



OUR REF:

RECEIVED
16 MAR 2004

CONFIRMATION
OF FAX

BY:

11 March 2004

The Committee Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Attention: Dr N Horne

Dear Secretary,

**Inquiry Into Averment Provisions in Customs Legislation -
Further Submission on Behalf of Peter Tomson**

We refer to the recent telephone conversation between the writer and Dr Horne in relation to the reference in the Tomson trial transcript dated 20 April 1994 (page 6) to a document handed to Mr Parnell (Counsel for Mr Tomson).

We attach hereto the document we believe is the one referred to. It is the summary of the prosecutor's submissions in relation to the charges laid in respect of the Cameron Trading Co shipment.

To put the matter in perspective, please note that on page 3 of the transcript for 19 April 1994, reference is made to the fact that counsel addressed the Court. The addresses are not recorded. My recollection however is that Mr Parnell's address covered two matters, the first being the admissibility of certain averments in the form presented and the second being a submission that the charges in relation to the Cameron Trading Co shipment should be dismissed on the ground that the prosecution had not shown that there was a case to answer.

The address by Mr Lakatos (Counsel for the ACS) responded to Mr Parnell's submissions. My recollection is that Mr Lakatos, in making his address, referred as he proceeded to an *aide memoire* prepared for his use either by the ACS or his instructing AGS solicitor.

The hearing was adjourned following the addresses.

The magistrate opened the hearing the following morning by giving his ruling on the submissions relating to the averments (pages 1 to 4), and then turned to

SUITE 11A
LEVEL 1, ANDREWS HOUSE
185 MILITARY ROAD
NEUTRAL BAY NSW 2089
AUSTRALIA

PO BOX 305
NEUTRAL BAY NSW 2089

TELEPHONE (61 2) 8969 6422

FACSIMILE (61 2) 8969 6522

PRINCIPALS IAN RODDA
0414 690 469
IanRodd@roddacastle.com

ALAN GREENAWAY
0414 611 814
Greenaway@roddacastle.com

ASSOCIATE VICTORIA JAY
0419 626 362
VictoriaJay@roddacastle.com

www.roddacastle.com


the submissions relating to "no case to answer". He outlined the various categories of evidence referred to by the prosecutor, including the documentary evidence (pages 4 and 5) and the averments (page 5). He then gives his ruling (bottom of page 5 and top of page 6).

My recollection is that it was at that point that Mr Lakatos handed Mr Parnell the document referred to on page 6 of the transcript dated 6 April 1994. I believe that is the document attached to this note (the *aide memoire* referred to above). A glance through it reveals that the documents referred to in the magistrate's decision are the same documents referred to in the attachment. The document also refers to the fact that "The prosecution case relies on the averments contained in the informations ...".

I do not know who made the annotations on the document.

Please let me know if I can be of any further assistance.

Yours sincerely



(Ian Rodda)

SUBMISSIONS

DEFENDANT; KONGKEO KEOMALAVONG

PROSECUTION BY THE COMPTROLLER-GENERAL OF CUSTOMS

The prosecution seeks to amend averments numbered 16 and 17 in informations to by deletion of the amount of \$A22,240.10 in paragraph 16 and the insertion of \$A13,782.02 and deletion of \$A14,066.32 and insertion of \$A5608.24. in paragraph 17.

The prosecution case relies on the averments contained in the informations and the following documents:

- 1. The Statement of Facts.
- 2. Company Search of Lanwren Pty. Ltd. which indicates that Mr. Keomalavong was a company director of Lanwren Pty. Ltd. before his resignation inon 15 May 1989. L 2
- 3. Entry for Home Consumption No. IM.8090.0482N Doc L.5B
- 4. Entry for Home Consumption No. IM.8091.0596B Doc. L5C.
- 5. Cameron Trading Co. Invoice dated 25 March 1988 to Lanwren Pty. Ltd. for a total amount of \$HK104,070.00. L5D
- 6. Cameron Trading Packing List dated 22 March 1988 L.5F.
- 7. Produced Invoice from Cameron Trading Co. L5I.
- 8. Produced Packing List L5J.
- 9. Copy of House air waybill produced for this shipment. L5L
- 10. Query memorandum 45617 issued for entries IM.8091.0596B and IM.8090.0482N. L5 LSM
- 11, Notice of Seizure Doc. L5Q.
- 12. Copy of Export Declaration form 2A produced to Hong Kong Customs and Excise Department. Doc L5S.
- 13. Cargo Flow Transportation Ltd. house air waybill no. CF7753. L5T
- 14. Copy of Export Licence (Textiles) Form 4 produced to Hong Kong Trade Department. Doc. No. L5V.

15. Copy of Export Licence (Textiles) Form 4 produced to Hong Kong Trade Department.

Doc. No. L5X.

WITNESSES STATEMENTS

16. ~~GAVIN McDONALD~~ *MARK CRAHAM*

17. PATRICK TERENCE DAUNT *S 35*

18. NEIL JOHN STOCKBRIDGE *S 23*

19. JAMES DELMENICO *KING DELMENICO ON 26/10/92* *S 29*

20. GREG GRAUSAM. *S 7*

21. AFFIDAVIT OF MR. KEOMALAVONG *S 19*

HARRY STOCKBRIDGE *S 22*