

1908.
NEW ZEALAND.

“THE PUBLIC REVENUES ACT, 1908”

(DISALLOWANCE UNDER SECTION 30 OF) OF SURCHARGE MADE BY AUDIT OFFICE UPON
COLLECTOR OF CUSTOMS AT AUCKLAND.

Presented to both Houses of the General Assembly pursuant to Act.

SIR,—

Audit Office, 8th October, 1908.

In accordance with the provisions of section 30 of “The Public Revenues Act, 1908,” I have the honour most respectfully to report that the Hon. the Minister of Customs has, in pursuance of the same section, and in the circumstances conveyed by the correspondence of which I beg leave to submit a copy, disallowed a surcharge of £71 4s. made by the Audit Office upon the Collector of Customs at Auckland for Customs duty which he failed to collect on skips for mining ore.

I have, &c.

J. K. WARBURTON,

Controller and Auditor-General.

The Hon. the Speaker of the House of Representatives.

COPY OF CORRESPONDENCE.

No. 1.

Waihi Gold-mining Company (Limited), Shortland Street, Auckland,
16th October, 1907.

SIR,—

Hoisting-skips for Mining.

This company has imported from Adelaide an apparatus, the first of its kind in a gold-mine in New Zealand, whereby the hauling of ore from the mine is greatly facilitated.

It is a system whereby a pair of skips, to carry 2 to 3 tons each, are loaded directly out of a hopper in a chamber underground near the shaft, hoisted at speed, and by special tumbling gear made to deliver the ore into a hopper on the surface. We do not contend that this effects any economy in labour, but it certainly does facilitate the quantity that can be handled on day-shift, and thereby makes work more comfortable for men.

The apparatus is purely and simply for mining purposes. I cannot conceive any other use that it could possibly be put to. We therefore approach you with the request that it be admitted duty-free as “mining-machinery” as provided for in Schedule B.

I enclose a copy of the invoice showing value at £323 18s., on which 20 per cent. is demanded.

It is certain that no machinery is more truly mining machinery than the plant under discussion, and I therefore submit this matter with every confidence that you will see the justice of our application, and am

Yours, &c.,

CHAS. RHODES,
Local Director.

The Hon. the Minister of Customs, Wellington.

N.B.—No diagram available.

No. 2.

Memorandum No. 1541.

THE Waihi Gold-mining Company request that “hoisting-skips suitable only for mining purposes” be admitted free of duty under Schedule B, Class XII, of “The Tariff Act, 1907.” I regret that no diagram is available.

Letter and invoice herewith.

JOHN MILLS, Collector.

1—B. 19.

Hon. Minister.—The skips are no doubt “plant” for mining, but they are not “machinery.” There does not seem to be any reason why such things should not be made in the Dominion. I recommend that the Waihi Company be informed that duty has been correctly charged.—W. T. GLASGOW. 24/10/07.

Approved.—J. A. M. 28/10/07.

No. 3.

Department of Trade and Customs, Wellington, 30th October, 1907.

The Collector of Customs, Auckland.

REFERRING to your letter of the 19th instant (1541), I have to request you to inform the Waihi Gold-mining Company, by direction of the Minister, that the “hoisting-skips” are not machinery, and are therefore not entitled to be admitted free of duty under the heading “Machinery, mining.” The correct classification is “Manufactured articles of metal, 20 per cent.” Will you be good enough to take occasion to remind the Waihi Gold-mining Company that there is no exemption in the tariff in favour of “plant” for mining purposes. (Invoice returned herewith.)

W. T. GLASGOW,
Secretary and Inspector.

No. 4.

Waihi Gold-mining Company (Limited), Shortland Street, Auckland,
30th November, 1907.

SIR,—

Re *Hoisting-skips*.

I am informed by the Collector of Customs, Auckland, in his 07/1633, that hoisting-skips, “not being machinery,” are therefore not duty-free under the heading of “Mining machinery.”

This is so surprising to us that I fear I have failed to make clear to you the kind of machinery a hoisting-skip is, and also the purpose for which it is required. The importance of the matter to us and the mining industry must be my excuse for again addressing you, and furnishing further information.

Attached, therefore, I send you a sketch showing where and how the skips work. In spite of its roughness, you will easily gather that from a bin underground the ore is discharged into a skip. It is then hauled to the surface, and there, with the help of the tumbling gear on the skip and a bracceman, the contents are emptied into the ore-hopper.

The apparatus is so essentially, and only, for a mining purpose that it seems to us it can only be classed as “mining machinery,” particularly as the pit-head frame, sheave, and winding-rope are all duty-free, if imported, all of which suggests that it was intended to permit the machinery of the character in question to come in free.

Indeed, if it be not so, we are driven to the conclusion that only the items enumerated in the tariff are to be free, while the schedule of the Act says that “machinery for mining and gold-saving” is to come in free, and “also” various items specially named, we presumed, in the way of illustration.

We sincerely hope that you will reconsider your decision in this matter, and order that the skips and gear, so absolutely for a mining purpose, shall be exempt from duty.

Yours, &c.,
CHAS. RHODES,
Local Director.

The Hon the Minister of Customs, Wellington.

No. 5.

SIR,— Department of Trade and Customs, Wellington, 13th February, 1908.

I am directed by the Minister of Customs to acknowledge the receipt of your letter of the 30th November last, and to remind you that when the deputation of persons interested in the mining industry waited on him during the session of Parliament a list of machinery and materials was submitted to him which, it was suggested, should be embodied in the free-list of the tariff. In this list no mention was made of hoisting-skips. The introduction of the words upon which you appear to rely—namely, “Machinery, mining, and gold-saving”—was not in that list, but the Minister of his own motion inserted them among the exemptions, but printed in italics, so that their interpretation would be within his discretion. He took this action because he anticipated that the deputation’s list might not be exhaustive, and that there might be machines peculiar to mines and to gold-saving which it might be well to exempt.

With reference to the hoisting-skip, even if this article had been included in the list submitted by the Department, the Minister directs me to say that he would have objected to its being exempted, as he does not see why it should not be made in New Zealand.

Not being in itself a machine, or “machinery,” the Minister does not see his way to authorise its admission free as “machinery, mining, and gold-saving.”

I have, &c.,

W. T. GLASGOW,
Secretary and Inspector.

The Local Director, Waihi Gold-mining Company (Limited), Auckland.

No. 6.

Department of Trade and Customs, Wellington, 13th February, 1908.

The Collector of Customs, Auckland.

REFERRING to your letter of the 3rd December last, I enclose herewith for your information and guidance copy of a letter to the local director, Waihi Gold-mining Company (Limited), Auckland, in connection therewith.

W. T. GLASGOW,
Secretary and Inspector.

Read and approved.—J. A. M. 14/2/08.

No. 7.

Waihi Gold-mining Company (Limited), Shortland Street, Auckland,
6th March, 1908.

SIR,—

Re *Hoisting-skips or Buckets*.

I am duly in receipt of letter No. 1907/1918 from the Secretary of your Department in which I was exceedingly surprised and, indeed, particularly sorry to find that his communication practically reversed what the Hon. Thorne George and I understood you to decide in respect to duty on our hoisting-skips.

So far as the manufacture of this machinery is concerned, it truly might be made in the country in future; but up to the present no such article ever has been made in New Zealand, for it is absolutely the first of its kind in use here, and we had no plans or patterns from which to copy.

I would also respectfully point out that your exclusive jurisdiction on the interpretation of whether this is mining machinery does not apply to this shipment, as it was entered on the 23rd September, 1907, while clause 23 of the Tariff Act only came into force on the 25th September, 1907.

We are convinced that previous decisions of the Court would cover these skips as being mining machinery in the true sense of the word, and, as your own idea regarding them when we interviewed you on the subject certainly seemed to be in line with those decisions, we would ask you to again review the matter, and permit the free entry of the goods under the old heading even if not under the new.

If more skips are required, we, and others, now have plans and patterns from which they can be made, and your contention that, in future, they can be made in the Dominion would have force, which it hardly has till our manufacturers have the necessary details available to assist them.

I respectfully urge that we are entitled to your further consideration in this matter, and that, as it really comes under the old tariff heading, no precedent is established under the new by admitting our hoisting-skips duty free.

With apologies for again addressing you,

I am, &c.,

CHAS. RHODES,
Local Director.

Hon. J. A. Millar, Minister of Customs, Wellington.

No. 8.

(Telegram.)

Re your letter 1848, what is the date of the entry for this hoisting-skip?

Wellington, 16/3/08.

Collector Customs, Auckland.

RICH. CARTER,
For Secretary.

(Telegram.)

WAIHI hoisting-skips *ex* "Zealandia" reported 20th September, 1907; sight entry passed 23rd September, 1907. Awaiting final decision before completion.

Auckland, 17/3/08.

Secretary Customs, Wellington.

J. MILLS, Collector.

No. 9.

Hon Minister.

It is now shown that this hoisting-skip was delivered two days before the passing of the Tariff Act, and Mr. Rhodes's contention that you cannot (in respect of this importation) exercise the power given by section 23 seems to be valid. The question arises whether the wording of the resolution of the 23rd August (which is identical with tariff item 401) is sufficiently explicit, without the application of section 23, to exclude hoisting-skips. This is sufficiently doubtful to suggest the expediency of giving way as to this particular importation. I recommend that Mr. Rhodes be informed that, although the heading relating to mining machinery as it appears in the resolution is quite sufficient of itself to bar the free entry of hoisting-skips, the Minister, in consideration of the company's claim, and of their assurance that no precedent is sought to be established, agrees to the free admission of the shipment under question.

RICH. CARTER,
For Secretary and Inspector.
18/3/08.

Reply accordingly.—J. A. M. 24/3/08.

No. 10.

Department of Trade and Customs, Wellington, 25th March, 1908.

The Collector of Customs, Auckland.

ADVERTING to my letter 118/78, of the 13th ultimo, I have to request you to inform the local director of the Waihi Company that, although the Minister is still of opinion that the heading relating to mining machinery, as it appears in the resolutions, is quite sufficient of itself to bar the free admission of hoisting-skips, he is prepared to accept the company's assurance that no precedent is sought to be established, and to admit free the shipment in question.

RICH. CARTER,

For Secretary and Inspector.

No. 11.

S. 458.

(3.) P. 7606 of 30/3/08, skips for hoisting mining-ore, £285; free upon declaration as mining machinery. Please give further particulars, and quote authority for so admitting these articles.

P. PURVIS WEBB,

For C. & A.-General.

The Collector of Customs, Auckland.

(3.) Authority c. 1907/1918, 615/79, of 25/3/1908. The skips are as described on entry and record quoted, being a mechanical contrivance for lifting ore from the mine-workings.

J. MILLS, Collector.

H. R. SPENCE, Ldg. Surveyor.

17/6/08.

No. 12.

Audit Query S. 458 (3).

For the consideration of the Controller and Auditor-General:—

CERTAIN skips for hoisting mining-ore were delivered upon deposit by the Collector at Auckland upon Sight Entry No. 1474, of 23rd September, 1907. This sight entry was perfected by Prime Entry 7606, of 30th March, 1908, when the skips were passed free upon declaration by the importers that they were imported for mining purposes.

The tariff item under which this exemption is purported to be made is No. 401. This item admits free "Machinery, mining and gold-saving," also certain specified "machines, materials, and appliances, when imported for mining purposes." Skips for hoisting mining-ore are not among the appliances specified.

This case is similar to one which has already been before the Audit Office with regard to the free admission of overhead gear for mining purposes on Audit Query S. 323, which latter query is at present under the consideration of the Secretary and Inspector of Customs. There is, however, the important distinction that in the case in question the Collector, before passing the skips, obtained authority for so doing from the Secretary and Inspector of Customs. Accordingly I do not think that the failure, on the part of the Collector, to collect duty, if duty is due, can be considered either wilful or negligent within the meaning of the Public Revenues Act.

The question which I have to submit for your consideration is whether the Customs Department are, in the circumstances, justified in authorising the Collector to admit the articles in question free. I attach hereto Customs Record 1907/1918.

From the above record it is clear that, in the opinion of the Minister and the Secretary and Inspector of Customs, skips for hoisting mining-ore are not mining machinery, and as such exempt from duty, but manufactured articles of metal n.o.e., and as such liable to duty at 20 per cent. *ad valorem*. This opinion was given, it is to be noted, under the impression that the decision of the Minister was final, under section 23 of "The Tariff Act, 1907," with regard to the importation in question.

It was subsequently pointed out by the importers, and correctly so, that, as the articles were delivered upon deposit before the passing of the Act, the Minister's powers so far as regards them were inoperative. It was then decided to admit the importation in question free as mining machinery, no precedent for the future being thereby established.

Such a course was, I think, expedient, and possibly avoided a recourse to litigation. At the same time I would submit that the case upon the facts is in no way altered by the presence or the absence of power on the part of the Minister of Customs to make a final decision as to the classification of any article. If it is proper to insist upon a duty of 20 per cent. upon skips of the kind in question when the decision of the Minister of Customs thereon is final, I would respectfully submit that it is equally proper to charge 20 per cent. upon them although the decision of the Minister of Customs may be subject to the review of a Court of law.

COSMO A. RALSTON.

22nd June, 1908.

The Secretary and Inspector of Customs.—The skips in question were liable to duty, were deemed by the Department to be so, and the Minister had no authority of law to admit them free. If, then, the duty is not to be accounted for by the Collector, provision should be made for the amount by appropriation.—J. K. WARBURTON, C. & A.-General. 29 June, '08.

No. 13.

Department of Trade and Customs, Wellington, 7th July, 1908.

The Auditor-General.

Your statement that the "skips were liable to duty, and were deemed by the Department to be so" does not seem to be supported by the evidence as set forth in the record, and therefore the deductions made upon this premise are in my judgment invalid.

If you will be so good as to again refer to the recommendation to the Minister, you will see that it was considered very questionable whether these skips were liable to duty: "The question arises whether the wording of the resolution of the 23rd August (which is identical with tariff item 401) is sufficiently explicit, without the application of section 23, to exclude hoisting-skips. This is sufficiently doubtful to suggest the expediency of giving way as to this particular importation."

This is the opinion of the departmental officers, for private information of Ministers only, based upon a perusal of the various cases relating to mining which have previously been adjudicated upon, and it is still my opinion that the Minister is not bound to risk heavy legal expenses in contesting a point that is beset with doubt, and upon which in his judgment he is likely to be defeated.

The case seems to lack explicit authority for charging duty, and there does not therefore appear to be any necessity for a vote.

W. T. GLASGOW,
Secretary and Inspector.

The Secretary and Inspector of Customs.—The Collector will be surcharged. Be good enough to note and to return me these papers, in order that the surcharge may be made.—J. K. WARBURTON, C. & A.-General. 8th July, '08.

The Controller and Auditor-General.—Noted, and papers returned accordingly.—W. T. GLASGOW. 9th July, 1908.

No. 14.

The Collector of Customs, Auckland.

Audit Office, 18th August, 1908.

UNDER the provisions of "The Public Revenues Act, 1891," you are hereby surcharged in the sum of seventy-one pounds four shillings (£71 4s.) on the account mentioned below, and are directed to pay the same into the Public Account forthwith, forwarding the bank receipt for the same to this office.

J. K. WARBURTON,
C. & A.-General.

Account referred to.—Amount of Customs duty payable on Auckland Prime Entry 7606, of 30th March, 1908, being perfecting of Sight Entry 1474, of 23rd September, 1907, in respect of the entry of ten packages of skips for hoisting mining-ore, liable to duty at 20 per centum *ad valorem* as Manufactured articles of metal n.o.e., but entered free of duty on the above prime entry as mining machinery.

	£	s.	d.
Invoice value	323	18	0
Value for duty, 10 per cent added	356	0	0
Duty payable thereon at 20 per cent.	71	4	0

J. K. W.

No. 15.

Department of Trade and Customs, Wellington, 17th September, 1908.

The Controller and Auditor-General, Wellington.

REFERRING to your memorandum of the 18th ultimo surcharging the Collector of Customs with an amount of £71 4s., being duty on skips for hoisting mining-ore, I am directed by the Minister of Customs to inform you that, acting under section 32 of "The Public Revenues Act, 1891," he has disallowed this surcharge on the ground that the Collector has not wilfully or negligently failed to collect the said duty.

The grounds for such disallowance are that the importation in question was dealt with under the resolution of Parliament passed on the 23rd August, 1907, which is not considered to have been sufficiently explicit to warrant charging duty on the hoisting-skips, especially seeing that section 23 of "The Tariff Act, 1907," which gives the final power of interpretation of words printed in italics in the tariff lists to the Minister, had not then become law. The Waihi Gold-mining Company claimed that the skips were free as mining machinery, and, in view of previous experience of the elastic nature of this item without the interpreting-power of section 23, this claim could not at the time be safely contested.

W. T. GLASGOW,
Secretary and Inspector.

The Secretary.—Please submit the papers, including the disallowance signed by the Minister.—J. K. WARBURTON, C. & A.-General. 18/9/08.

No. 16.

Hon. Minister.

REFERRING to my memorandum of the 18th March last, 07/1918; herewith, I have to submit herewith correspondence with the Controller and Auditor-General on the subject of duty on the hoisting-skips which were admitted free at Auckland. I recommend that, if the Auditor-General makes surcharge, you express disallowance of same under the authority of section 32 of "The Public Revenues Act, 1891."

W. T. GLASGOW,

Secretary and Inspector.

22/9/08.

Accordingly.—J. A. M. 28/9/08.

The Controller and Auditor-General.—Papers herewith.—W. T. GLASGOW. 29/9/08.

[From *Hansard*, 9th October, 1908.]

The Hon. Mr. MILLAR (Minister for Trade and Customs) asked that he might explain to the House the reply he had received from the Audit Office in regard to the refund of duty to the Waihi Mining Company. Under section 10 of the Public Revenues Act the Audit Office was empowered to report to the House anything that took place between Departments which they thought proper. The position was this: The Waihi Company imported a skip for automatic loading, and duty was charged upon it in the first instance, but after full inquiry into the matter, and ascertaining that the skip could be used for no purpose except mining, he exercised the power granted under the Act, and declared it to be mining machinery. In consequence of that decision a refund of the duty originally paid was made to the company. He might explain that the skip ascended the mine, and was loaded from the different levels, and finally automatically tipped itself into the truck. The whole of the information before them and the whole facts of the case showed clearly beyond doubt that the skip could not be used for any purpose other than mining. It had therefore been classed as such, and the Collector of Customs had refunded the duty, amounting to £71 4s. The Audit Department debited the amount to the Customs Department, on the ground that the latter Department should not have made the refund. This was the explanation. The whole evidence showed conclusively that it was part of a plant, and a part that could be used for no other purpose, and therefore he sanctioned the refund of duty under the powers granted by statute.

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