IN THE SUPREME COURT OF ZAMBIA **APPEAL NO 69 OF 2005**
HOLDEN AT LUSAKA **SCZ No. 26 of 2006**
(CIVIL JURISDICTION)

BETWEEN:

ZAMBIA REVENUE AUTHORITY - Appellant

And

AGRO-FUEL INVESTMANTS LTD - Respondent

Coram: Chirwa, Chitengi and Silomba JJS on 27th March and 24th April 2008.

For the Appellant: Mr G Locha, Legal Officer, ZRA
For the Respondent: Ms F C Kasonde, Mulenga Mundashi & Co.

JUDGMENT

Chirwa, JS delivered the judgment of the Court:-

This is an appeal by the appellant, **ZAMBIA REVENUE AUTHORITY,** against the decision of the High Court which ruled that the goods bought by the respondent, **AGRO FUEL INVESTMENTS LTD,** did not attract Excise duty.

The history of the matter is that American Peace Corps is an organisation that operates in Zambia and when it brings in goods for its operations such as motor vehicles, it does not pay any Excise duty and Surtax. In 2001, American Peace Corps imported into the country a number of vehicles for their use and among them was the Toyota Land Cruiser in issue. No Excise Duty and Surtax were paid. Ordinarily duty

would be paid as provided for under Section 191(a) of the Customs and Excise Act. This vehicle was sold in 2004 by the American Peace Corps to the respondent.

Prior to the sale of the motor vehicle, the Customs and Excise Act was in 2003 amended to provide for the payment of Excise Duty on motor vehicles, which was not payable in 2001. On the motor vehicle being sold to the respondent, the appellant demanded Excise duty in addition to other taxes such as VAT notwithstanding that Excise Duty was not payable on motor vehicles at the time the motor vehicle was imported into Zambia. The appellants demanded Excise Duty under Section 191 (a) of the Customs and Excise Act saying that duty was due as when it was sold to the appellant for their use or consumption, there was now law in place which empowered them to charge consumers of the goods liable for Customs Duty as there was in place law passed in 2002. The Respondents on the other hand are of the view that Excise Duty was not payable and it cannot be paid now because of change of users or owner and because there is law now in place charging Excise Duty.

Because of this dispute, the Respondent took out Originating Summons asking the Court to determine one question of law, namely:-

> **"whether the Respondent can charge excise duty on a motor vehicle that was imported prior to introduction of Excise Duty on the basis of the Customs and Excise Act, Section 191 (a) as read with Regulation 88 (2) of the Customs and Excise (General) Regulations".**

After considering the affidavit evidence and submissions by Counsel, the learned trial judge held that the respondent (appellant)

could not charge the applicant (respondent) excise duty on a motor vehicle imported prior to the introduction of Excise Duty. It is against this judgment that the appellants have now appealed.

There is only one ground of appeal and this is that the learned trial judge misdirected himself in law and fact when he held that the appellant cannot charge Excise Duty on a motor vehicle imported prior to the introduction of Excise Duty when the respondent bought the said motor vehicle way after Excise Duty had been introduced on motor vehicles.

Both Counsel filed detailed written heads of argument and authorities on which they relied at the hearing of the appeal.

The gist of the appellants' argument is that under Section 191(a) of the Customs and Excise Act, Cap 322 tax is payable on all goods imported into Zambia and that the tax rates to be used are those applicable at the time of importation or at the time goods are released or entered for consumption or use. It was argued that as the motor vehicle when imported by the American Peace Corps came into the country duty free, once it was sold to the respondents, it was then released for consumption and duty then became due and payable under Section 191(a) of the Customs and Excise Act, the tax rate would be either that applicable at the time of importation or at the time released for consumption. It was finally argued that for the purposes of custom and excise duty, the purchase of the motor vehicle by the respondent made the vehicle entry into the Country for consumption and that since no tax was payable at the time of importation, the tax rate applicable is that

applicable when the respondent bought the vehicle from the American Peace Corps.

In response to the argument of the appellant, on behalf of the respondent it was argued and accepted that tax was payable under Section 191(a) of the Customs and Excise Act but this Section has to be read together with Section 72 of the Act which reads that "**Subject to the provision of Section seventy-nine, there shall be charged, levied collected and paid in respect of goods imported into Zambia Customs duties at the rates specified in the Customs tariff set out in the first schedule, in this Act referred to as the Customs tariff"** and that since no Customs Excise duty was payable on importation of motor vehicles at the time of importation of the vehicle in question, there was no excise duty due on it then and duty imposed by an Act of Parliament in 2004 cannot be of retrospective effect unless it states so. But it does not and therefore, there is no duty due on it. It was also argued that the use of the phrase "**entered for consumption"** used in Section 191(a) should be given its natural meaning. In this case, the vehicle was entered for consumption by the American Peace Corps in 2001 and they consumed it then and as no duty was payable then, it cannot be payable now because of the amendment to the law after the consumption. On giving words of the Act of Parliament their natural meaning so as to give the intention of Parliament, we were referred to the case of **ATTORNEY-GENERAL AND MOVEMENT FOR MULTI-PARTY DEMOCRACY V LEWANIKA [1993-94] Z.R. 144.** We were further referred to the English case of **CAPE BRANDY SYNDICATE V INLAND REVENUE COMMISSIONERS [1921] 1K.B. 64, 71** on considering a tax statute that:

"One has to look merely at what is said. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

It was finally submitted that if there is any doubt in a penal statue such as a taxing Act, such doubt should be exercised in favour of the tax payer.

We have carefully considered the undisputed facts of the case and the dispute that arose there-from. We have also considered the judgment of the learned trial judge and the submissions by Counsel before us.

In considering the matter before us, we will start from looking at the provisions of the Customs and Excise Act, Cap. 322, Section 191(a) under which authority the appellants charge duty on imported goods which reads as follows:

"191. Subject to the provision of this Act –

(a) **goods imported into Zambia shall be liable to the rates of customs duty and surtax, other than surtax on cigarettes, which is applicable to those goods at the time when they are imported or at the time when they were entered for consumption, whichever shall be the later, so, however, that is no case, except in the case of gods properly taken out of bond, shall the duty be less than that payable at the time of importation".**

We have to look, from the Act, the meaning of the words which seem relevant and which impose duty or tax on goods. The word **"Import" means to bring goods or cause goods to be brought into Zambia and cognate expressions shall be construed accordingly**". The word "**enter**" is not defined but the word "**Entry**" is defined in relation to clearance of goods for importation, warehousing, removal from warehouse or exportation to mean "**the presentation, in accordance with the provisions of this Act, of a correctly completed declaration in writing in the form prescribed, together with such bills of lading, invoices, certificates and documents as are by or under any provision of this Act, required to be furnished with that declaration, and cognate expression shall be construed accordingly**". "Duty" means any duty leviable under any law relating to Customs and Excise and includes surtax. All these definitions are in Section 2 of the Act. Consumption is not defined in the Act as has been conceded by both parties. Consumption, therefore, must be given its ordinary meaning.

In the present case, the duty in issue is the excise duty. It is common to both parties that there was no excise duty on motor vehicles in 2001 when the vehicle in question was imported into Zambia, therefore, nothing was payable under this tax. From the definition of "**Import**" there is no doubt that this vehicle was imported in 2001 when there was no excise duty payable on motor vehicles.

The appellant's contention is that although the vehicle was imported In 2001 and no excise duty was payable, the vehicle was never "**entered for consumption**" until in 2004 when it was sold to the

respondents. There is no definition under the Act of **"entered for consumption**" and we have to give an ordinary meaning to the word "**Consumption**". "**The Collins Concise English Dictionary defines "Consume" as (a) To eat or drink (b) to use up; expend (c) to destroy or be destroyed by fire, (d) to waste or to waste away**". In the present case, we are of the view that "entered for consumption" would mean "entered for use". The vehicle was imported into the country for use by the American Peace Corps and immediately they completed the necessary declaration and the vehicle was allowed into the country and they started using it, they had "**consumed** "it. It is our holding that the phrase "**entered for consumption**" in Section 191(a) of the Customs and Excise Act is meant for situations where the goods are imported into the country and kept in Bond and not used and no duty is paid. When the goods are released from Bond to be used, they are entered for consumption and duty is payable. The facts of the present case present a different scenario. At the time the vehicle was imported into the country by American Peace Corps, although they were exempted from paying duty, there was no excise duty payable in any event even if the vehicle was imported by anyone else. The American Peace Corps not only did they import the vehicle but they "**consumed**" or "**used it**". It was not in Bond awaiting to be "entered" into the country for consumption. Giving

ordinary meaning to the phrase "**entered for consumption**" in light of what we have discussed above, we agree with Counsel for the respondents that excise duty in the present case is not payable as the vehicle was imported into the country when no excise duty was payable by anybody and the introduction of excise duty later cannot change the situation that the vehicle was entered for consumption when it was sold to the respondents. The Act was not made retrospective and Courts would be the last institutions to imply a penalty when the Act does not say so. On the facts of the case, we uphold the learned trial Judge and confirm that excise duty was not payable on the vehicle bought by the respondents from the American Peace Corps. The appeal is dismissed with costs. Costs to be agreed, in default to be taxed.

D K Chirwa
JUDGE OF THE SUPREME COURT

P Chitengi
JUDGE OF THE SUPREME COURT

S S Silomba
JUDGE OF THE SUPREME COURT

For Your Signature Please

Chirwa, JS:……

Chitengi:……..

Silomba:……