



CUSTOMS PROSECUTIONS CRIMINAL IN NATURE

John Law, The Down Under Trade Group, Law Rexstraw Lawyers, John V. Law & Co Consultants provides comment for AFIF Members on this landmark issue.

Background

There has been a difference of opinion between various state courts as to whether offences under sections 33 and 234(1)(a) and (d) of the Customs Act must be proved (i) to the criminal standard (ie beyond reasonable doubt) or (ii) to the civil standard (ie on the balance of probabilities).

This has caused confusion, uncertainty and debate amongst lawyers and Customs administrators for some time.

The difference is very important to a defendant.

If the civil standard is used, the prosecutor must only establish that it is more likely than not that the alleged offence was committed.

If the criminal standard is used, the prosecutor must establish that the offence was committed beyond reasonable doubt, which may clearly be more difficult.

Decision of the High Court of Australia in Chief Executive Officer of Customs v Labrador Liquor Wholesale Pty Limited [2003] HCA 49 (5 September 2003)

The High Court has decided that in relation to sections 33 and 234(1)(a) and (d) of the Customs Act (1901), " in order to obtain a conviction of a defendant for any of the offences specified, the elements of the offence must be established beyond reasonable doubt".

The same principle was applied by the High Court in relation to sections 61 and 120(1)(iv) of the Excise Act (1901).

The importance of this decision of the High Court of Australia

For Customs to be successful in a prosecution under any of these sections it will be necessary for Customs to establish that the offences were committed beyond reasonable doubt. It will not be sufficient for Customs to suspect and suggest that an offence has been committed.

Persons should be aware of this principle of law if they are subjected to investigation by Customs.

Accusations that an offence was committed under the sections mentioned above are insufficient for persons to be found guilty.

Section 255 of the Customs Act allows Customs officers to aver facts (ie to make a statement about the facts that they relied on when they issued a prosecution). Even though an averment is prima facie evidence, Customs must still satisfy the court that someone is

guilty beyond a reasonable doubt before someone can be convicted under the sections mentioned above. The practice of averment is insufficient to prove that an offence was committed beyond reasonable doubt.

If you need advice or assistance regarding a particular issue or situation you have regarding anything raised above, please do not hesitate to contact me at your earliest convenience to discuss your situation? Our contact details appear below.

John Law

www.dutg.com.au

The Down Under Trade Group is:

Law Rexstraw Lawyers

John V. Law & Co Consultants

mediating LATERAL Solutions (Dispute Resolution without Litigation)

Brofor & Forbro Services (For Customs Brokers & Freight Forwarders)

Phone: 02 9873 1447 Fax:02 9873 1264 Mobile: 0414 409 098