



## HIGH COURT OF AUSTRALIA

2 April 2014

### THIESS v COLLECTOR OF CUSTOMS & ORS

[2014] HCA 12

Today the High Court dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland. The High Court held that s 167(4) of the *Customs Act* 1901 (Cth) ("the Act") operates to bar all actions for the recovery of duty paid to Customs, irrespective of whether a dispute as to the amount or rate of duty payable arises at the time of payment, subject only to two statutory exceptions.

The appellant, Mr Alan Thiess, imported a yacht into Australia for home consumption. On 15 December 2004, Mr Thiess' customs agent transmitted a computer import entry on his behalf. The customs agent mistakenly believed that the gross weight of the yacht was 108 tonnes, when in fact it was 160 tonnes. The effect of this error was that Customs' COMPILE computer system automatically calculated that the customs duty payable was \$494,472, with an additional \$49,447 payable as GST. In fact, yachts exceeding 150 tonnes were duty free. Upon payment by the customs agent, Customs authorised delivery of the yacht. Mr Thiess only discovered the mistake after the expiration of the statutorily prescribed period for making an application for a refund. On 15 December 2010, he brought proceedings in the trial division of the Supreme Court of Queensland seeking to recover the amount of \$543,919 as money had and received, relying on the money having been paid under a mistake of fact, and in the alternative as a claim for restitution in equity or equitable compensation. Questions of law were reserved for the consideration of the Court of Appeal.

The Court of Appeal held that the Collector of Customs and the Commonwealth had lawful defences to Mr Thiess' claim: by s 167(4) of the Act, in so far as the claim was to recover the amount paid as customs duty; and under s 36 of the *Taxation Administration Act* 1953 (Cth), in so far as the claim was to recover the GST paid. Mr Thiess sought to argue that s 167(4) had no application because no "demand" had been made and hence no "dispute" had arisen within the meaning of s 167(1) at the time of payment. The Court of Appeal rejected this argument, finding that a demand had been made. By special leave, Mr Thiess appealed to the High Court.

The High Court unanimously held that irrespective of whether a dispute has arisen at the time of payment within the meaning of s 167(1) of the Act, s 167(4) operates to bar all actions for the recovery of duty paid to Customs, subject only to either a statutory action for recovery under s 167(2) of the Act, or any action to enforce a right or to compel the exercise of powers under s 163 of the Act. It followed that because the appellant could not recover the amount paid as customs duty, he could not recover the amount paid as GST.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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