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To: Transport Industry Operators

Strategic Commodities

When a forwarding agent arranges shipment for a laden container stuffed and sealed by the shipper, do you think if the forwarder is required by the Hong Kong law to open the container doors and check the goods inside? Judge Addison of Hong Kong High Court said yes in his Judgment dated 27/3/1987.

Under the Import & Export (Strategic Commodities) Regulations, no person should import or export strategic commodities into or from Hong Kong except under and in accordance with import and export licences granted by the Director of Trade. Strategic commodities were specified in the Schedule to the said regulations.

Officers of the Customs and Excise Department carried out an investigation into the forwarder regarding a shipment of 300 sets of IBM PCXT computer system imported into Hong Kong from Singapore and re-exported to the People's Republic of China. As a result, it was revealed that the shipment arrived Hong Kong on 21/10/1984 and was re-exported to China 26/10/1984. The forwarder received the goods in three sealed containers and then arranged the onward delivery of the same to China and also prepared and handled all the shipping documents. The said containers were described in all shipping documents including the bill of lading as containing 'one lot of power supply'. There was no import licence nor export licence applied for to cover the import and export of the computer systems.

As confirmed by the Postmaster General, the computer systems were classified as strategic goods under the Schedule to the Import and Export (Strategic Commodities) regulations. Therefore, the goods should be covered by relevant import and export licences granted by the Director of Trade. The value of the consignment in question was HK\$10,998,000.

There was no evidence to establish that the forwarder at the material time had knowledge that the said containers contained computers. The forwarder did no more than arrange for the laden containers to be off-loaded in Hong Kong and transshipped to the consignees. The goods remained throughout in the same containers. In its dealing with the goods the forwarder relied on their description as set out in the bill of lading which was prepared by the deceitful consignors in Singapore. That bill of lading was deliberately misleading.

It was argued that there would be a serious and unacceptable delay in shipping business if forwarding agents, to avoid the draconian effect of heavy fines, had to open up and check the contents of each container arriving in Hong Kong before forwarding the goods to the consignee.



The forwarder argued that it was totally blameless in this case. It had not deliberately imported or exported the prohibited commodities nor had it acted recklessly in the sense that it thought such goods might have been included in the containers but deliberately closed its eyes to that risk. It was duped.

According to the Judge, it seemed clear that the consignors practised deceit on the forwarder which accepted the integrity of the consignors with whom it had not done business before. No system of on-site inspection was carried out even if that could have been a practical measure in the circumstances. However, the legislation imposed strict liability and the purpose of the legislation would be totally defeated if the punishment for infringement of the regulation were watered down to that extent which effectively deprived it of its bite. This class of legislation could be found the world over and it behoved the shipping community to introduce its own measures to counteract or prevent or minimise the abuses. The courts were concerned with the just enforcement of the law.

It was contended that it was not feasible for forwarding agents to examine all the goods they dealt with and that if they were required to check all goods in transit the shipping industry would grind to a halt. However, the Judge thought that such was an argument against strict liability which could have no place in the enforcement of a regulation which imposed strict liability. It should be a risk of the industry which the industry itself must seek to cater for.

The penalty on summary conviction for breach of the regulation was a fine of \$500,000 and imprisonment for 2 years. For these offences, the forwarder was imposed a fine of HK\$100,000.

Although the Judgment was given in 1987, it should still be the authority in respect of the criminal offences charged against the shipping industry operators under the Hong Kong law concerning import and export of goods. It is clear that the shipping industry practice is not to open the doors of laden containers stuffed and sealed by shippers and not to check the goods inside the containers. The law and the shipping industry practice are clearly in conflict. Unless something is done to change the law, the shipping industry is breaking the law every day.

If you have any questions or would like to have a copy of the Judgment, please feel free to contact us.

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