[2021] JMRC 2

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

REVENUE COURT

APPEAL NO. 2020 RV 00002

BETWEEN	**CHAS E. RAMSON LIMITED**	**APPELLANT**
AND	**THE COMMISSIONER OF CUSTOMS**	**RESPONDENT**

Ransford Braham Q.C. and Carrisa Mears instructed by Braham Legal, Attorneys-at-Law for the Appellant.

Hazel Edwards and Krystal Corbett, Attorneys-at-Law for the Respondent.

Heard: 15th to 18th June and 30th July 2021

Revenue Law - Customs Tariff (Revision) (Amendment) Resolution 2007 - Interpretation - Tariff Heading 04.01 and 04.02 - Meaning of "Cream" - Meaning of "concentrated" and "not concentrated" - Whether Elle & Vire whipping and cooking creams imported by the Appellant are "creams, concentrated" within the meaning of Tariff Heading 04.02.

C. BARNABY, J

INTRODUCTION

[1] The Appellant is a supplier of food products locally, some of which are imported. Among its imported products are whipping and cooking creams manufactured by Elle & Vire International, France (hereinafter called the "Imported Creams"). In 2011 Customs raised a concern in respect of the Appellant's classification of the said creams and the duties payable upon them. The Appellant had classified the Imported Creams as "concentrated" and assessed itself as being liable to pay duties upon the said creams at a rate set out in Tariff Heading 04.02 of the

Customs Tariff (Revision) (Amendment) Resolution 2007 (hereinafter called "The Tariff").

[2] The Appellant was subsequently audited by the Respondent for the period 1st January 2009 to 31st October 2011. On conclusion of the audit, the Respondent determined that the Appellant had misclassified the Imported Creams on its C87 import entry forms and had incorrectly applied Tariff Codes 0402.91.00 and 0402.99.90 under which duties are charged at a rate of 30% and 20% respectively. The Respondent considered the applicable Tariff Code to be 0401.30.00 on the basis that the Imported Creams were "not concentrated", did not contain added sugar or other sweetening matter and had a fat content by weight exceeding 6%. Creams so classified are liable to duty at a rate of 75%. In consequence, the Respondent raised an assessment for additional duties in the sum of **Twenty-Two Million One Hundred and Fifty-Two Thousand Nine Hundred and Seventy-Four Dollars and Fifty-Six Cents ($22,152,974.56)** in respect of the Imported Creams for the years 2009, 2010 and 2011.

[3] The Appellant objected to the additional assessment and no adjustments having been made on the conclusion of that process, appealed the Respondent's decision to the then Taxpayer Appeals Department on 12th June 2012, now the Revenue Appeals Division (RAD). In its decision delivered 16th September 2020, the RAD confirmed the additional assessments.

[4] It is from that decision that the Appellant now appeals to this court. It is prayed that the decision of the RAD and the additional assessment raised by the Respondent be set aside; that the court declares that the Imported Creams are properly assessed under Tariff Code 04.02 for customs duty purposes; and that costs be awarded to the Appellant. In rejoinder the Respondent prays that the appeal be refused; the decision of the RAD be permitted to stand; and that he be awarded costs in the appeal.

[5] At the root of the parties' dispute is whether the Imported Creams are "concentrated" within the meaning of Tariff Code 04.02. While the RAD erred in coming to its decision by considering material on which the parties were not heard and in making many of its findings as contended by the Appellant in its Notice and Grounds of Appeal, it is my judgment that the decision to confirm the additional assessment is substantially correct. Accordingly, I find that the appeal should be refused.

ISSUES

[6] The Appellant challenges the decision of the RAD on eight grounds and twenty-five findings of law and fact. For reasons of economy and on the basis that appeals to this court are by way of rehearing, I do not believe it is necessary to reproduce them. Having considered them and the Respondent's answer however, I find that these issues dispose of the appeal.

1. Did the RAD err in consulting and relying on the product of its internet research without permitting the Appellant an opportunity to be heard on the product of the research?
2. Can the onus of proof which initially rests with the Appellant shift to the Respondent in circumstances where liability to duties is admitted but it is contended that the Respondent's classification of the Imported Creams was erroneous, and the classification leads to an increase in the quantum of duties payable?
3. Did the Respondent err in assessing the Imported Creams under Tariff Heading 04.01?

ANALYSIS

Did the RAD err in consulting and relying on the product of its internet research without permitting the Appellant an opportunity to be heard on the product of the research?

[7] Learned Q.C. Mr. Braham submitted that the RAD erred in using information gathered from internet research to aid in the interpretation of the Tariff and in failing to provide any opportunity to the Appellant to take instructions on the information so gathered and to be heard thereon. I agree with the submission.

[8] Pursuant to rule 7 of the **Revenue Appeals Division Rules** which appears in the First Schedule of the **Revenue Appeals Division Act**, The Commissioner of the RAD or an authorised officer is permitted to collect all information which is necessary to facilitate the determination of an appeal. The information may be new and in addition to information which the relevant Revenue Commissioner did not have at the time of making his decision. In those regards, the Commissioner of the RAD is permitted, among other actions which are not immediately relevant, to contact the parties by any means of communication; invite either or both parties to informal meetings; request further information from the parties on fourteen (14) days' notice; and to use any other lawful means which she considers suitable to collect the relevant information. When the Commissioner has collected the necessary information to facilitate the determination of the appeal, she is then required to notify the parties in writing forthwith.

[9] Based on the foregoing, the Commissioner of the RAD is undoubtedly permitted to use such lawful means which she considers suitable to collect relevant information, which in my view could include internet searches. Where she exercises this power she is obligated to notify the parties on completion of the collection process. It does not appear that this was done or that the parties were given an opportunity to make representations in respect of any new or additional information which the RAD gathered, and proposed to consider in determining the matter before it.

[10] It is my view that there is some latitude for the RAD to use legal principles which have been established by judicial authorities and other interpretative aids such as dictionaries in arriving at the meaning of words used in legislation without reference to the parties. It appears to me to be an affront to basic principles of

fairness however, to ground findings of fact on material gathered from internet searches, which material formed no part of the evidence before the tribunal without giving the parties an opportunity to take instructions and make submissions in respect of them if they saw fit. The RAD would therefore have erred in these regards. This being an appeal by way of rehearing however, the error is curable and is therefore incapable of disposing of the appeal in favour of the Appellant.

Can the onus of proof which initially rests with the Appellant shift to the Respondent in circumstances where liability to duties is admitted but it is contended that the Respondent's classification of the Imported Creams was erroneous, and the classification leads to an increase in the quantum of duties payable?

[11] In response to the Appellant's contention that this is an appeal in which the Respondent has an evidential burden, it was submitted by Counsel Ms. Edwards that it is only where a taxpayer challenges an assessment on the basis of liability that the burden shifts to the Respondent. The appeal being against quantum she argues, there can be no shifting of the evidential burden. I am unable to agree.

[12] Pursuant to section 18(2) of the **Customs Act**, *"[t]he onus of proving that the assessment complained of is erroneous shall be on the objector."*

[13] The Appellant relies on the dicta of Morrison JA (as he then was) in **D.R. Holdings Ltd. v the Commissioner of Taxpayer Appeals** JMCA, 31 October 2008 who said this of like words which appear in the **Income Tax Act** with which the court was then concerned. On its face, *"24. … "erroneous" is wide enough to embrace both a complaint that the assessment is wrong in principle and that it is excessive in amount."*

[14] It is clear from the foregoing quotation that when a taxpayer contends that an assessment is erroneous on the basis that it is *"excessive in amount"*, that the nature of the challenge is as to quantum. It is not equally clear what *"wrong in*

principle" means. In my view the two paragraphs and words immediately preceding the extract makes it clear that *"wrong in principle"* is reference to a challenge in respect of liability to tax. Justice of Appeal Morrison stated,

> *22. Prior to 2002, the word "excessive" appeared in section 76(2) [of the Income Tax Act] in place of "erroneous". However, in that year, the section was amended (by the Revenue Administration (Alteration of Laws) Order, 2001) to adopt the present wording. Some minor confusion was caused at the outset of this appeal by the fact that Anderson J referred throughout his judgment to the old wording, thus potentially giving rise to a consideration of whether the word "excessive" in this context could as a matter of language carry the meaning contented for… which is that* ***the onus was placed on the appellant to prove that the Commissioner's assessment was wrong, both as to liability and quantum.***
>
> *23. This point in fact arose in passing in* ***Common Empire Ltd.*** *(supra), where the comparable section in the Hong Kong legislation had originally used the word "excessive" but by the time of the litigation had been expanded by amendment to read "excessive and incorrect". Deputy High Court Judge To commented in this change as follows (at paragraph 20):*
>
> > *"'Incorrect' is a term of wider import than 'excessive'. An assessment which is excessive must be incorrect but* ***it is inappropriate to label an assessment which is wrong in principle and which should not have been issued at all as excessive.*** *Such an assessment should be properly labelled as incorrect rather than excessive."*
>
> *24. Similarly in the instant case, while it might in my view have been arguable whether the word "excessive" was an appropriate label for an assessment that was wrong in principle, it does appear on the face of it, that* ***the word "erroneous" is wide enough to embrace both a complaint that the assessment is wrong in principle and that it is excessive in amount.***
>
> [Emphasis added]

[15] It is evident that there are two broad challenges which can brought by an appellant on a revenue appeal, a challenge as to liability and/or quantum. In the result, when Morris JA stated that the word "erroneous" is capable of capturing a complaint that an assessment is *"wrong in principle"* and one that is *"excessive in amount"*, he refers to challenges as to liability and quantum respectively. Whichever is the basis of the appellant's challenge, the onus of proof rests on him pursuant to section 18(2) of the **Customs Act**.

[16] Morrison JA in the course of his judgment cited at paragraph 29 the following dicta of Carey JA in **Karl Evans Brown v Commissioner of Income Tax** [1987] 24 JLR 277, 281.

> *"In my judgment the matter stands thus: there are two distinct burdens of proof in an appeal to the Revenue Court. There is first, the burden on the appellant to show that the assessment is excessive. This onus is a heavy one because of the duty to make a full disclosure of all his income from whatever source. The burden on the Commissioner is the lighter one because in the majority of cases, the objector is not claiming that he is not liable to tax; he is challenging quantum; the burden on the Commissioner is evidential. It only arises or shifts to him when the taxpayer on whom the initial burden rest, leads evidence that he is not liable for any tax whatever."*

[17] In having the word *"whatever"* follow the words "*not liable for any tax"*, there appears to be a suggestion that the evidential burden can only shift to a respondent commissioner where there is a challenge to liability to be taxed. However, I do not believe that Carey JA was purporting to exclude a shift in the evidential burden to a revenue commissioner in respect of disputes as to quantum. This appears to me to be manifested in the line which follows the quotation appearing in **D.R. Holdings Ltd.** and by reference to the nature of the appeal in **Karl Evans Brown**. The line which follows is this, *"[t]he commissioner's Statement of Case need, therefore, only show that the objector is liable to tax in the amount assessed on the basis of material he has."* The

appellant in **Karl Evans Brown** had in fact applied to the court for a review of the assessments of the Income Tax Commissioner on the basis that they were excessive, which was a challenge as to quantum.

[18] Although said in the context of the old wording of the **Income Tax Act,** the general observations of Carey JA apply with the same force to the burden of proof on an objector to show that the commissioner's assessment is erroneous. An evidential burden on the commissioner may therefore arise where the taxpayer leads evidence that the assessment was erroneous either on the basis of liability or quantum.

[19] I believe this is borne out in the interplay between the burdens of proof on the respective parties to a revenue appeal which appears in the following extract from Dr. Claude Denbow's *Income Tax Law in the Commonwealth Caribbean,* p.172. It was cited approvingly by Morrison JA in concluding that in an appropriate case, the commissioner may have an evidential burden.

> *[28] … The taxing statutes in the Commonwealth Caribbean invariably provide that, in a tax appeal the burden of proof rests on the taxpayer to show that the assessment in dispute is wrong or unfounded. This means that* ***the taxpayer bears the legal burden on the whole of the case to show that the income being imputed to him by virtue of the Revenue's assessment is not taxable a nd the reasons why this is so****. However, this does not mean that the Revenue is entitled to raise an assessment on a taxpayer and then leave it to him to show that he is not taxable on the income imputed to him.* ***While the onus of the whole case rests on the taxpayer and he is obliged to begin, his mere denial of any imputed income throws upon the Revenue the evidential burden to adduce testimony in order to support its assessment****…The matter has perhaps been best expressed by the Court of Appeal in Trinidad and Tobago in the case of* ***Inland Revenue Board v Boland Maraj*** *by Kelsick CJ when he said:*

> *'On the Revenue rests only the evidential onus that it rightly 'appears' to the Revenue to act,* ***which it discharges by adducing evidence of the information or material which caused it to appear to the Revenue that the taxpayer was under-assessed.*** *On the other hand, the statutory burden of the whole case is on the taxpayer'.*
>
> [Emphasis added]

[20] It was observed by Carey JA in **Karl Evans Brown** at page 281 that the information used by the commissioner in making his assessment may be acquired from any source and may also *"be cogent or hearsay or evidence inadmissible in a Court of Law."*

[21] The Appellant does not deny that it is liable to customs duties on the Imported Creams but contends that they were properly assessed under Tariff Heading 04.02 on the basis that they are "concentrated". In my judgment, the Appellant challenges the Respondent's determination that the Imported Creams are liable to be taxed as "not concentrated" as well as the additional assessment raised as a result of that classification. The appeal appears to me to be both in respect of liability and quantum.

[22] Whether or not I am correct in so concluding, it is incontrovertible that the Appellant has the legal burden on the whole case to prove on a balance of probabilities that the Respondent's assessment was erroneous. It has the initial evidential burden to lead evidence that the Commissioner's assessment so qualifies and if it discharges that burden, whether in respect of liability and/or quantum, an evidential burden shifts to the Respondent. The Respondent will have discharged that burden by adducing evidence of the information and material on which he relied and which caused it to appear to him that the Appellant was under-assessed. Whether or not the evidential burden shifted to the Respondent in the circumstances of this case can only be answered after considering the Appellant's evidence.

Did the Respondent err in assessing the Imported Creams under Tariff Heading 04.01?

[23] Tariff Headings 04.01 and 04.02 are found in Chapter 4 of the Schedule of Rates in the Tariff at Section 1, *Live Animals; Animal Products*. They provide as follows:

> *04.01 Milk and cream, not concentrated nor containing added sugar or other sweetening matter.*
> *04.02 Milk and cream, concentrated or containing added sugar or other sweetening matter.*

[24] In order to arrive at the appropriate classification for the Imported Creams it is essential to construe the words which I believe are at the centre of the dispute: "cream", "concentrated" and "not concentrated". Ahead of doing so however, it is necessary to address the background to the Tariff and the expressed approach to its interpretation.

Background to the Tariff

[25] Pursuant to section 5 of the **Customs Act**, the House of Representatives is permitted to make Resolutions for the imposition, revocation, reduction, increase, alteration or exclusion of the payment of customs duties on the importation of goods into the island. In exercise of that power, the **Customs Tariff (Revisions) Resolution,1972** (hereinafter called "the Principal Resolution") was passed. Import duties were set out in the First Schedule and a list of commodities which were to be admitted into the island without being eligible for conditional duty exemption was provided for in the Fourth Schedule. The Tariff amends the Principal Resolution by deleting the two (2) referenced schedules and replacing them with the First and Second Schedule of the Tariff respectively.

[26] The Tariff incorporates into national law the Common External Tariff (CET) of the Caribbean Community (CARICOM) which was established by the Council for Trade and Economic Developments (COTED). The **Harmonised Commodity Description and Coding System** (4th Edn.) (hereinafter called "the HS") is the

basis of the classification structure of the Schedule of Rates in the Tariff; and the **Statistical Classification Numbers on the Standard International Trade Classification** (Third Revision).

[27] The HS was developed by the World Customs Organization (WCO) and among its functions and arguably its principal function, is the harmonization of the description, classification and coding of goods for international trade purposes. Groups of related products are designated by four (4) digit Headings and five (5) to six (6) digit Subheadings which permit separate identification of products within a Heading without moving products outside their group.

The General Rules for the Interpretation of the Harmonized System (GRI)

[28] It is expressly stated in the General Note to the Tariff, that the GRI are integral to the classification structure of the Schedule of Rates. To that end the GRI of the HS is reproduced in the Tariff with only one addition, a paragraph 7. I do not find it necessary to reproduce the GRI in full but so far as is relevant it provides that the

> *[c]classification of goods in the Nomenclature shall be governed by the following principles:*
>
> 1. *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the Headings and any relative Section or Chapter Notes and, provided such Headings or Notes do not otherwise require, according to the following provisions:*
> 2. …
> 3. ...
> 4. …
> 5. …
> 6. *For legal purposes, the classification of goods in the Subheadings of a Heading shall be determined according to*

the terms of those Subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only Subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

7. *…*

[29] The first interpretative principle under the Tariff is that the classification of goods thereunder is to be determined according to the terms of the Headings and the relevant Section or Chapter Notes unless they require otherwise.

The Meaning of "Cream" under Tariff Heading 04.01 and 04.02

[30] It was contended by learned Q.C. for the Appellant that the word "cream" in the Tariff Headings is to be given its ordinary and natural meaning. In a rare convergence of views between the Appellant and the Respondent, Counsel Ms. Edwards agreed. While I agree that the word "cream" must, as a starting point, be interpreted so as to give effect to its grammatical and ordinary meaning, its meaning is ultimately to be determined in the context of the Tariff. The GRI require no less.

[31] This approach is consistent with the principles which govern modern statutory interpretation and which have been set out at page 49 of *Cross' Statutory Interpretation*, 3rd edition. These principles were cited with approval by Brooks JA (as he then was) in **Jamaica Public Service Limited v Meadows et** [2015] JMCA Civ 1 [54], a decision on which the Appellant relies. They are that,

"1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.

2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose

of the statute, he may apply them in any secondary meaning which they are capable of bearing.

3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute..."

[32] While it was long held that in interpreting revenue statutes the court was confined to a literal interpretation of its clear words, in a departure which is generally attributed to the seminal statement of Lord Wilberforce in **WT Ramsay Limited v Inland Revenue Commissioners** [1982] AC 300, revenue statutes are now to be purposively interpreted. Much has changed in the decades since then and in **Inland Revenue Commissioner v McGuckian** [1997] 1 WLR 991 for example, Lord Steyn, who was cited with approval by Harrison JA at paragraph 12 in **Commissioner of Taxpayer Appeals v Swept Away Resorts** (2006) SCCA No.18 stated that *"… the modern approach (sic) to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as is possible, in a way which best gives effect to that purpose…"*

[33] When Lord Steyn's dicta in **McGuckian** is read beyond the above quotation it is evident that the court in arriving at the meaning of clear words in a statute is permitted to consider them within the context, scheme as well as purpose of the statute as a whole. After briefly referencing the pre **Ramsay** position, Lord Steyn stated,

*… During the last 30 years there has been a shift away from literalist to purposive methods of construction. Where there is no obvious meaning of a statutory provision the modern emphasis is on a contextual approach designed to identify the purpose of a statute and to give effect to it. But under the influence of the narrow **Duke of Westminster** doctrine [1936] A.C. 1,19 tax law remained remarkably resistant to the new non-formalist methods of interpretation. It was said that the taxpayer was entitled to*

> *stand on a literal construction of the words used regardless of the purpose of the statute:* ***Pryce v. Monmouthshire Canal and Railway Cos.*** *(1879) 4 App. Cas. 197, 202–203****; Cape Brandy Syndicate v. Inland Revenue Commissioners*** *[1921] 1 K.B. 64, 71;* ***Inland Revenue Commissioners v. Plummer*** [1980] A.C. 896. *Tax law was by and large left behind as some island of literal interpretation… [T]he intellectual breakthrough came in 1981 in the* ***Ramsay*** *case, and notably in Lord Wilberforce's seminal speech which carri ed the agreement of Lord Russell of Killowen, Lord Roskill and Lord Bridge of Harwich. Lord Wilberforce restated the principle of statutory construction that a subject is only to be taxed upon clear words [1982] A.C. 300, 323C–D. To the question "What are clear words?" he gave the answer that the court is not confined to a literal interpretation. He added "There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded." This sentence was critical. It marked the rejection by the House of pure literalism in the interpretation of tax statutes.*
>
> [Emphasis added]

[34] In its ordinary signification cream, certainly as it relates to animal products, is *"the thick white or pale yellow fatty liquid which rises to the top when milk is left to stand"* as defined in the Concise Oxford English Dictionary, 11th Edn. Revised. That was the definition of cream relied on by the Respondent in argument before me with which the Appellant did not disagree.

[35] It appears to me that many of the errors which the RAD made stem from giving "cream" under the Tariff Headings its ordinary and grammatical meaning without regard for the context of the Tariff. Firstly, in an effort to determine what constituted cream, the RAD resorted to the internet and concluded at paragraph 149 that consistent with the finding of Professor Benkeblia from whom the Appellant sought an expert opinion on the appropriate Tariff classification of the Imported Creams, that

> *Cream is derived from whole milk... [That] whole milk consists of water, milk solids and butterfat of approximately 3.5% [and that when] whole milk is left to stand the butterfat rises to the top or separates from the milk. This process is called creaming... Thus based on the above research, cream is obtained by reducing the water content in butterfat, which comes from milk. This agrees with Professor Benkeblia's submission that cream is a concentrate of the fats derived from milk.*

[36] The reference to "butterfat" appears to be the result of RAD's internet research. There was unassailable evidence before the tribunal as there is before me, that cream is a product of milk and that cream is a "concentration" of the fats from.

[37] The challenge however is that "cream" appears at both Tariff Headings 04.01 and 04.02. In the first heading it is qualified by "not concentrated" and in the latter heading by the word "concentrated". To construe "cream" so as to give effect to its literal and grammatical meaning is to ignore entirely the distinction which the legislature makes between "cream, not concentrated" on one hand and "cream, concentrated" on the other.

[38] Professor Benkeblia relied on a number of documents which he supplied with his report, some of which I was able to read and others which were not very legible or illegible. Learned Q.C. undertook to provide better copies of those documents if they were found but nothing further had been supplied at the time of delivery of this judgment.

[39] Among the documents provided and relied upon by Professor Benkeblia are *"CODEX Standard for Cream and Prepared Creams"*, CODEX STAN 288-1976 and *"Report of the 4th Session of the CODEX Committee on Milk and Milk Products" CODEX* ALIMENTARIUS COMMISSION, ALINORM 01/11. I take judicial notice that CODEX is the food safety standard programme carried on jointly by the Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO). It sets out international standards and guidelines for food safety to protect not only the health of consumers but also to

promote fair practices in the trade of food. The scope of both documents is the same. They apply to *"…cream and prepared creams for direct consumption or further processing as defined in Section 2 of [the] Standard."* While neither party made reference to the documents in argument before me and there is no evidence of the RAD having made use of them, I found them to be very helpful in resolving issues which arise on the appeal.

[40] In the first of the two CODEX documents, "cream" is defined at Section 2.1 as *"… the fluid milk product comparatively rich in fat, in the form of an emulsion of fat-in-skimmed milk, obtained by physical separation from milk." "Fluid*" is defined to mean *"capable of pouring at temperatures above freezing."* Section 2.1 of the second document goes further and states,

> *CREAMS are milk products comparatively rich in fat, in the form of an emulsion of fat-in skimmed milk, which can be obtained by:*
> *(a) separation from milk. The final composition may be adjusted by the addition of milk or skimmed milk; or*
> *(b) reconstituting and/or recombining milk products into creams with the same characteristics as the product obtained under (a).*

[41] "Reconstituted cream" and "Recombined cream" are defined at Sections 2.2 and 2.3 respectively as *"cream obtained by reconstituting milk products with or without the addition of potable water and with the same end product characteristics as the product described in Section 2.1";* and *"cream obtained by recombining milk products with or without the addition of potable water and with the same end product characteristics as the product described in Section 2.1."*

[42] In the general note to the Tariff, it is expressly stated that the rates of duty which appear in the Schedule of Rates are applicable to goods which are traded among Member States of CARICOM which do not qualify for community treatment, as well as imports from third counties into CARICOM Member States. As stated previously, the Schedule of Rates in the Tariff are based on the HS which has as a principal function the harmonization of the description, classification and coding

of goods for international trade purposes. These are the lenses through which the provisions of the Tariff must be viewed. While undoubtedly a part of domestic law, the Tariff's focus is to provide for the taxation of products traded between our national borders and others.

[43] Two products are dealt with at Tariff Headings 04.01 and 04.02, "milk" and "cream". Of the two, only "milk" is defined in the Tariff. Note 1 of Chapter 4 provides that *"[t]he expression "milk" means full cream milk or partially or completely skimmed milk."* It is the evidence before this court, which I accept, that *"[m]ilk can be regarded as two liquids of different specific gravities, the serum and the fat."*[1]

[44] It is my assessment that in defining "milk" to include full cream milk, partially and completely skimmed milk; in placing the distinct product "cream" at both Tariff Headings 04.01 and 04.02; and in qualifying the word with "not concentrated" and "concentrated", the framers of the HS and the Jamaican legislature by incorporating the HS into domestic law, intended "cream" to mean the concentration of fatty liquid which is **removed** from milk. This construction is consistent with the meaning of "cream" in the context of the international food trade and the Tariff. It is unquestionable, that until separation, the milk product and tradeable commodity which is "cream" cannot be said to have a separate existence from milk.

The Meaning of "Concentrated" and "Not Concentrated" in the Tariff Headings

[45] It was submitted by Counsel for the Respondent that "concentrated" at Tariff Heading 04.02 should be construed purposively, while learned QC for the Appellant contended that the word should be given its ordinary and natural

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[1] *Milk Processing,* accessed on 03/08/2021 from http://www.ilri.org.InfoServ/Webpub/fulldocs/ilca_manual4/MilkProcessing.htm on 03/08/2012, p.3.

meaning. As with the construction of the word “cream”, I find that “concentrated” and “not concentrated” are to be construed in the context of the Tariff.

[46] It seems to me that the approach urged by the Respondent was aimed at addressing and overcoming Professor Benkeblia’s indication that in food science, *“[p]owder, granules or any solid form of any product is NOT A CONCENTRATED form but a dry or dehydrated form.”* Milk and cream *“[i]n powder, granules or other solid forms”* appears at Tariff subheading 0402.10.00 and are therefore classified as “concentrated” for customs purposes.

[47] In arguing that a purposive construction was to be adopted, Ms. Edwards referred the court to Note 2 of the Section 1 Notes and contended that its terms demonstrate that the position advanced by Professor Benkeblia in respect of “concentrated” is not the interpretation being adopted in the Tariff. She went further to submit that “concentrated” within the meaning of Tariff Heading 04.02 meant that the named products were subject to further processing, such as evaporation or condensation, with the intention of increasing their strength or intensity by reducing or removing their liquid components.

[48] Note 2 reads,

> *[e]except where the context otherwise requires, throughout the Nomenclature any reference to “dried” products also covers products which have been dehydrated, evaporated or freeze-dried.”*

[49] It is my view that Note 2 of Section 1 does not assist the Respondent as the word **“dried”** is not used in reference to any of the products in Tariff Heading 04.02. Where the Tariff intends to use the word “dried” it does so, for example at Tariff subheadings 408.11.00 and 408.91.00.

[50] In further support of the construction advanced, Ms. Edwards also referred to the fact that “condensed milk” is included at Tariff Heading 04.02 at subheading

0402.99.10. She cited the meaning of "condensed milk" and "condensed" as appears in the *Concise Oxford English Dictionary*, 11th Edn. Revised, thus,

> ***condensed milk*** *n. milk that has been thickened by evaporation and sweetened.*
> ***condense*** *n.* ***1*** *change from a gas or vapour to a liquid.* ***2*** *[usu. as adj.] thicken (a liquid) by heating it to reduce the water content.* ***3*** *make denser or more concentrated…*

[51] It was argued by learned QC for the Appellant, and rightly conceded by Ms. Edwards, that "condensed milk" could justifiably be included in Tariff Heading 04.02 either on account that it is milk thickened by evaporation and therefore a concentrated form of milk, or that it contained added sugar or other sweetening matter.

[52] In my view, it was unnecessary to resort to Note 2 of Section 1 to justify the inclusion of milk and cream *"[i]n powder, granules or other solid forms",* or attempt to establish a genus from only two sets of products, milk and cream in the form referenced and *"condensed milk"* in order to arrive at the meaning of the derivative "concentrated", having regard to the ordinary meanings which the word is capable of bearing.

[53] The definition of "concentrate" as appears in the *Webster's New World Dictionary,* p. 288 was supplied to Professor Benkeblia when he was approached by the Appellant for an opinion on the classification of the Imported Creams. Significant portions of the copy produced in evidence are illegible. However, the Appellant relied on that source in argument before the RAD and its contents were reproduced at paragraph 30 of the tribunal's decision. *"Concentrate"* is defined in this way: *"to increase in strength, density or intensity."* Another definition from www.dictionary.com accessed 15th May 2012 was also supplied. It reads as relevant,

Verb (used with object)

1. *to bring or draw to a common center or point of union; converge, direct toward one point; focus; …*
2. *to put or bring into a single place, group etc…*
3. *to intensify; make denser, stronger or purer, especially by the removal or reduction of liquid: to concentrate fruit juice; to concentrate a sauce by boiling it down.*
4. *…*

[54] For the natural and ordinary meaning of "concentrated", the Respondent relies on the definition of "concentrate" which appears in the Concise Oxford English Dictionary, 11th Edn. Revised. As a verb and so far as is relevant, it means *"…**2** bring together in numbers or a mass in one place. **3** increase the strength of (a solution)"*, and as a noun *"a concentrated form of something, especially food."*

[55] Having concluded that "cream" at Tariff Headings 04.01 and 04.02 means the concentration of the fatty liquid which is removed from milk, "concentrated" at Tariff Heading 04.02 is not to be construed by reference to the bringing together of the fatty matter or serum in milk, or by the separation of the fatty liquid in milk from the serum. Such an interpretation would be inconsistent with the Tariff's obvious intention to treat differently for customs purposes, milk and cream which are "not concentrated" and those which are "concentrated".

[56] Additionally, on a reading of the subheadings of Tariff Heading 04.01 and 04.02 it is abundantly clear that the classification of milk and cream as "not concentrated" or "concentrated" is not dependent on fat content. The products in both concentrated and not concentrated forms may have fat content by weight below 1% and exceeding 6%. Under Tariff Heading 04.01, the products may be classified under three subheadings, on the basis of *"fat content, by weight, not exceeding 1%",* "fat *content, by weight, exceeding 1% but not exceeding 6%"* and *"fat content, by weight, exceeding 6%".* At Tariff Heading 04.02, in particular subheading 0402.10.00, the products *"in powder, granules or other solid forms"*

are classified on the basis of *"fat content, by weight not exceeding 1.5%",* and "fat *content, by weight exceeding 1.5%".*

[57] In relation to food, "concentrate" from which "concentrated" is derived, in its ordinary and natural meaning is *"to intensify; make denser, stronger or purer, especially by the removal or reduction of liquid…"*

[58] It is this removal of liquid which explains in my view, the inclusion of milk and cream *"[i]n powder, granules or other solid forms"* at subheading 0402.10.00. I regard the inclusion of milk and cream in these forms as a compelling indicator that it is the ordinary meaning of "concentrated" in relation to food which the legislators intended to have apply to the word at Tariff Heading 04.02 and not the technical and scientific meaning alluded to by Professor Benkeblia. As seen in the CODEX, cream may in fact be obtained in one of two ways, separation from milk or by reconstituting and/or recombining milk products into creams with the same characteristics as the cream which has been separated from milk, with or without the addition of potable water. A concentrated cream may be restored to "cream" by the reintroduction of a liquid.

[59] I am further fortified in the view that "concentrated" at Tariff Heading 04.02 means to intensify "milk" and "cream" by making them denser, stronger or purer especially by removing or reducing their liquid content having regard to following provision in the WCO *Harmonised Commodity Description and Coding System Explanatory Notes*, 4th Edn. 2007, Vol.1. It provides that Tariff Heading 04.02

> *… covers milk (as defined in Note 1 to this Chapter) and cream, concentrated (**for example, evaporated**) or containing added sugar or other sweetening matter, whether liquid, paste, or solid (in blocks, powder or granules) and whether or not preserved or reconstituted.*
>
> [Emphasis added]

[60] While "evaporated" is the only example given of a concentrated milk or cream product, when one thinks of a milk product which bears that description,

evaporated milk may no doubt readily come to mind. It is a milk product which has had much of the water content in milk reduced.

[61] In respect of milk and cream "not concentrated" under Tariff Heading 04.01, they are easily construed by reference to what they are not, milk and cream "concentrated". In fact, the Explanatory Notes provides that the Heading

> *…covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurised, sterilised or otherwise preserved, homogenised or peptonised; but it* ***excludes*** *milk and cream which have been concentrated and or contain added sugar or other sweetening matter (****heading 04.02****) and curdled, fermented or acidified milk and cream (****heading 04.03****).*

[62] Mr. Braham Q.C. contended that the HS Explanatory Notes were of little value except in suggesting that cream could be concentrated. I cannot agree with him. Firstly, section 3.1 of the CODEX makes express reference to cream powders so that it goes beyond suggestion that cream can be "concentrated". Second, the basis of the classification structure of the Schedule of Rates in the Tariff is the HS and in that regard I find the guidance persuasive in determining product classification under the Tariff, a matter to which I will return later.

[63] In all the foregoing circumstances I find that "milk and cream, concentrated" at Tariff Heading 04.02 means "milk" as defined in the Tariff and "cream" which I have construed to mean the concentration of fatty liquid which is removed from milk, which has been intensified, made denser, stronger or purer especially by removal or reduction of liquid; and that the products in a form that is "not concentrated" which are to be classified under Tariff Heading 04.01 are simply determined by what they are not, "milk and cream, concentrated".

Classification of the Imported Creams

[64] It is not in issue that the Imported Creams are "creams", a discrete commodity characterised by a concentration of the fatty matter from milk, and that they do not contain added sugar or other sweetening matter. It is the Appellant's

contention however, that they are to be classified as “concentrated” within the meaning of Tariff Heading 04.02.

[65] In my judgment, the conclusion pressed by the Appellant could only properly be reached if it demonstrated on the evidence that the Imported Creams are “creams” as earlier construed, which have been intensified, made denser, stronger or purer, especially by the removal of liquid. While I found the evidence presented by the Appellant extremely helpful in resolving the dispute, I am unable to agree with learned Q.C. as to their classification under the Tariff.

[66] The Appellant relies primarily on the contents of three documents for its submission that the Imported creams are “concentrated”. A letter from Elle & Vire dated 7th June 2012; the manufacturer’s brochure “Academy of Cream”; and Professor Benkeblia’s opinion dated 20th August 2019.

[67] The letter from Elle & Vire is said to be in response to correspondence from the Appellant. The letter reads,

> *The cream is a milk product. Actually with 10 litres of whole milk with a 3.5% fat content, it is possible to get 1litre of cream with 35% fat content (and 9 litres of skimmed milk).*
> ***The cream is obtained by skimming the whole milk in order to extract the fat by centrifugal force.***
> ***In the circumstance cream is a concentration of the fat matter extracted from the whole milk.***
> *Hence we say that the cream has a 35.1% fat content, it means that the cream is an emulsion of 35.1% of droplets milk fat in skimmed milk.*
>
> **[Emphasis added]**

[68] *“In order to”* is a subordinating conjunction used to explain the purpose of the verb which precedes it. The sentence as constructed appears to suggest that the cream to which the letter refers is produced by a two staged process. Firstly, by skimming the milk and secondly, by extracting the fat by centrifugal force. In the first instance, skimming would have separated fat from the milk, producing

cream (the concentration of fats from milk) and in the second instance, fats would have been extracted from the cream by the application of centrifugal force, thereby further reducing the liquid content of the cream.

[69] Counsel for the Respondent initially questioned the letter writer's command of the English language in attempting to persuade the court that the writer had misapplied the phrase *"in order to",* and that the writer makes reference to a single process, the separation of cream from whole milk by centrifugal force. Having indicated that I found the English language command submission unmeritorious in the absence of any evidence to support it, Counsel went on to submit that the correspondence should be disregarded in resolving the dispute as the enquiry to which it purports to respond was not before the court. Alternatively, that the court should attach little weight to it having regard to the other evidence before it of the manufacturer's cream making process.

[70] The letter from Elle & Vire appears to have formed a part of the Appellant's case, certainly from the time of proceedings before the RAD. It is also included in the affidavit evidence filed in support of this appeal to which the Respondents were permitted to respond and did respond. There was also a Pre-Trial Review only days before the hearing of the appeal and if there were concerns about the provenance of the letter, the Respondent could no doubt have raised the issue then. No issue having been taken previously, I am not inclined to deny the Appellant the opportunity to rely on the letter. That being said however, whether the Imported Creams are "concentrated" within the meaning of Tariff Heading 04.02 is a matter to be determined on the totality of the evidence before me and not the classification which either party elects to attach to the Imported Creams.

[71] Among the processes available for separating milk from cream are centrifugal and gravity separation. Centrifugal force is 5000 to 10000 times that of gravity so that separation by the former method is faster and more efficient than the latter. Generally, in centrifugal separation, milk (which contains both serum and fat, two liquids of different specific gravities) is introduced into separation

channels in a centrifugal separator. The two liquids of specific different gravities revolve around the same centre, at the same distance and angular velocity and a greater centrifugal force is exerted on the heavier as opposed to the lighter liquid, thereby causing the less dense cream or fat globules to separate from the milk. While a number of factors influence separation efficiency, which is referable to the percentage of the fat remaining in skimmed milk, whatever the percentage of the fat separated from the milk, the fat so separated is cream.[2] The final composition of cream, as stated in the CODEX definition of cream, may be adjusted by the addition of milk or skimmed milk; and the minimum percentage milk fat levels may vary depending on the type of cream being produced.

[72] In addition to the manufacturer's letter, the Appellant also relies on an Elle & Vire brochure, where among other things, it sets out how its cream is produced. The following appears under the subheading *"Natural production"*.

> *In the past, to make cream, milk was left to stand for several hours and then the cream was skimmed off the top with a ladle. Today, a skimmer rapidly reproduces the same process. The milk is separated from the cream (which is lighter) by centrifugal force, and no longer by gravity…*

[73] The Imported Creams are formally descried as:

> *(a) Excellence Cooking Cream*
> - *UHT Long Life Special*
> - *Cooking Cream 35.1% fat*
> - *Cream, modified starch, emulsifier: E471; thickener: carrageenan*
>
> *(b) Excellence Whipping Cream 35.1% fat*
> - *UHT Long Life Whipping Cream 35.1% fat*
> - *Cream, thickener: carrageenan*

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[2] Supra. n. 1

[74] When Elle & Vire's letter is considered within the context of the centrifugal separation process, the process for making cream as outlined in its brochure, and the product description for the Imported Creams, it appears more probable than not, that Elle Vire cream, which it describes as "a *concentration of fat matter extracted from whole milk" is* produced by a skimmer which separates the cream from milk using centrifugal force.

[75] Neither the letter nor brochure purports to classify the creams for HS or Tariff purposes however and for that, the Appellant relies on Professor Benkeblia's opinion, which Counsel conceded, does not bind the court.

[76] It was the learned Professor's opinion that the Imported Creams "could" fall under Tariff Heading 04.02. He stated thus,

> *As of your letter date (sic) August 2, 2012, requesting to have two products,* ***Excellent Cooking Cream*** *and* ***Excellent Whipping Cream****, being determined whether they are a* ***"Concentrated or as a Concentrate",*** *I hereby, inform you that based on the physico-chemical and biochemical specificities of the two products, [they] could be considered as a* ***"Concentrate of Fats derived from Milk"*** *product. Therefore, and based upon the documents you sent me regarding the Relevant Tariff Heading, the two above mentioned products could fall under the heading* ***"04.02"*** *as per the definition given under this heading both in matter of product definition, fats concentration, and absence of sweetener. (sic)*

[77] In light of the earlier discussion, there is no room to successfully argue against Professor Benkeblia's conclusion that the creams are a concentration of the fats derived from milk. Whether the creams are "concentrated" within the meaning of Tariff Heading 04.02 is an entirely different matter however, and it is upon that matter that there is divergence between the learned Professor and I.

[78] CODEX Standards require foods to be appropriately labelled to avoid consumers being misled or confused as to the true nature of the food and treatments or conditions it may have undergone, for example, whether it was concentrated or

reconstituted. In the formal description of the Imported Creams supplied by Elle & Vire, there is no evidence that they are “concentrated” nor are there any words to that effect. The ingredients are stated in both as *cream,* followed by permissible food additives.

[79] No evidence has been presented before me that either Imported Cream was intensified, made denser, stronger or purer, especially, by the removal of liquid, or was obtained from “concentrated” milk or cream. In fact, Professor Benkeblia states in his opinion that cream usually has a fat content of 40% after creaming but that the concentration in processed creams is decreased while the total dry matter of the product increases by the addition of other ingredients such as starch. He explains that it is in consequence of these additions that the final product has a fat content of 35.1% when compared to the 40%, which is usually obtained after creaming. It was his evidence that both Imported Creams contain starch.

[80] He goes on to state that the ingredient carrageenan works as a thicker, stabilizer and emulsifier, which keeps mixed ingredients from separating; and gives the creams a smooth texture and accentuate their flavour. Emulsifiers on the other hand are used to bind together “non-combinative substances” such as oil and water and are used to thicken and bind foods such as sauces. All these are permissible functionally necessary food additives for cream in the CODEX.

[81] On the Appellant’s own evidence then, while the total dry matter of the Imported Creams is increased by the addition of starch, stabilisers and emulsifiers, the concentration of the fats in the creams decrease. While the said creams may no doubt have be thickened and made more stable, it appears to me that it is the introduction of functionally necessary ingredients, which produces that result.

[82] In all these circumstances I am unable to find that the Imported Creams were intensified, made denser, stronger or purer, especially by the removal or reduction of liquid or that they were made with “concentrated” “milk” or “cream”

to enable them to be classified as *"cream, concentrated"* within the meaning of Tariff Heading 04.02. In consequence I find that the Appellant has not discharged the burden which rests upon it to prove that the Respondent erred in classifying the imported creams as "creams, not concentrated" under Tariff Heading 04.01.

[83] In these premises there cannot be said to be any shifting of the evidential burden to the Respondent. I nevertheless wish to remark briefly upon the evidence on which he relied in the appeal.

WCO Ruling

[84] In concluding that the Imported Creams were to be classified under Tariff Heading 04.01, the Respondent relied on WCO classification advice dated 27th April 2012 where it was concluded that in the absence of any indication that the Imported Creams were concentrated milk and cream, they do not qualify for classification under Tariff Heading 04.02. A like conclusion to that made by Professor Benkeblia was reached in respect of the effect of the addition of starch, carrageenan and emulsifier to the creams. The advice was arrived at by applying GIR 1 and 6 and on information supplied by the Respondent in its letter to the WCO dated 5th March 2012. The Imported Creams were described in the Respondent's letter as *"UHT sterilized whipping cream 35.1% fat* [and] *UHT sterilized cooking cream 35.1% fat."* Attached to the letter is a copy of Elle & Vire information sheet where the creams in question are described in this way.

> ***UHT sterilized whipping cream 35,1% fat***
> *Cream, thickener: carrageenan.*
> ***UHT sterilized cooking cream 35.1% fat."***
> *Cream, modified starch, emulsifier: E471, stabilizer: carrageenan.*

[85] There is no dispute that the creams described in the Respondents letter and attachment, and which are set out above, are the Imported Creams. It is contended by learned Q.C. however, that the ruling from the WCO is inconclusive and should not be relied upon. Among the Appellant's contentions is that the

creams were not examined by the WCO. I also note that there is no evidence before me of the Imported Creams being examined by Professor Benkeblia who has nevertheless given an opinion on which the Appellant relies.

[86] In response Ms. Edwards submitted that the WCO ruling should be regarded as highly persuasive. No authority was cited but I believe that the judgement of the Caribbean Court of Justice in **Trinidad Cement Ltd. v the State of Trinidad and Tobago et al** [2019] CCJ 4 (OJ) is instructive in this regard. The CARICOM CET like the Tariff adopts the HS as the basis of the classification of goods. In concluding that COTED properly relied on a classification opinion by the WCO in respect of cement, the court considered that in light of the WCO's responsibility for the classification of goods globally under the widely accepted HS, its decisions are normally of high persuasive value unless there was good reason for not relying on them. While it was accepted that the HS Convention and Explanatory Notes were not formally binding, because of their importance to the development of the CET, they too were to be regarded as highly persuasive. Likewise, the GRI and the Explanatory Notes to the HS.

[87] To the extent that food products in the global food trade are required to be appropriately labelled, including with an indication of any treatments or processes it has undergone, and in light of the submission of the Elle & Vire product information sheet to the WCO by the Respondent, notwithstanding the submission of learned QC that the products were not examined by the WCO, I am inclined to regard the opinion as persuasive. It was concluded that

> *Heading 04.01 provides for non-concentrated milk and cream while heading 04.02 covers concentrated products. In the absence of any indication that the products at hand are made of concentrated milk or cream, the Secretariat understands that they do not qualify for classification in heading 04.02.*

Consistency in customs code on import and export documentation & Customs administration ruling

[88] In determining the classification of the Imported Creams the Respondent also considered documents supplied to it by the Appellant including an Elle & Vire Professional Brochure in which *"Excellence Whipping Cream 35.1% fat UHT Long Life Whipping Cream 35.1% fat"* and "*Excellence Cooking Cream UHT Long Life Special Cooking Cream 35.1% fat"* are both assigned customs code *"04013031".* It also relied on import goods declarations submitted by the Appellant to which Invoices from Elle & Vire are attached showing customs code/NDP *"04013031 1000S"* being applied to the Imported Creams.

[89] United States Customs Administration ruling dated 8th December 1997 where *"Elle & Vire UHT Whipping Cream -35.1 Percent"* which were classified in subheading *"0401.30.0500* [and] *0401.30.2500"* based on respective quantitative limits under the Harmonised Tariff Schedule of the United States (HTS) was also called in aid by the Respondent. It's heading appears to provide for milk and cream, not concentrated nor containing added sugar or other sweetening matter.

[90] It is the Respondent's evidence that in the cross border trade of goods the first six digits of the HS tariff code are consistently applied and recognized. This evidence was unchallenged. As stated previously, the harmonization of the description, classification and coding of goods for international trade purposes is achieved by grouping related products to which four (4) digit Headings are designated, which are further expanded to five (5) to six (6) digit Subheadings which allow products to be classified without being moved outside their related product groups.

[91] While I am prepared to accept that the Respondent may have regard to customs code consistency on related import and export documentation, and rulings of other customs agencies on the basis of code similarities, prudence dictates that they should not be relied on exclusively. While parties may no doubt classify

goods themselves for customs purposes, it is well settled that the characterisation of transactions by parties are not conclusive or determinative of what they are in fact. The court is permitted, having regard to the evidence before it, to determine for itself the appropriate characterisation and classification.

[92] As it transpires however, the Respondent's exclusive reliance on these various documents is not fatal as on the Appellant's evidence I am constrained to conclude that the Imported Creams are not "concentrated" within the meaning of Tariff Heading 04.02; and that they were therefore properly classified by the Respondent under Tariff Heading 04.01. The creams being of a fat content by weight exceeding 6%, they fall within subheading 0401.30.00 and are liable to duties at a rate of 75%. In the circumstances, while the RAD erred in making many of its findings, the decision which was returned on the appeal before it is substantially correct.

[93] It is in all the foregoing circumstances that I make the orders below.

ORDER

1. The appeal against the decision of the RAD delivered on the 16th September 2020 is dismissed.

2. The decision of the RAD confirming the Respondent's assessment against the Appellant for additional duties in the amount of **Twenty-Two Million One Hundred and Fifty-Two Thousand Nine Hundred and Seventy-Four Dollars and Fifty-Six Cents ($22,152,974.56)** is confirmed.

3. The declaration that for customs duty purposes Elle & Vire whipping and cooking creams are properly assessed under tariff code 04.02 is refused.

4. In the event that an issue arises in respect of the payment of interest on the additional assessment between the date of assessment and resolution of this appeal, either party is at Liberty to Apply to the Court to resolve that issue.

5. Costs of the appeal to the Respondent, to be taxed, if not sooner agreed.

Carole S. Barnaby
Puisne Judge