of guilt. In the judge's Grounds of Decision at [11], he had stated that:

> It is not in dispute that the accused had, on 8 June 2004, pleaded guilty unreservedly to the offence of failing to declare dutiable goods under [s 128(1)(f)] of the Customs Act read with [ss] 26 and 77 of the GST Act. The accused Chu had also admitted without qualification to the Statement of Facts in which he agreed that GST was payable for the jewellery and he was aware that the GST tax had not been paid. He had also admitted he had no intention of declaring the items to the Customs officer. He was convicted of the charge accordingly. That conviction has not been set aside.

28 Since the plea of guilt was the foundation upon which the judge found that an offence had been committed, which in turn led to the order of forfeiture, the appeal against the forfeiture order would have to be heard on the same basis. It would be wholly incongruous for me to proceed to determine whether the elements of the offence had been established whilst ignoring the fact that CWK had pleaded guilty to the offence.

29 I noted that CWK only purported to challenge the judge's finding that the offence was committed. He did not raise any argument about the correctness of his conviction since forfeiture of goods under s 123(2) of the Customs Act can be ordered independent of a conviction. However, in arguing that the offence was not committed, CWK was in effect launching a collateral attack against the correctness of his conviction. It stands to reason that if CWK were to succeed in arguing that no offence was made out for the purposes of setting aside the forfeiture order, a corollary of that outcome would be the quashing of CWK's conviction.

30 In my view, the appropriate course of action in these circumstances would have been for CWK to petition for a criminal revision of his conviction and sentence. In *Ng Kim Han v PP* [2001] 2 SLR 293, eight persons were arrested while playing a game of "*pai kow*" in a factory. Seven of them were jointly charged with gaming in a common gaming house whereupon they pleaded guilty and were sentenced. The eighth person was separately convicted for permitting the premises to be used as a common gaming house. I allowed his appeal against conviction (see *Chua Seong Soi v PP* [2000] 4 SLR 313) on the ground that the factory did not constitute a gaming house under the Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

31 Following that decision, the seven persons in *Ng Kim Han v PP* petitioned for a criminal revision of their conviction and sentence. I allowed their petition as I found that they had been

convicted despite the fact that an essential constituent of the offence had not been satisfied. In response to the Prosecution's emphasis on their guilty pleas, I observed at [16] that:

> It also has to be borne in mind that the determination of whether certain premises do or do not amount to a common gaming house can involve a fair amount of legal analysis. As such, an admission by an accused to the premises being a common gaming house may not necessarily be conclusive. *The fact that an accused has admitted to the premises being a common gaming house does not absolve the court of its duty to ascertain whether the premises do actually fall within the legal definition of a common gaming house or not.* [emphasis added]

32 The same approach applies to the facts of this case. If CWK had petitioned for a criminal revision of his conviction and sentence, the fact that CWK had admitted to failing to make the requisite declaration on the importation of dutiable goods, would not absolve the court of the duty to ascertain whether CWK was legally obliged to declare the jewellery. Under such circumstances, if the court then allowed the petition upon finding serious injustice arising from the judge's decision that the offence had been made out, the issue of forfeiture would be moot. After all, there would no longer be any basis to forfeit the jewellery since the requirements under s 123(2) of the Customs Act would not be fulfilled. Accordingly, I was of the opinion that the present appeal was brought on the wrong footing. I hasten to add that this should not be taken to be an imprimatur for taking out criminal revisions at the drop of a hat on the purport of some error in law.

33 At the hearing before me, counsel made an oral application for me to invoke my revisionary powers. It is clear that in the exercise of its powers of criminal revision under s 266 of the CPC, the High Court has a discretion to determine whether to hear the petitioner since it is not obliged to do so: *Bright Impex v PP* [1998] 3 SLR 405. Furthermore, it is trite law that such powers of revision must be exercised sparingly: *Ma Teresa Bebango Bedico v PP* [2002] 1 SLR 192; *Hong Leong Finance Ltd v PP* [2004] 4 SLR 475.

34 In *Wang Wang Pawnshop Pte Ltd v K J Tiffany* [2004] 2 SLR 222, I affirmed my observation in *Magnum Finance Bhd v PP* ([20] *supra*) that the High Court would only exercise its revisionary powers if it was shown that there were fundamental errors of law which had occasioned a clear failure of justice. Needless to say, this is a high threshold to fulfil.

35 I also held in *Koh Thian Huat v PP* [2002] 3 SLR 28 at [16] that the High Court's revisionary powers existed to facilitate its supervisory and superintending jurisdiction over criminal proceedings before a subordinate court so as to correct a miscarriage of justice arising from the correctness, legality or propriety of any finding, sentence or order recorded or passed.

36 In the present case, counsel's contention that the judge had made an error of law in finding that the offence was made out was devoid of merit. I now turn to explain why there was no grave injustice which would call for the exercise of my revisionary powers.

Whether the jewellery did not have to be declared because it was a non-dutiable good

37 With regard to the charging of GST on the importation of goods into Singapore, the starting point is s 8(4) of the GST Act which states that:

> Tax on the importation of goods shall be charged, levied and payable as if it were customs duty or excise duty and as if all goods imported into Singapore are dutiable and liable to customs duty or excise duty.

38 Counsel devoted a large part of his skeletal arguments to attacking the judge's finding that the jewellery was a dutiable good under s 8(4) of the GST Act and thus had to be declared upon importation pursuant to s 37 of the Customs Act. Essentially, it was contended that the jewellery did not have to be declared as it was a non-dutiable good, which was only liable for GST, and that there should be a clear distinction between goods liable for GST and goods liable for customs or excise duty. This argument was premised on the definition of "dutiable goods" under s 3(1) of the Customs Act and under para 2 of the GST Order 4.

39 Section 3(1) of the Customs Act defines "dutiable goods" as:

> [a]ny goods subject to the payment of customs duty or excise duty on entry into customs territory or manufactured in Singapore (including any free trade zone) and on which customs duty or excise duty has not been paid and includes goods manufactured in a free trade zone from materials of a class dutiable on entry into customs territory for consumption within the customs territory.

40 In a similar vein, para 2 of the GST Order 4 states that:

> "dutiable goods" means goods which are subject to customs duties including import and excise duties imposed under section 10 of the Customs Act …

Paragraph 2 goes on to define "non-dutiable goods" as "goods which are not subject to such duties".

41 In response, the Prosecution submitted that counsel's arguments had no basis in law as the wording of s 8(4) of the GST Act made it undeniably clear that the jewellery was properly the subject of a declaration that had to be made under s 37 of the Customs Act. A failure to do so constituted an offence under s 128(1)(f) of the Customs Act and the joint application of s 8(4) of the GST Act and s 128(1)(f) of the Customs Act was not in doubt in the present case.

42 To my mind, counsel had misapprehended how the term "dutiable goods" in the context of the GST regime should be understood. This has to be looked at in light of the interplay between the customs regime and the GST regime in Singapore as alluded to earlier. While imported goods liable for GST are not strictly speaking "dutiable goods" in the exacting sense the term is adverted to under the customs regime, s 8(4) expressly imports the concept of "dutiable goods" into the GST regime in that all imported goods are treated *as if* they are dutiable goods for the purposes of imposing, administering and enforcing GST. As the learned editors of *Singapore Goods & Services Tax Guide* (CCH Asia Pte Limited, 1993, 27 September 2004 release) state at para 13-120:

> *Imported goods which are subject to GST are treated as though they are dutiable goods.* The present customs requirements for documentation relating to imported dutiable goods will generally apply to imports of goods subject to GST. [emphasis added]

43 This underscores the legislative intention percolating through this aspect of the GST regime, as enunciated by the learned authors of the *Goods and Services Tax – Law and Practice* (LexisNexis, 2002) at p 445 that:

> [T]he charging, collection and administration of GST on the importation of goods shall so far as is applicable follow the charging, collection and administration of customs duties.

44 Indeed, while s 8(4) of the GST Act serves as a charging provision for the importation of goods into Singapore, it appears that the section is also a statutory recognition of the possible

difficulties faced by the customs authorities in discharging their duties under the GST scheme. If counsel were correct in saying that goods subject to GST did not have to be declared simply because they were not, strictly speaking, dutiable goods, it seems that the effective collection of GST at the point of importation would be subverted.

45 Although s 8(4) of the GST Act does not transmogrify imported goods subject to GST into imported dutiable goods, it has to be applied in a manner that accords with the correlation between the GST system and the customs regime. In line with the legislative intent under the statutory regime, it is axiomatic that the obligation to declare imported dutiable goods under s 37 of the Customs Act applies, *mutatis mutandis*, to imported goods subject to GST *as if* the latter were dutiable goods that had to be declared. In my view, if the legislature has thought it fit to assimilate the customs regime with the GST scheme, the function of the court would be to give effect to it as far as is applicable.

46 I was thus inclined to agree with the Prosecution that the joint application of s 8(4) of the GST Act and ss 37 and 128(1)(f) of the Customs Act was not in doubt. The declaration of the jewellery should have been made *as if* it was a dutiable good. Since CWK had failed to do so, an offence under s 128(1)(f) of the Customs Act read with ss 26 and 77 of the GST Act and the subsidiary legislation thereunder was made out, for which he was rightly convicted.

47 Having dealt with the main thrust of CWK's arguments, I now go on to explain why I had no hesitation in dismissing his remaining contentions.

Whether the jewellery did not have to be declared as the GST liability on the jewellery could have been suspended at the time of importation

48 Under this ground of appeal, CWK's line of reasoning was that even if the jewellery was a dutiable good, GST liability on it would have been suspended if he had appointed a local agent who was either a major exporter or an approved third-party logistics company to import the jewellery into Singapore. If he had availed himself of this avenue, he could have then obtained GST relief under s 33 of the GST Act read with regs 45 and 45A of the Goods and Services Tax (General) Regulations (Cap 117A, Rg 1, 2001 Rev Ed) ("GST (General) Regulations"). In such circumstances, the question of declaring the jewellery would not even arise and no offence would be made out.

49 I gave short shrift to this disingenuous argument which was akin to using the tail to wag the dog. This argument was premised on CWK being able to obtain a suspension of GST if he had embarked on a particular course of action that was apparently open to him. However, what CWK could have done in retrospect was entirely beside the point. Assuming, *arguendo*, that CWK could indeed have obtained GST relief had he undertaken the requisite steps under s 33 of the GST Act read with regs 45 and 45A of the GST (General) Regulations, what mattered was whether he had actually done so, and the fact remained that he had not. Accordingly, the jewellery remained subject to GST for which CWK would have to make a declaration upon importation.

Whether the jewellery did not have to be declared because CWK had already made a full declaration of the jewellery in the course of interrogation by the customs officers

50 It was suggested that CWK had made a full declaration of the jewellery in the course of being interrogated by the customs officers and that in any event, he should have been given the opportunity to make payment of the GST. In support of the latter contention, counsel cited *PP v Anwar Khan Mohamed Khan* [2004] SGDC 45, where the accused person was referred by an immigrations officer to the Singapore customs for payment of GST after it was discovered that he had

not made the said payment. Counsel also relied on *PP v Chan Yu Iu* [2004] SGDC 1, where it was the agreed position during trial that the customs duty office could collect any shortfall payments of GST provided a full declaration of value was made.

51 This ground of appeal similarly could not be countenanced. First of all, CWK had admitted unequivocally that he had no intention of declaring the jewellery. Second, it was undisputed that when the customs officers asked CWK if he had anything more to declare, he had replied twice in the negative. It was only after the jewellery was discovered by the customs officers that CWK came out in the open about it. To say that CWK had made a full declaration at that stage would be putting the cart before the horse, since the "declaration" would be made only after the offence for non-declaration had been uncovered.

52 As for the contention that CWK should have been given the opportunity to make payment, it had no bearing on the fact that an offence had already been committed. Even if accused persons in other cases were given an opportunity to pay outstanding GST, matters such as this, as well as matters pertaining to the investigations into an offence or a decision to prosecute an offender, would fall within the province of the relevant authorities and not the court.

Whether the jewellery was the subject matter of, or was used in the commission of, the offence

53 Building on his earlier contention that no offence was made out, CWK refuted the judge's finding that the second requirement for forfeiture under s 123(2) of the Customs Act was fulfilled. It was argued that since no offence under the Customs Act was established, the jewellery could not be the subject matter of, nor could it be used in the commission of, the offence. In light of my finding that an offence under s 128(1)(f) of the Customs Act was made out, this line of reasoning would no longer apply. In any event, I was of the view that the judge was correct in finding that the jewellery was the subject matter of, or was used in the commission of, the offence.

54 Logic and common sense dictate that the jewellery was the subject matter of the offence as it goes without saying that the offence for non-declaration of the jewellery could not conceivably have been committed without the jewellery to start with. I also found that the jewellery was used in the commission of the offence as it was "directly related and substantially connected" to the offence: *PP v Mayban Finance (Singapore) Ltd* [1998] 1 SLR 462; *Moey Keng Kong v PP* ([20] *supra*).

55 Since the statutory requirements for forfeiture under s 123(2) of the Customs Act were fulfilled, forfeiture of the jewellery would be mandatory. In the circumstances, the judge rightly ordered the jewellery to be forfeited.

Conclusion

56 For the reasons above, CWK's appeal was dismissed.

Appeal dismissed.