



15 June 2011
[2011] UKSC 25

PRESS SUMMARY

Bloomsbury International Limited and others (Respondents) v Sea Fish Industry Authority and Department for Environment, Food and Rural Affairs (Appellants)

On appeal from the Court of Appeal (Civil Division) [2010] EWCA Civ 263

JUSTICES: Lord Phillips (President), Lord Walker, Lady Hale, Lord Mance, Lord Collins

BACKGROUND TO THE APPEALS

This appeal concerns the extent of the power of the Sea Fish Industry Authority to impose a levy on persons engaged in the sea fish industry and the compatibility with EU law of the levy imposed.

The Sea Fish Industry Authority (“the Authority”) is established under the Fisheries Act 1981 (“the 1981 Act”) for the purposes of promoting the efficiency and serving the interests of the sea fish industry. Section 4(3) of the 1981 Act provides that regulations may be made imposing a levy on persons engaged in the sea fish industry “*in respect of the weight of sea fish or sea fish products landed in the United Kingdom*”. The regulations which have been made in pursuance of this power are the Sea Fish Industry Authority (Levy) Regulations 1995 (“the 1995 Regulations”). They expressly make a levy payable not only on sea fish and sea fish products first brought to shore in the United Kingdom, but also on imported sea fish and sea fish products.

Bloomsbury International Limited and the other Respondents are importers who brought these proceedings to challenge the validity of levies made on them in respect of imports. The Department for the Environment, Food and Rural Affairs, and the Authority appeared in the proceedings to defend the validity of the levy. The first basis of challenge was that the power to levy contained in the 1981 Act did not extend to imposing a levy in respect of sea fish or parts of sea fish first brought to shore outside the United Kingdom and only later imported into the United Kingdom. The second basis of challenge was that even if the statutory power did extend so far, the imposition of such a levy was and is a charge equivalent to a customs duty and therefore contrary to Articles 28 and 30 of the Treaty on the Functioning of the European Union (“TFEU”).

Hamblen J dismissed the claim at first instance, rejecting both grounds of challenge. An appeal against that decision was upheld by the Court of Appeal, which acceded to both grounds. The Appellants then appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal, holding that the statutory power extends to imposing a levy in respect of imported sea fish or parts of sea fish and that such a levy is not a charge equivalent to a customs duty contrary to EU law. Lord Mance gives the lead judgment and Lord Phillips gives an additional judgment on the first issue only.

REASONS FOR THE JUDGMENT

The first issue was whether the statutory power permitted the imposition of a levy on imported sea fish and sea fish products. Lord Mance noted that there is a choice between a wider and a narrower sense of the word “*landed*” in section 4(3) of the 1981 Act. The wider sense would cover any form of bringing into the United Kingdom, commonly by sea or air, wherever the sea fish or sea fish product may have been first brought to shore after catch. The narrower sense would cover only the first bringing to shore after catch. In matters of statutory construction, the statutory purpose and the general scheme by which it is to be put into effect are of central importance. They represent the context in which individual words are to be understood. The Authority is set up by the 1981 Act to promote the efficiency of the sea fish industry, which is defined specifically to include importers. Thus the purpose and scheme of the 1981 Act are expressed in terms extending to importers generally. Yet the narrower sense of the word “*landed*” would mean that very few such importers actually contributed to the levy. [11]

Further, the predecessor schemes to that introduced by the 1981 Act had all involved levies imposed on imports and no reason was suggested for any change of policy under the 1981 Act so as to exclude fish importations and importers. In addition, section 4(8) of the 1981 Act expressly included within the meaning of ‘*landed*’ the bringing of sea fish and sea fish products through the Channel Tunnel. Although not expressly defined so as to include imports by ferry or air, it would be discriminatory and irrational for the 1981 Act to distinguish between that mode of importation and by Channel Tunnel. [13]; [16]

Lord Phillips also remarked on the unusual feature in this case that for nearly thirty years everyone concerned has proceeded on the basis that the phrase should be given the wider meaning. In those circumstances there must be, at the least, a powerful presumption that the meaning that has customarily been given to the phrase is the correct one. [58]

As to the second issue, Articles 28 and 30 TFEU prohibit and render void charges having equivalent effect to a customs duty (“CEEs”). The principal feature of a CEE is that it is levied solely or exclusively by reason of goods crossing a frontier within the European Union, whereas domestic products are excluded from a similar charge. In respect of the levy in question, it is imposed by reason of the sea fish or sea fish product crossing a frontier in the European Union. As to whether the levy is imposed solely or exclusively by reason of the crossing of the frontier, however, this will not be the case if the levy forms part of a general system of internal dues applied systematically to categories of products according to objective criteria and without regard to the origin of the products. The levy does form part of such a system. In particular, the Court of Appeal was wrong to suggest that sea fish products which are both manufactured and sold in the United Kingdom would escape the levy, in contrast to imported sea fish products: the levy would be payable on the fish content of the domestic products either when the constituent fish was first sold, or if there had been no prior sale, at the sale of the fish product. Nor could it be said that the levy would constitute a CEE on the basis that it would involve the imposition of charges at differing production or marketing stages, which is impermissible. The levy is consistently imposed at the point at which the sea fish is placed on the market and enters the supply chain. [40]; [43]; [47]

For these reasons the appeal was allowed and Respondents’ challenge to the levy dismissed. [54]

References in square brackets are to paragraph numbers in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html