

IN THE SENIOR MAGISTRATE'S COURT OF
THE REPUBLIC OF VANUATU

CRIMINAL CASE NO. 112 OF 1996

PUBLIC PROSECUTOR -V- TRACY RUKE

Coram : Jerry Boe
Prosecutor : Hilary Toa
Defendant : Represented by John Malcolm

Sometime at the beginning of this year, 1996, in Vila, whilst employed by South Pacific Stores Limited, Better Price as agent, Miss Ruke, the Defendant, was assigned for six (6) weeks from her normal categorised job to carry out certain related matters dealing with costings. Thereafter, on 28 February 1996 she was caught by Tariff and Customs Officers entering the wrong tariff Code number for imported corned beef to be 16021000 when it should have been 16025000. She was charged for making false or incorrect declaration under Section 32 Cap 3. It reads as follow; ***"Any person who makes a false or incorrect declaration in respect of the origin, quantity, tariff Code number or value of goods shall be guilty of an offence and shall be liable on conviction to pay a fine equivalent to twice the value of such goods"***.

Defendant pleaded guilty to the charge.

In light of the facts presented by the Prosecution the Court wish to make the following observations;

- (1) Was it a deliberate act on the part of the Defendant or was it an act that could have been avoided but at that time was beyond her reasoning and capacity to do so;
- (2) If it was a deliberate act on the part of the Defendant, then what are her motives for committing such an act ?,and;
- (3) If it was a mistake, did the Defendant from the beginning know it was a mistake?

I discuss the first point with reference to Section 32, Cap 3. "**False**" or "**incorrect**" declaration used in the Section, in my view, is an act of pre-empt of an intention or an act of making deliberate false or incorrect declaration. In this case, the prosecution must proof beyond reasonable doubt that the said Defendant had intended to falsely declare the tariff code and that she did so because she had certain motives behind it. In this case, I find no indication from the facts presented that she intended or was under pressure at that time to enter the wrong tariff code. If she did, that in my view, is "**false**" or "**incorrect**" declaration under section 32, as suppose to a simple careless honest mistake. A simple careless mistake made by a person who has just only been working for a short time can only be justified on grounds that she is new in the process and may not be familiar with some of the terms used. I found the Defendant so. That all along from the beginning she filled in the declaration forms to the time someone pointed out her mistake, she has been led to believe in herself that what she did was right.

That she made an honest mistake, in my view, is human error like any other ordinary employee at "Better Price" Store. I mean what motives would have prompted her to make such a false or incorrect declaration ? I find no facts presented that would have indicated her motives and that would have led her to commit the act. The court learnt that she is just an ordinary employee at Better Price, like everyone else, earning roughly 100,000 Vatu a month. She is not the owner or shareholder in the Company, nor is she having direct access to the profits. Moreover, it would have been irrational on her part, the fact that she is on work permit and such an act would have antagonised her work in future.

That Better Price Store is one of the huge chain Stores operating Supermarkets is self-explanatory. Since its establishment it has always kept

up its good reputation with the government, its customers and the customs Department, or at least this is what should have been done. For many years, both Better Price and the Customs Department have enjoyed that working relationship where one or the other knows exactly what to do when declaring goods such as, in this case, imported corned beef. This is, however, not the first time corned beef is imported into Vanuatu. It has long before independence and after the Customs Act came into force after 1980 that corned beef has continuously flooded Better Price shelves. For this reason, it is hard to believe that Miss Ruke, would have deliberately wanted to make a false or incorrect declaration within the term of section 32 Cap. 3, because she would have known better that she sooner or later found out. Another fact is that corned beef has always been declared by the same tariff and Customs Department, under the same law which prescribed the same procedures to be used in making declarations. Therefore, it would be difficult to say that the Defendant or Better Price, having known of the procedures prescribed by law, would want to cheat the Customs Department, the fact that everything has to be checked thoroughly by the Customs Department.

Having looked at the circumstances surrounding the facts of the case, I ask myself why the Defendant or Better Price, for some unknown reason or another would want to make such a false declaration ? I find no facts in the report presented by Prosecution that would have indicated otherwise. For these reasons, unless the prosecution provide this court with facts which can proof beyond reasonable doubt that it was not a mistake but a deliberate act on the part of the defendant or Better Price, for that matter, and in this case, there are none, this court will not accept that the Defendant has committed the offence within the context of section 32 of Cap. 3.

I therefore, make the following observations;

- (1) That "**false**" or "**incorrect**" declaration under section 32, Cap.3, in my view, is an act of pre-empt and accountability;
- (2) That the circumstances surrounding the facts of the case do not proof to this court that the Defendant has deliberately made false or incorrect declaration by entering the wrong tariff code than a simple honest mistake.
- (3) That the court find no motives whatsoever for committing the act;

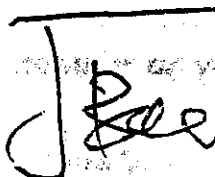
- (4) That the Defendant made an honest mistake, she did, which could have been avoided if only she knew.

Having considered the above points and reasons, I make the following orders.

COURT ORDER :

- (i) That the Defendant is discharged under section 43(1) of the Criminal Procedure Code;
- (ii) That Better Price Store, must within two (2) weeks, settle the outstanding account balance of Customs Duty and Service tax owed to the government the sum of 199, 043 vatu;
- (iii) That the goods be released to Better Price after payment of the outstanding balance.

Dated at Port Vila this 3rd day of MAY 1996.


JERRY BOE
Magistrate

