

AG



TERRITORY OF MONTSERRAT

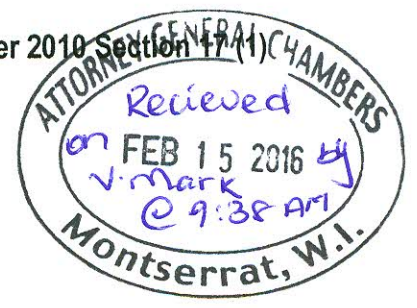
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No MNIHCV2014/0037

In the Matter of the Montserrat Constitution Order 2010 Section 17(1)

And

In the Matter of S.R.O. 41 of 2014



Between:

JOHN ROSEVELT LEE

Claimant

and

[1] DIRECTOR GENERAL OF MONTSERRAT CUSTOMS
& REVENUE SERVICE

[2] THE HON. ATTORNEY GENERAL

Defendants

Appearances

Mr Sylvester Carrott for the Claimant
Ms Amelia Daley for the Defendants

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2015: September 28; October 8; 15
2016: February 10
.....

JUDGMENT

INTRODUCTORY AND BACKGROUND

[1] **LANNS, J. [Ag]:** By a Fixed Date Claim Form and statement of claim dated 16th October 2014, the Claimant, Mr John Rosevelt Lee (Mr Lee) brought an action against the Director General of Montserrat Customs & Revenue Service ("the Director General, MCRS) and the Attorney General seeking (1) a declaration that the continuing failure of the Government of Montserrat to grant him an exemption in accordance with Statutory Rule and Order 41 of 2014; (S.R.& O.41 of 2014);

alternatively, in accordance with its predecessor rules and orders, on goods imported by Mr Lee as a returning Montserratian, is unlawful, and a breach of Mr Lee's rights under section 17(1) of the Montserrat Constitution Order 2010; (2) An order compelling the Government of Montserrat to grant the said exemption and to procure payment forthwith; or alternatively, reimburse Mr Lee with duties which he has paid on such goods which are exempt in accordance with SRO 41 of 2014, and or its predecessor statutory rules and orders; (3) An order compelling the Director General, MCRS to procure payment forthwith to Mr Lee of all sums due to Mr Lee in the amount of \$57,089.80; (4) Damages for breach of Mr Lee's constitutional rights; (5) Interest; and (6) Costs.

[2] During the period 2002 and 2014, the Government of Montserrat passed a number of Statutory Rules and Orders (SR&Os) under which Montserrat nationals who have resided outside of Montserrat for five years or more, and are returning to reside on Montserrat with the intention of remaining there permanently, are to be exempted from paying customs duties and consumption tax on the importation of certain specified items. The SR&Os contain conditions under which Montserrat Nationals might be entitled to, or be granted exemptions. Those conditions, with minor exceptions are basically the same.

[3] Mr Lee lived outside of Montserrat for five years until the 26th November 2012. During the period 8th August 2011 to 27th November 2012, Mr Lee imported certain items on which he paid customs duties and consumption taxes. Subsequently, he sought, to get a refund of the duties and taxes paid in respect of those items. His request for a refund was apparently discussed among government officials in the former Administration, and based on those discussions, it was agreed that Mr Lee was entitled to a refund, and a discretionary SR&O was to be prepared in order for him to be refunded. Correspondence passed between Mr Lee and the Director General, MCRS, and between Mr Lee's legal representative and the Director General, MCRS, but no positive word was forthcoming from the Director General, MCRS. Although he seemed to have been part of the initial discussions, he seemed to have taken a different view as to Mr Lee's entitlement to a refund. As far as the Director General was concerned, Mr Lee was not entitled to a refund. He said that he had already provided Mr Lee with a response to that effect. Further, he was not of the view that Mr Lee's legal representative had provided any ground for the request he had made of the Director General in his letter of 30th June 2014, that the Director General furnish

him with documents pertaining to Mr Lee's request for exemption. Case closed, the Director General stated. Against that background, the claim herein for a declaration and other reliefs for alleged breach of Mr Lee's constitutional rights, resulted.

THE CLAIMANT'S CASE

- [4] Mr Lee's case is that he is a Montserratian by birth. Prior to February 2007, he was "a permanent resident in Montserrat", working for the Montserrat Fire & Rescue Service. In February 2007, he moved to Afghanistan where he worked as a water purification supervisor. He returned to permanently reside in Montserrat on the 26th November 2012. Prior to his return to Montserrat, he imported a motor vehicle and a number of goods in connection with the construction of his home. He filled in forms to claim exemption on those goods, since he was advised that as a returning resident, he was entitled to claim such exemption. He was interviewed by one Mr Terrod Chalmers of the MCRS in connection with his claim, and was led to believe that he qualified for exemption as a returning resident.
- [5] By letters dated 10th December 2012 and 12th February 2014, he formally requested a refund of the import duties paid in relation to the goods imported. He met and held discussions with a number of government officials, as well as the former Premier Mr Reuben Meade concerning his right to be granted an exemption and a refund of the duties he paid. Some government officials agreed that he was entitled to a refund, but the government did not have sufficient funds at the time to reimburse Mr Lee. Mr Lee avers that his claim falls under SRO 41 of 2014, but the Director, MCRS has failed to make the refund of the sum of \$57,089.80.
- [6] By a further letter dated the 30th June 2014, Mr Lee's legal practitioner Mr Sylvester Carrott (Mr Carrott) wrote to the Director General, MCRS requesting copies of all correspondence in connection with Mr Lee's claim to an exemption, and all copies of his application for an exemption, and interview notes. The Director General, by letter dated the 22nd July 2014 replied stating that he was unable to accede to the request, since Mr Lee has not put forward any grounds upon which the application can be acceded to, and the records show that the matter had been attended to and was now closed. Mr Lee says that the continued failure to grant the exemption in

