

ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 66/2016

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BETWEEN

RUSSEL HUI

Appellant

and

COMMISSIONER OF  
CUSTOMS AND EXCISE

Respondent  
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Coram: Administrative Appeals Board

Mr Alan Ng Man-sang (Deputy Chairman)

Mr Lawrence Ng San-wa, MH (Member)

Mr Tsang Mo-chau (Member)

Date of Hearing: 28 April 2017

Date of Handing Down Written Decision with Reasons: 21 November 2017

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**DECISION**  
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1. By a Notice of Appeal dated 6<sup>th</sup> December 2016 lodged by the Appellant with the Administrative Appeals Board (“**the Board**”) (“**the Notice**

**of Appeal**”), the Appellant appealed against the assessment by the Respondent of customs duty on 2 items of the Appellant's cargo<sup>1</sup> under the Air waybill numbered 615-78750475 and the House waybill numbered 8389652600 amounting to HK\$3,095.70.<sup>2</sup> The 2 items of the Appellant’s cargo were:-

Full Description of Goods	Qty	% ABV (Alcohol by Volume)	Volume (litres)	Unit Value (excluding VAT)
Glenlivet Founder’s Reserve & 15 Year Old French Oak with Hipflask Gift Set (“ <b>the Gift Set</b> ”)	2	40.0	0.05 each 0.10 total	£25
Rosebank 1989 16 Year Old Murray McDavid (“ <b>the Rosebank 1989</b> ”)	1	46.0	0.70	£270

2. It is apparent that the Rosebank 1989 was a bottle of liquor. However, the Gift Set was a composite items of goods. It composed of (a) 1 bottle of Glenlivet Founder’s Reserve miniature (liquor of 0.05 litre); (b) 1 bottle of Glenlivet 15 Year Old French Oak miniature (liquor of 0.05 litre) (“**the 2 Miniature Liquor Items**”); and (c) 1 Hipflask. The customs duty was in fact imposed on the Rosebank 1989 and the 2 Miniature Liquor Items (collectively as "**the Liquor Items**").

3. The total amount of customs duty imposed on the Liquor Items can be broken down into:-

- (a) HK\$238.50 customs duty on the 2 Miniature Liquor Items;

<sup>1</sup> For details, see Hearing Bundle 48, 106 and 114.

<sup>2</sup> See Hearing Bundle 54-57, 74-83.

- (b) HK\$2,575.80 customs duty on the Rosebank 1989; and
- (c) HK\$281.40 import licence fees on the Liquor Items.<sup>3</sup>

### **The Relevant Background**

4. In early November 2016, the Appellant purchased, among other things, the Gift Set and the Rosebank 1989 from Scotch Whisky Auctions Ltd (“**Scotch Whisky**”), a company in Glasgow of Scotland, as Christmas gifts for his son and friends<sup>4</sup>. The goods purchased by the Appellant from Scotch Whisky were arranged to be delivered by DHL Express to the Appellant in Hong Kong.

5. On 12<sup>th</sup> November 2016, DHL Express (on behalf of the Appellant) submitted to the Respondent, a “Commercial Invoice” dated 10<sup>th</sup> November 2016<sup>5</sup> (“**the Commercial Invoice**”) and an “Order Invoice”<sup>6</sup> issued by Scotch Whisky for assessment of customs duty on the Liquor Items. On even date, the Respondent examined the Liquor Items<sup>7</sup> and assessed the customs duty to be imposed thereon at HK\$3,095.70<sup>8</sup> (“**the 12/11/16 Assessment**”).

6. The Appellant did not accept the customs duty assessment imposed

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<sup>3</sup> See para.18 of the Respondent’s Statement dated 9<sup>th</sup> January 2017, at Hearing Bundle at 67.

<sup>4</sup> See the last paragraph of the Appellant’s letter to the Respondent dated 26<sup>th</sup> November 2016, at Hearing Bundle 111; and the last paragraph of the Appellant’s letter to the Respondent dated 28<sup>th</sup> November 2016, at Hearing Bundle 115.

<sup>5</sup> See Hearing Bundle 48, 78.

<sup>6</sup> See Hearing Bundle 77.

<sup>7</sup> See Customs and Excise Department Cargo Examination Report, at Hearing Bundle 74-75.

<sup>8</sup> See Customs & Excise Department Standard Valuation List Payment Record dated 12<sup>th</sup> November 2016, at Hearing Bundle 79.

and did not pay the customs duty assessed for clearance of the Liquor Items.

7. By letter dated 16<sup>th</sup> November 2016<sup>9</sup>, the Appellant requested the Respondent to reassess the customs duty of the Liquor Items by providing information and retail prices of other comparable liquor items obtained on the internet. On the same day, the Respondent informed the Appellant (*via* DHL Express verbally) that the 12/11/16 Assessment remained unchanged.<sup>10</sup>

8. By letter dated 17<sup>th</sup> November 2016<sup>11</sup>, the Appellant requested the Respondent to provide formal written initial assessment and reassessment of the Liquor Items and the final assessment of the customs duty imposed just on the Rosebank 1989 abandoning the 2 Miniature Liquor Items. It is the Appellant's case that on the same day, the Respondent informed the Appellant (*via* DHL Express verbally) that the 12/11/16 Assessment remained the same.<sup>12</sup>

9. By letter dated 18<sup>th</sup> November 2016<sup>13</sup>, the Appellant requested the Respondent to reassess the customs duty of the Rosebank 1989 by providing information and retail price of a comparable of (but not exactly) the Rosebank 1989 obtained on the internet.

10. By letters dated 25<sup>th</sup> November 2016<sup>14</sup> and 7<sup>th</sup> December 2016<sup>15</sup>

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<sup>9</sup> See Hearing Bundle 37-39, 84-86.

<sup>10</sup> See the email from DHL express to the Appellant dated 16<sup>th</sup> November 2016, at Hearing Bundle 49, 107

<sup>11</sup> See Hearing Bundle 42, 87.

<sup>12</sup> See the email from DHL express to the Appellant dated 16<sup>th</sup> November 2016, at Hearing Bundle 49, 107

<sup>13</sup> See Hearing Bundle 43-45.

<sup>14</sup> See Hearing Bundle 56-57, 108-109.

(“the Respondent’s Letters”), the Respondent provided the Appellant with the customs duty assessment and reassessment, and explained (with reference to the relevant legislative provisions) how the customs duty on the Liquor Items had been arrived at. In both letters, the Respondent also assessed the customs duty imposed just on the Rosebank 1989 (abandoning the 2 Miniature Liquor Items) at HK\$2,833.30.

11. The Liquor Items have been returned to Scotch Whisky pending the present appeal.<sup>16</sup>

### **The Reasons for the Decision**

12. In the Respondent’s Letters<sup>17</sup>, the Respondent has given his reasons for imposing a customs duty of HK\$3,095.70 for the Liquor Items and HK\$2,833.30 for just the Rosebank 1989.

13. In a nutshell, the Respondent’s reasons for his decision are as follows:-

- (a) The Respondent cited *section 26A(1) of the Dutiable Commodities Ordinance (Cap. 109) ("DCO")* which provided that “*for the purpose of assessing and calculating duty by reference to the value of any goods, the value shall be the*

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<sup>15</sup> See Hearing Bundle 120-121.

<sup>16</sup> See Hearing Bundle 115, 149-155.

<sup>17</sup> See Hearing Bundle 56-57 (108-109), 120-121; we understand that only the Respondent’s letter dated 25<sup>th</sup> November 2016 (“the 25/11/16 Letter”) was enclosed with the Notice of Appeal, but the reasons given by the Respondent in both letters are more or less the same.

*normal price which the goods would fetch, at the relevant time, on their sale in the open market between a buyer and seller independent of each other*". Pursuant to section 26A(8)(a) of DCO, "relevant time" meant "*in the case of imported goods the time such goods are removed from premises of the seller for the purpose of export*".

- (b) In reliance on section 26A(4) of DCO, the Respondent accepted the Commercial Invoice provided by the Appellant via DHL Express, and assessed customs duty on the Liquor Items by reference to the prices of the Rosebank 1989 and the Gift Set stated in the Commercial Invoice.
- (c) The Respondent regarded those prices as the normal prices which the Rosebank 1989 and the 2 Miniature Liquor Items were sold by Scotch Whisky to the Appellant in the open market on 10<sup>th</sup> November 2016.
- (d) The Respondent did not accept the prices of other liquor items referred to by the Appellant as comparables in the Appellant's letters to the Respondent dated 16<sup>th</sup> and 18<sup>th</sup> November 2016.
- (e) The Respondent referred to the current rate of customs duty imposed on liquor with an alcoholic strength of more than 30% by volume measured at a temperature of 20°C as 100%

of the value of the goods.

- (f) The Respondent cited *section 26A(6) of DCO* which provided that “*if in any contract of sale, invoice or other document the value of the goods is stated in a currency other than Hong Kong dollars, the Hong Kong dollars equivalent of the other currency is calculated at the opening indicative counter exchange selling rate published by the Hong Kong Association of Banks*”, and took the view that at the material day of the customs duty assessment, the exchange selling rate was 9.54 Hong Kong Dollar to 1 Great Britain Pound.
- (g) The Respondent cited *section 17(3A) of DCO* and opined that “*a person shall apply for an import licence and permit for importing dutiable goods into Hong Kong, including goods for his own use.*” He then referred to *item 3(b) of Part 1 of the Schedule to the Dutiable Commodities Regulations (Cap. 109A) (“DCR”)* which further stipulated that the licence fee for dutiable goods imported for personal use was “*10% of the duty on the goods imported with a minimum fee of \$2*”.
- (h) Accordingly, the Respondent assessed
  - (i) the customs duty payable (including the import licence fee) on the Rosebank 1989 at HK\$2,833.30 whilst the 2 Miniature Liquor Items at HK\$262.40, totalling HK\$3,095.70; and

- (ii) with the abandonment of the 2 Miniature Liquor Items, the customs duty payable (including the import licence fee) on just the Rosebank 1989 at HK\$2,833.30.

### **The Present Appeal**

14. The Appellant has not formulated his grounds of appeal on the Notice of Appeal, but referred to in the Notice of Appeal his letter to the Board dated 19<sup>th</sup> November 2016 and its enclosures<sup>18</sup> in support of the present appeal.

15. The nub of the Appellant's grounds of appeal is as follows:-

- (a) As regards the Rosebank 1989, the Appellant referred to the prices of a number of comparable liquor items<sup>19</sup> obtained on the internet, and contended that the Respondent's assessment was excessive because in light of the prices of the comparable liquor items, the normal price of Rosebank 1989 in the open market at the relevant time should be less than £270 [HK\$2,575.80<sup>20</sup>].

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<sup>18</sup> See Hearing Bundle 34-49; the letter and its enclosures were mistakenly delivered to the Respondent, later returned to the Appellant who delivered the same to the Board on 29<sup>th</sup> November 2016, see Hearing Bundle 50.

<sup>19</sup> 1989 Rosebank 1989 – Rare Old (Gordon and MacPhail) 46% at £169.17 ex VAT for 1 bottle 70 cl in the U.K. on 19<sup>th</sup> November 2016, but out of stock, see Hearing Bundle 35 (para.2(1)) & 40; Rosebank 1990-21 year old at HK\$12,862 (including premium) for 2 bottles in Hong Kong on 18<sup>th</sup> November 2016, see Hearing Bundle 35 (para.2(2)) & 45.

<sup>20</sup> £270 x 9.54.



- (b) Insofar as the 2 Miniature Liquor Items are concerned,
- (i) the Appellant argued that if the Respondent opined that the information in any contract of sale, invoice or other document produced under *section 27 of DCO* was insufficient or inaccurate as to the value of the goods, the Respondent might fix a value which should be deemed to be the value of the goods for the purpose of assessing and calculating customs duty<sup>21</sup>;
  - (ii) the Appellant referred to the price of a bottle of Glenlivet 15 Year Old French Oak 700 ml at HK\$748 in Hong Kong<sup>22</sup>, the retail price for Glenlivet Founders Reserve 5 cl miniature at £2.35 (£2.67 discounting VAT)<sup>23</sup> and for Glenlivet 15 Year Old French Oak 700 ml at £38.51 (£43.46 discounting VAT)<sup>24</sup> in the U.K. on 19<sup>th</sup> November 2016, and argued that the 2 Miniature Liquor Items should have cost at most HK\$60.00 (based on £2.35 excluding VAT per bottle in the U.K.)<sup>25</sup>;
  - (iii) it was a matter of common sense that the Glenlivet Hipflask of the Gift Set would be more expensive than

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<sup>21</sup> See *section 26A(5)(b) of DCO*; and Hearing Bundle 35 (para.2(4)).

<sup>22</sup> See Hearing Bundle 35 (para.2(4)).

<sup>23</sup> See Hearing Bundle 37 (para.2(1)) & 41.

<sup>24</sup> See Hearing Bundle 37 (para.2(1)) & 91.

<sup>25</sup> See Hearing Bundle 35 (para.2(4)).

the 2 Miniature Liquor Items<sup>26</sup>;

(iv) the Appellant argued that to insist on the same amount of customs duty notwithstanding that he had abandoned the 2 Miniature Liquor Items, the assessment by the Respondent was bureaucratic, difficult and unreasonable.

16. Pursuant to *section 11(2)(a) and (b) of the Administrative Appeals Board Ordinance (Cap.442)* (“**AABO**”), the Respondent has filed and served his Statement<sup>27</sup> and List of Relevant Documents with copies<sup>28</sup> on 9<sup>th</sup> January 2017<sup>29</sup>.

17. The Respondent was represented by Ms Venus Cheung (“**Ms Cheung**”), Senior Government Counsel (Ag.), and Ms Cheung has filed the Respondent’s Skeleton Submission<sup>30</sup> and made oral submissions at the substantive hearing.

18. The Appellant was unrepresented and has only made oral submissions at the substantive hearing.

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<sup>26</sup> See Hearing Bundle 35 (para.2(4)).

<sup>27</sup> See Hearing Bundle 64-69.

<sup>28</sup> See Hearing Bundle 70-156.

<sup>29</sup> See Hearing Bundle 63.

<sup>30</sup> See Hearing Bundle 194-199.

## **The Relevant Statutory Provisions and the Relevant Principles**

19. Section 26A(7) of DCO provides that “[a] person who is aggrieved by the exercise of the powers conferred under [section 26A of DCO] may appeal to the [Board].”

20. Section 26B of DCO further provides that “[the Board] shall assess the duty payable if an aggrieved party appeals and the Board finds that duty (other than duty assessed by the [Respondent]) is payable”<sup>31</sup> and that “[a]n assessment of duty by the [Board] is treated as if it is an assessment of duty by the [Respondent] ...”<sup>32</sup> This Board therefore has the statutory power and duty to assess the customs duty payable.

21. The following provisions in DCO are pertinent to the assessment of customs duty on the Liquor Items in the present appeal:-

### Section 4(1) of DCO

“Duty shall be assessed and payable on dutiable goods and refunded in respect of such goods at the rates and in the manner as set out in Schedule 1.”

### Part I, Schedule 1 to DCO

“Duty shall be payable on the following types of liquor at the rates,

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<sup>31</sup> See section 26B(1) of DCO.

<sup>32</sup> See section 26B(2) of DCO.

*expressed as a percentage of the value (calculated in accordance with section 26A), set out opposite each type of liquor-*

...

*Liquor with an alcoholic strength of more than 30% by volume measured at a temperature of 20° C [at the rate of] 100%”*

### *Section 26A(1)&(2) of DCO*

*“(1) Subject to subsections (2), (3), (4), (5) and (5A), for the purpose of assessing and calculating duty by reference to the value of any goods, the value shall be the normal price which the goods would fetch, at the relevant time<sup>33</sup>, on their sale in the open market between a buyer and seller independent of each other.*

*(2) The normal price of any imported dutiable goods and of any dutiable goods manufactured in Hong Kong shall be determined on the assumptions that-*

- (a) the goods are treated as having been delivered to the buyer in Hong Kong at the time when they are removed from the premises of the seller for the purpose of such delivery;*
- ...

### *Section 26A(3) of DCO*

*“(3) A sale in the open market between a buyer and seller independent of each other pre-supposes that-*

- (a) the price is the sole consideration;*

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<sup>33</sup> For the present purpose, “*relevant time*” means, in the case of imported goods, the time such goods are removed from the premises of the seller for the purpose of export, see *section 26A(8)(a) of DCO*.

- (b) *the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him (other than the relationship created by the sale of the goods in question); ... ”*

Section 26A(4) of DCO

*“(4) For the purpose of subsection (1), the [Respondent] or any officer authorized by him in that behalf may, subject to subsections (5) and (5A), accept the value of the goods as stated in the contract of sale, invoice or other document, relating to the goods and produced under section 27, if the date of the contract of sale, invoice or other document precedes the date on which the duty is assessed by not more than 12 months.”*

Section 26A(5) of DCO

*“(5) If-*

- (a) *an importer or manufacturer fails to produce any contract of sale, invoice or other document required to be produced by the [Respondent] under section 27;*
- (b) *in the opinion of the [Respondent] or any officer authorized by him in that behalf the information in any contract of sale, invoice or other document produced under section 27 is insufficient or inaccurate as to the value of the goods; or*
- (c) *in the opinion of the [Respondent] or any officer authorized by him in that behalf the value of the goods stated in any contract of sale, invoice or other document produced under section 27 is not the value in accordance with subsection (1),*

*the [Respondent] or such officer may fix a value which shall be deemed to be the value of the goods for the purpose of assessing and calculating duty.”*

*Section 26A(6) of DCO*

*“(6) If in any contract of sale, invoice or other document the value of the goods is stated in a currency other than Hong Kong dollars, the Hong Kong dollars equivalent of the other currency is calculated at the opening indicative counter exchange selling rate published by the Hong Kong Association of Banks-*

*...*

*(b) in any other case, on the 15<sup>th</sup> day of the month immediately preceding the month in which the goods are imported. ”*

22. The following provisions in *DCO* and *DCR* are pertinent to the assessment of import licence fee on the Liquor Items in the present appeal:-

*Section 17(3A) of DCO*

*“(3A) A person who imports goods to which [DCO] applies without a licence –*

*(a) for his own use other than for trade or business and the goods are declared to a member of the Customs and Excise Service; ...*

*shall, after import of the goods, immediately apply for-*

*(i) an import licence, or an import and export licence ...”*

*Item 3(b) of Part 1 of the Schedule to DCR*

*“(b) Import licence to persons licensed only to import for their own use*

*or for a single commercial shipment of duty value less than [HK]\$2,000, fee [at] 10% of the duty on the goods imported with a minimum fee of \$2.”*

23. Section 21(1) of the AABO provides that for the purposes of an appeal, this Board may: (j) subject to sub-section (2), confirm, vary or reverse the decision that is appealed against or substitute therefor such other decision or make such other order as it may think fit.

### **Our Views**

24. In the present appeal, the Appellant disowned the Commercial Invoice submitted by his delivery agent to the Respondent for the assessment of customs duty and import licence fee on the Liquor Items, and argued that the prices of the Rosebank 1989 and the Gift Set stated in the Commercial Invoice did not represent the normal price which the Liquor Items would fetch, at the relevant time<sup>34</sup>, on their sale in the open market between a buyer and seller independent of each other. In order to advance the aforesaid argument, the Appellant adduced the prices of a number of what he described as comparable liquor items to show that the prices of the Rosebank 1989 and the Gift Set stated in the Commercial Invoice exceeded the normal price which the Liquor Items would fetch in the open market.

25. We now turn to analyse the Appellant’s arguments in detail.

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<sup>34</sup> For the present purpose, “*relevant time*” means, in the case of imported goods, the time such goods are removed from the premises of the seller for the purpose of export, see section 26A(8)(a) of DCO.

## The Rosebank 1989

26. It is quite obvious that the liquor items relied on by the Appellant as comparables<sup>35</sup> to establish the normal price of the Rosebank 1989 in the open market in around 10<sup>th</sup> November 2016<sup>36</sup>, are not identical to the Rosebank 1989. At most, they can only be said to be similar to the Rosebank 1989. Therefore, we are of the view that the prices of such liquor items are unable to establish the normal price of the Rosebank 1989 in the open market in around 10<sup>th</sup> November 2016.

27. The Respondent has relied on *section 26A(4) of DCO* in assessing the customs duty on the Rosebank 1989. The assessment took place on 12<sup>th</sup> November 2016 and the Commercial Invoice only preceded the assessment by 2 days. The Respondent was entitled to rely on *section 26A(4) of DCO*, and accepted the value of the Rosebank 1989 as stated in the Commercial Invoice for the assessment of the customs duty thereon. We further hold that there was nothing in the Appellant's argument which suggested (a) that the information relating to the Rosebank 1989 in the Commercial Invoice was insufficient or inaccurate as to the value of the Rosebank 1989; and (b) that the value of the Rosebank 1989 stated in the Commercial Invoice was not the value in accordance with *section 26A(1) of DCO*.

28. Accordingly, we agree to the Respondent's assessment that the

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<sup>35</sup> See para.15(a) hereinabove.

<sup>36</sup> The date of the Commercial Invoice was 10<sup>th</sup> November 2016, and it is presumed that around 10<sup>th</sup> November 2016 was the approximate time the Liquor Items were removed from the premises of Scotch Whisky for the purpose of export to Hong Kong see *section 26A(8)(a) of DCO*.



customs duty payable (including the import licence fee) on the Rosebank 1989 was HK\$2,833.30.

29. The Appellant has already abandoned the 2 Miniature Liquor Items for assessment of customs duty purpose. By the Respondent's Letters, the Respondent provided the Appellant with the basis upon which the total sum of customs duty on the Liquor Items was arrived at, and also assessed the customs duty imposed just on the Rosebank 1989 (accepting the abandonment of the 2 Miniature Liquor Items) at HK\$2,833.30. One of the Respondent's Letters is the 25/11/16 Letter (enclosed with the Notice of Appeal), and the Respondent's decision in the 25/11/16 Letter is the decision against which the Appellant has launched the present appeal. There is nothing in the Appellant's argument that the Respondent has insisted on the same amount of customs duty (presumably HK\$3,095.70) notwithstanding that he had abandoned the 2 Miniature Liquor Items, and that the Respondent's assessment was bureaucratic, difficult and unreasonable.

30. On this ground alone, the present appeal should be dismissed. But, in deference to the parties' arguments on the amount of customs duty to be imposed on the 2 Miniature Liquor Items, we think it is necessary for us to give our views on how to assess the customs duty on the 2 Miniature Liquor Items. This is particularly so where the price stated in the Commercial Invoice was as to the Gift Set, a composite item, which happened to contain the 2 Miniature Liquor Items. The price as to the Gift Set was not as clear as the price as to the Rosebank 1989 which indicated/evidenced the normal open

market price of the liquor in question.

### The 2 Miniature Liquor Items

31. As we have said, the Gift Set contained not only the 2 Miniature Liquor Items, but also a Hipflask, and the Respondent assessed the customs duty on the 2 Miniature Liquor Items at HK\$262.40 on the basis of the price of the Gift Set stated in the Commercial Invoice submitted by the Appellant's delivery agent for customs duty assessment purpose.

32. Customs duty may be charged by weight, or sometimes by volume, or sometimes on the value of the imported goods<sup>37</sup>, i.e. *ad valorem*, and, in the latter type of cases, assessable by multiplying the customs value of the imported goods by an *ad valorem* rate of duty (e.g. 100% in the present appeal). This requires the customs officials to determine the value of the goods imported, and *section 26A of DCO* provides the customs officials with the necessary valuation mechanism through which the customs duty on the imported goods can be assessed. For assessment and calculation purpose, the customs value shall be the normal price which the goods would fetch at the relevant time on their sale in the open market between the buyer and seller independent of each other.<sup>38</sup> We accept Ms Cheung's submission that it would be unreasonable for the Respondent's frontline customs officials to research on the prices of each and every item of dutiable goods in order to

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<sup>37</sup> Insofar as alcoholic beverages are concerned as in the present appeal.

<sup>38</sup> See *section 26A(1) of DCO*.

assess the customs duty to be imposed thereon<sup>39</sup>. In cases where the price stated in the contract of sale, invoice or other document is related to a composite of goods which includes the goods subject to customs duty, how should the Respondent assess the customs duty on the goods in question?

33. The customs officials have a discretion under *section 26A(4) of DCO* to accept the value of the goods as stated in the contract of sale, invoice or other document relating to the goods. However, under *section 26A(5) and (5A) of DCO*, the customs officials have the discretion under certain situations to reject the value so stated and assess the customs value separately. Two of the situations where the customs officials may reject the value so stated are where they are of the opinion that the information in any contract of sale, invoice or other document relating to the goods is insufficient or inaccurate as to the value of the goods<sup>40</sup>, and that the value of the goods stated therein is not the value in accordance with *26A(1) of DCO*<sup>41</sup>. In dealing with a composite of goods imported (with only some items of goods subject to customs duty) and the price stated in the contract of sale, invoice or other document is related to the whole composite without any breakdown, the customs officials should not be too ready to accept the price so stated as the customs value of the dutiable goods for obvious reasons. The price so stated may not be accurate as to the value of the goods in question. The customs officials shall examine the documents and the goods carefully to identify which items of goods in the composite the seller has priced for. For example, if the items of

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<sup>39</sup> See para.17 of the Respondent's Skeleton Submission, at Hearing Bundle 198.

<sup>40</sup> See *section 26A(5)(b) of DCO*.

<sup>41</sup> See *section 26A(5)(c) of DCO*.

goods in the composite not subject to the customs duty are only a gift to boost the sale of the dutiable goods in the composite, the price stated in the invoice can be accepted as the customs value of the dutiable goods. The question is whether the customs officials, upon examination of the composite items of goods and the documents submitted, can be satisfied that the price stated in the documents submitted represents the normal open market price of the goods in question. It is a question of opinion of the frontline customs officials, and it is impossible for us to set out all the circumstances which may confront the frontline customs officials. As the circumstances will be varying, we simply leave it to the discretion of the frontline customs officials, and, if difficult cases arise and appeal is launched therefrom, to the discretion of the Board hearing the appeal.

34. If we are required to assess the customs duty on the 2 Miniature Liquor Items, we are inclined to reject the price of the Gift Set, i.e. £25.00 as the normal open market price of the 2 Miniature Liquor Items on the ground that part of the price must represent the value of the Hipflask and one of the comparables submitted by the Appellant, i.e. Glenlivet Founders Reserve 5 cl miniature only attracted a retail price of £2.35 (£2.67 discounting VAT) in the U.K. on 19<sup>th</sup> November 2016<sup>42</sup>. Had the Appellant not have abandoned the 2 Miniature Liquor Items, we would have remitted this part of the case to the Respondent for reassessment under *section 21(3) of AABO* since we have not had sufficient information to assess the normal open market price of Glenlivet 15 Year Old French Oak 5 cl miniature.

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<sup>42</sup> See Hearing Bundle 37 (para.2(1)) & 41.

## **Conclusion**

35. For the reasons given above, the appeal should be dismissed and we so order.

36. As to costs, both parties have confirmed not to ask for costs incurred in the present appeal at the end of the substantive hearing. This being the case, there be no order as to costs of this appeal.

(Mr Ng Man-sang Alan)

Deputy Chairman

Administrative Appeals Board