TC04127

Appeal number: TC/2012/03269

EXCISE DUTY – revocation of the appellant's registration under Warehousekeepers and Owners of Warehoused Goods Regulations 1999 – whether for "reasonable cause" – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SOUTHERN DRINKS LTD **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE CHRISTOPHER STAKER
MR JOHN CHERRY

Sitting in public in London on 10 and 11 September 2014

Ms Najat El-Ghorri, director of the Appellant

Mr Jonathan Hall QC, counsel, instructed by The Solicitor for HM Revenue & Customs, for the Respondents

DECISION

Introduction

1. The Appellant company appeals against a decision of Her Majesty's Revenue & Customs ("HMRC") dated 16 January 2012 made under s 100G(5) of the Customs and Excise Management Act 1979 ("CEMA") to revoke its approval under the Warehousekeepers and Owners of Warehoused Goods Regulations SI 1999/1278 ("WOWGR").

2. The Appellant has another pending appeal against a refusal to restore goods and assessments that were made following revocation of that approval. The present appeal is concerned only with the revocation of the WOWGR approval itself.

Background

3. The following background facts were not seriously contested by the Appellant. On the basis of the evidence, the Tribunal finds these background facts to be established.

4. At all relevant times, the Appellant company traded from and had its registered address at an address in Dagenham, which is also the home address of Ms Najat Ali El-Ghorri, who was appointed director of the Appellant on 30 May 2003. Ms El-Ghorri is the only person involved in the company and was fully responsible for the whole day to day running of its business. She was not involved in any other business, and the company was her sole source of income. The company's business activities were the trade in alcoholic beverages.

5. The Appellant company was approved under WOWGR on 27 October 2004, and as such was permitted to receive, dispatch, purchase and sell and/or store duty-suspended goods (that is, goods on which UK excise duty has not been paid) with an excise-approved warehouse.

6. Officers of HMRC visited Ms El-Ghorri at her home address on a number of occasions between 2005 and 2011, the two visits most relevant to this appeal being on 25 October 2011 and 16 November 2011.

7. On 8 June 2011, 15 July 2011, 12 October 2011 and 25 October 2011, the UK Border Agency ("UKBA") seized quantities of alcoholic beverages from lorries that had arrived in the UK. The goods in question were en route from the Continent to the Appellant's account at an excise warehouse in the UK. The Appellant's case is that Ms El-Ghorri was unaware of these seizures at the time that they occurred, but it has not made a positive case that the seizures themselves did not take place. The Tribunal is satisfied on a balance of probability that they did.

8. By a decision dated 16 January 2012, an officer of HMRC revoked the Appellant company's WOWGR approval.

The applicable legislation

9. The principal legislative provisions relevant to this appeal are set out in the annex to this decision.

The hearing

10. The hearing bundle consisted of four binders of documents. At the hearing, Ms El-Ghorri gave evidence in support of the Appellant's case. Evidence was given by three HMRC witnesses, Mr Mahomed Abdul-Karim, Mr Paul Simpson and Mr James Page. By agreement, Ms El-Ghorri presented her evidence after the HMRC witnesses. Submissions were then presented on behalf of both parties. Ms El-Ghorri provided handwritten final submissions, which the Tribunal has taken into account.

The evidence of Mr Abdul-Karim

11. Mr Abdul-Karim is in the Alcohol Strategy Team in HMRC.

12. His witness statement states amongst other matters as follows.

13. Mr Abdul-Karim participated in the HMRC visits on 25 October 2011 and 16 November 2011.

14. At the 25 October 2011 visit, Ms El-Ghorri stated amongst other matters that:

(1) she was the only person involved in the Appellant company and fully responsible for the day to day running of the business which was her sole source of income, and she was not involved in any other business;

(2) the company's business was trading in alcoholic beverages, and it had one UK based supplier and three UK based customers;

(3) the sole supplier since June/July 2011 had been Petrich Ltd;

(4) the goods arrived from the Continent (France) and it was her responsibility to book the goods into the Appellant's account at either of two excise warehouses, Seabrook (in East London) or Dynamic (in Bristol); when booking the goods in she did not know what date they would arrive and only learned of receipt when they actually arrived;

(5) Mr Kotsev of Petrich Ltd had approached her and offered to supply the drinks; a letter from Petrich Ltd to the Appellant company dated 1 July 2011 stated that as a "valuable customer" the Appellant company was being offered a credit limit of £250,000;

(6) Ms El-Ghorri was initially approached by Mr Kotsev who met her at her home address, but she never visited Mr Kotsev's business premises; this meeting came about after she announced her intention to trade with "others in the trade"; Petrich Ltd was the only company to approach her and she made no enquiries of other suppliers or advertised;

(7) the Appellant's customers were Shooters Hill Store, Woolf Leisure and Can Do Beers Ltd; the Appellant did not advertise and all contacts were achieved by word of mouth;

(8) the Appellant's transaction process was that (i) the Appellant received a stock offer from Petrich Ltd; (ii) Ms El-Ghorri booked the stock into Seabrook or Dynamic; (iii) the goods entered the Appellant's account at the warehouse at a delivered price, and the Appellant had no involvement in haulage arrangements; (iv) when the goods arrived into the Appellant's account, Ms El-Ghorri offered the stock to the customers by producing a "stock offer"; (v) the customers then sent a purchase order to the Appellant for the goods; (vi) a sales invoice was raised, and the Appellant then sent release instructions to the warehouse, pursuant to which there was an "underbond transfer" of the goods within the same warehouse to the ownership of the customer buyer; (vii) payment was made by the customer buyer by bank transfer up to a week or a month later, there being an informal credit arrangement reliant on trust.

15. At this 25 October 2011 visit:

(1) when asked to elaborate on who were the "others in the trade" who introduced her to Petrich Ltd, Ms El-Ghorri declined to comment even though she was told that her refusal to provide this information would be noted;

(2) when Mr Abdul-Karim expressed concern in respect of the goods seized by UKBA, Ms El-Ghorri stated that she had not received any notice from UKBA but was made aware by Seabrook of goods seized by UKBA;

(3) Mr Abdul-Karim expressed concern with "alcohol diversion fraud" and how the Appellant company may knowingly or unknowingly play a part in fraudulent supply chains to facilitate diversion fraud by providing cover loads for multiple movements across the Channel;

(4) Ms El-Ghorri became visibly upset and explained that she may have been a little bit naïve and not fully understood the extent of her involvement with these transactions;

(5) Mr Abdul-Karim explained the need for her to undertake appropriate due diligence in respect of those with whom she trades, especially given the UKBA seizures, and expressed concern about the extraordinary circumstances in which "high risk" transactions had fallen into place quite effortlessly, simply by Ms El-Ghorri expressing a desire to trade with persons unknown;

(6) HMRC uplifted business records of the Appellant, and Mr Abdul-Karim gave Ms El-Ghorri a factsheet explaining her rights under the Human Rights Act 1998 when HMRC are considering charging certain penalties.

16. The purpose of the subsequent 16 November 2011 visit was to return the Appellant's business records that had been uplifted and to establish trading activities since the last visit. Ms El-Ghorri informed Mr Abdul-Karim that the Appellant

company had not traded at all since the last visit, that she had had difficulty contacting Mr Kotsev, that she had made a decision not to trade with Petrich Ltd in the future, that she was looking for new suppliers, and that she would inform HMRC of any new suppliers.

17. Mr Abdul-Karim conducted further enquiries into the supply chain, and uplifted records from Petrich Ltd and Can-Do Beers Ltd. The documents established the following.

(1) The supply chain was as follows. Petrich Ltd (director Mr Kotsev) imported the goods from France and sold them to the Appellant company. The Appellant company took receipt of the goods in its chosen warehouse and then sold them to Can-Do Beers Ltd. Can-Do Beers Ltd then sold the goods on to San Marco Ltd. On instruction from San Marco Ltd the goods were removed from Can-Do Beers Ltd and deposited in the account of a company called Bourgas Ltd in France, the director of which was Mr Kotsev. The goods thus returned to France to the control of the same individual responsible for their entry into the UK.

(2) The purchase/sales invoices in respect of this supply chain showed that the transactions were non-commercial. Throughout the deal chain the price of the goods increased, so that the goods ended up back in France at a substantially inflated price. Those in the chain continued to add their standard mark-up even where the product was overpriced and irrespective of commercial reality.

18. Unusual features in the business practices of the Appellant giving rise to concerns as to the bona fides of its business activities were the low standard of due-diligence carried out, unrealistic lines of credit extended to trading partners, non-commercial prices and uniformity of price increases through the supply chain. This, together with the UKBA seizures, suggested to Mr Abdul-Karim that the trades in which the Appellant participated were not legitimate trading but a purely contrived chain to facilitate fraud. Mr Abdul-Karim considered that the most likely fraud that the trading was designed to facilitate was the diversion of excise goods through the use of "cover loads".

19. The nature of alcohol diversion fraud though the use of cover loads is a follows. There exists an EU-wide electronic Excise Movement and Control System ("EMCS") for recording and validating movements of duty suspended goods within the EU. To initiate a movement of duty suspended goods between approved warehouses or by approved persons from one Member State to another, the consignor must complete and submit an electronic administrative document ("eAD") using ECMS. The ECMS then generates a unique Administrative Reference Code ("ARC") for that particular movement. The ARC is required to travel with the goods and must be provided when requested by the relevant authorities during the course of the movement. An ARC has a "lifespan" during which the movement must take place. (In the case of the goods supplied from France to the Appellant, the lifespan of each relevant ARC was three to five days.) In this type of fraud, organised criminal gangs initiate a movement on the ECMS for a legitimate movement of goods from an excise warehouse in another

Member State to an excise warehouse in the UK. This properly set up movement is a "cover load", which covers fraud by which a number of other loads of similar products may then be brought across to the UK within the lifespan of the same ARC. These other loads are then diverted and sold on the black market in the UK without excise duty or VAT being accounted for. In such frauds, HMRC believe that for every such cover load there may be between 5 and 30 supplementary (fraudulent) movements.

20. As a result of the HMRC visits and further enquiries, Mr Abdul-Karim concluded that the Appellant was no longer a fit and proper person to continue to hold the privileges of a WOWGR registered owner, and that HMRC should exercise the power to revoke its registration. The Appellant's manner of conducting business not only risked facilitating fraud, but actually facilitated fraud. Given the risk of fraud, the Appellant should have undertaken further checks to ensure that its business did not facilitate fraud. It was not appropriate to conduct business on a "no questions asked" basis. The trading relationship with Petrich Ltd does not appear to have been a normal trading relationship, for instance no satisfactory explanation was given of the credit arrangements, under which Petrich Ltd extended to the Appellant a credit limit of £250,000 without giving any details of the basis, timescales, etc. Mr Abdul-Karim did not consider that there was any lesser measure than revoking the licence that would have adequately addressed the risk, but that even if there had been, the Appellant would not have been a fit and proper person to be a registered owner.

21. Mr Abdul-Karim denies reassuring Ms El-Ghorri during the HMRC visits that she had done nothing wrong or that she would be looked after, or that he made any comment on her religion, or that HMRC officials engaged in threatening behaviour, that it was Officer Paul Simpson and not Officer David Page who accompanied him. Ms El-Ghorri's claim in her witness statement that she dealt in cash was in contradiction with her claim during the HMRC visits that all payments were by bank transfer.

22. In cross-examination, it was put to Mr Abdul-Karim that Ms El-Ghorri had cooperated with his enquiries, and that she was, or had felt, intimidated by the HMRC officers. Mr Abdul-Karim confirmed that Ms El-Ghorri provided tea and coffee to the HMRC officers during the visits and said that the HMRC officers had acted professionally. He did not know if Can-Do Beers Ltd was still trading.

The evidence of David Page

23. Mr Page is an officer of HMRC working within the excise alcohol discipline. His witness statement deals with the decision to detain and seize goods belonging to the Appellant in duty suspension in Dynamic's warehouse, to refuse to restore those goods, and to assess the Appellant in respect of those goods. These are matters not within the scope of the present appeal. Mr Page confirms that it was he who accompanied Mr Abdul-Karim on the HMRC visits to the Appellant.

The evidence of Paul Simpson

24. Mr Simpson is an excise assurance officer.

25. The witness statement of Mr Simpson states amongst other matters as follows. Mr Simpson was present with Mr Abdul-Karim at an HMRC visit to the Appellant's premises on 30 May 2007. The purpose of the visit was to ensure that the Appellant was complying with the obligation to submit a form in respect of cash payments in excess of £9,000. Ms El-Ghorri stated that until that visit, she had been unaware of the form, and had not submitted such forms notwithstanding that her business had so far been paid solely in cash. Ms El-Ghorri stated that her customer in France sent her cash payments to her home address by courier. At that visit Mr Simpson stated that Mr Abdul-Karim outlined HMRC's concerns with respect to alcohol fraud.

26. Mr Simpson's statement then also describes the HMRC visits of 25 October 2011 and 16 November 2011. These matters were also dealt with in Mr Simpson's oral evidence.

The evidence of Ms El-Ghorri

27. The four witness statements of Ms El-Ghorri state amongst other matters as follows.

28. The Appellant company was formed in 2003. Ms El-Ghorri has always been the sole director. Ms El-Ghorri built the turnover of the company to a substantial level, and the company at all times abided by the rules and regulations. Buying and selling duty suspended alcohol was the totality of the Appellant's business, such that revocation of the WOWGR licence would force the company to close, and Ms El-Ghorri would lose her sole source of income. Ms El-Ghorri was interviewed by HMRC on numerous occasions, but she was never informed by HMRC of doubts about her character. She has no convictions. She has cooperated with HMRC at all times. Mr Abdul-Karim said to her at one of the visits that she was "the innocent party in all of this", but then on 16 January 2012 she received the decision revoking the WOWGR licence.

29. The decision to revoke the WOWGR licence indicates that it was based on the seizure notices. The Appellant operates a policy and clearly states on its invoices that goods are not the property of the Appellant until safely received in the bonded warehouses. The seizure notices were therefore incorrect as the goods did not belong to the Appellant.

30. After HMRC warned the Appellant not to trade with Petrich Ltd, the Appellant stopped doing so, and began trading with another company instead. Mr Abdul-Karim informed Ms El-Ghorri at all times that he would look after the Appellant, that she should inform him of new companies that the Appellant traded with, and that if she had any questions or concerns she should raise them directly with him. HMRC is taking advantage of the fact that she put her faith in them and cooperated with them at all times.

31. It is correct that the Appellant traded for a period with Petrich Ltd who supplied the Appellant with goods imported from France, and that the Appellant sold these goods to Can-Do Beers Ltd. It is disingenuous to suggest that Ms El-Ghorri would know to whom Can-Do Beers Ltd then sold the goods. The Appellant sold goods at a profit and the business was therefore commercially viable. Ms El-Ghorri was not in a position to know that any trade was circular or suspicious. She said that it is difficult to see how fraud committed by others could impact upon whether Ms El-Ghorri or the Appellant is a fit and proper person. Ms El-Ghorri has not been asked by HMRC for, and is not seeking to hide, details of the others in the trade who introduced her to suppliers and customers. Ms El-Ghorri carried out due diligence on companies before doing business with them. Petrich Ltd was an HMRC approved trader.

32. In cross-examination, Ms El-Ghorri said amongst other matters as follows.

33. She did not need to be concerned with whether the price of the goods was commercial because she only ordered goods from Petrich Ltd once her customers had already verbally placed orders with her and agreed to her price. She did not consider that it was her responsibility to ask questions unless something went wrong, but she considered there was nothing wrong with this arrangement. When it was put to her that she had not complied with all of her obligations in the past (for instance by receiving large cash payments in 2005 without being registered as a high value dealer under the Money Laundering Regulations), she considered that HMRC should have stopped her earlier if HMRC considered that she was not complying with her obligations. She said that she earned her good name in the trade by being honest, and that she would not jeopardise her family for a load of beer. She considered that the HMRC officers had lied to her and manipulated her. She cooperated with HMRC in the visits. She gave the name of one of the "others" when asked and declined to give another name merely to protect the privacy of the person concerned. She had met all her customers and it was only Petrich Ltd that she had not visited. It did not strike her as odd that she always had customers before she bought goods from Petrich Ltd, as she had been in the business since 2002 and it had always worked that way.

34. Ms El-Ghorri denied that she had operated on a "no questions asked" basis. When asked why she would use an excise warehouse in Bristol so far from her customers, she said that she did what it took to keep the business going, and that distance was not a problem. The Appellant paid for storage in the warehouses, but the Appellant's supplier paid for transport to the warehouse, and the Appellant's customer paid for transport from the warehouse. If loads were seized by UKBA, she would not know about that. She never had a situation in which expected stock did not arrive. She never had to pay for any seized load. When asked whether it was true that she would not know, when ordering goods from Petrich Ltd, when the goods would arrive, and that delivery might be one or two months later, Ms El-Ghorri responded that she put the order through, and that when the goods arrived she would be told that they are at the warehouse. When asked if she had admitted to HMRC officers that she had been naïve, Mr El-Ghorri said that she did not remember, but that she remembered saying that she had been betrayed by someone she trusted. She said that she had cooperated with HMRC, including in relation to tracking down a fraudster in 2007.

35. It was put to Ms El-Ghorri that her due diligence documents disclosed that Petrich Ltd had been incorporated only two months before she began trading with them. When asked if she had asked herself at the time how a company incorporated only two months previously could engage in such big deals, she replied no. She said that she did not know the credit score of Petrich Ltd. She said that just because someone had not been in the business long did not mean that they were untrustworthy. She had no credit report or written references, but had verbal references. She did not consider that the £250,000 credit extended to her by Petrich Ltd was a particularly large amount of credit. Although she knew very little about Mr Kotsev, she knew the people who introduced her to him. She considered that if Mr Kotsev had done anything wrong, that had nothing to do with her.

36. Ms El-Ghorri said that HMRC should not be permitted to take her livelihood away.

The Appellant's submissions

37. The principal submissions on behalf of the Appellant were as follows.

38. The Appellant's skeleton argument contains amongst other matters the following submissions. Whilst various "reasons" are set out in the revocation decision, it is unclear what test had been applied by HMRC in deciding to revoke the Appellant's WOWGR licence. The HMRC decision to revoke the licence was irrational and/or manifestly unreasonable and in breach of a legitimate expectation that if the Appellant ceased trading with Petrich Ltd, the Appellant would be permitted to retain its licence.

39. Ms El-Ghorri's handwritten submissions handed up at the hearing stated amongst other matters as follows. HMRC visited the Appellant's premises on many occasions and "gave a smile and a nod and said keep going". It took HMRC some 5-6 years to gather the evidence against the Appellant. The cross-examination of Ms El-Ghorri was opinionated and biased. It is a contradiction for HMRC to suggest that Ms El-Ghorri is naïve, and then to claim at the same time that she masterminded a fraudulent project. There are several companies in the chain said to be a fraudulent scheme, yet only the Appellant has been targeted, and only the Appellant has had its WOWGR licence revoked. HMRC have presented many documents in this appeal, but have not returned to the Appellant its original papers, thus hindering its presentation of its case. This is an abuse of power. The issue before the Tribunal is the reasonableness of the decision to revoke the WOWGR licence, and the Tribunal is therefore limited to considering the material that was before the decision maker at the time of decision in January 2012. The suggestion of alcohol fraud was not raised in the witness statement of Mr Abdul-Karim until February 2014. There is no evidence that a fraud existed, or that the Appellant was unknowingly part of such a fraud. The suggestion that an ARC can be used multiple times makes no sense. The Appellant company did in fact have a system in place, and was at all times able to assist HMRC and provide them with requested documents. The Appellant would not be spending thousands of pounds in legal fees to bring this appeal if it had really been assisting fraudulent activities.

40. Her failure to give HMRC the name of one person did not hinder its investigation, and HMRC did not chase her up for this name. She is offended to be called a liar. The HMRC officers who visited her never told her that anything was wrong and if they had she would have taken action earlier. If HMRC are correct, they should have taken action much earlier. Ms El-Ghorri ran the business single handedly. She had one supplier and three customers. She did not need any other staff. She did not see any wrongdoing. She does not recognise the person that HMRC are trying to present her as. She is sociable and not known as a fraudster by anyone.

The HMRC submissions

41. The principal submissions on behalf of HMRC were as follows.

42. On the basis of the evidence presented, the following conclusions should be found:

(1) The goods traded by the Appellant company followed a pattern of trade:

(a) Petrich Ltd imported the goods into the UK from France and sold them on to the Appellant company.

(b) The Appellant company sold the goods on to Can-Do Beers Ltd.

(c) Can-Do Beers Ltd sold the goods to San Marco Ltd which re-exported the goods to France for the account of Bourgas Ltd.

(2) Mr Kotsev was the sole director of both Petrich Ltd and Bourgas Ltd, and both were deregistered for VAT as missing trader companies with effect from 22 November 2011. The goods thus returned to the control of the same individual who had been responsible for their entry into the UK. Throughout the chain the price increased and Mr Kotsev eventually obtained the same goods back in a French warehouse at a substantially inflated price. The increased costs to Mr Kotsev and the near uniformity of price increases throughout the chain shows that the trades were not the product of legitimate trading but were designed to facilitate fraud. The most likely fraud that this trading is designed to facilitate is the diversion of excise goods through the use of "cover loads".

43. The decision to revoke the Appellant company's registration with immediate effect was well within the range of decisions that the officer could reasonably have arrived at. It is a proper inference from the facts and evidence that the Appellant company knowingly facilitated fraud and was not a "fit and proper person" to be a registered WOWGR owner for that reason. Alternatively, the Appellant company was not a fit and proper person for each of the reasons that:

(1) it was unwilling or unable to conduct proper checks on its suppliers and customers;

(2) it was unwilling or unable to carry out its business in a way that avoided the risk of facilitating fraud;

(3) it did not cooperate with reasonable enquiries conducted by HMRC.

44. Although Ms El-Ghorri claims to have cooperated with HMRC, she did not give details of how she made the contacts with the persons with whom she traded.

45. Ms El-Ghorri was permitted to continue trading for so long despite the HMRC concerns because the HMRC investigations took time. It is not the case that a person who has been permitted to trade for a period cannot have their licence withdrawn. Ms El-Ghorri contends that Can-Do Beers Ltd has been permitted to continue in business, but it is in business as a brewery and no longer has a WOWGR licence.

46. HMRC request that the appeal be dismissed with costs.

The Tribunal's findings

47. The challenged decision in this appeal is the decision of HMRC dated 16 January 2012 to revoke the Appellant's approval under WOWGR. Under s 100G(5) CEMA, HMRC were empowered to revoke the approval "at any time for reasonable cause".

48. Relevant HMRC guidance is Notice 196. Section 5 of that guidance deals with owners of excise goods in excise warehouses. Paragraph 5.6 in that section states that "We may cancel your registration at any time", but further details do not appear to be given in section 5 of the circumstances in which HMRC consider that revocation of that particular type of licence will be appropriate. However, paragraph 2.1 of the guidance, dealing with WOWGR licences generally, states that "Only persons who can demonstrate that they are fit and proper to carry out an excise business will be authorised or registered". On behalf of HMRC it was submitted, and the Tribunal agrees, that it must follow that an appropriate ground for revocation of a licence would be that the person can no longer "demonstrate that they are fit and proper to carry out an excise business". The Tribunal also agrees that the words "demonstrate that" indicate that there is a continuing burden on the licence holder to satisfy HMRC that it is a fit and proper person.

49. In this appeal, it is not for the Tribunal to determine for itself whether or not the Appellant is a fit and proper person to hold the WOWGR licence. Section 16(4) of the Finance Act 1994 limits the role of the Tribunal to determining whether HMRC "could not reasonably have arrived at" the decision to revoke the approval. That is to say, the Tribunal can only allow an appeal if it is satisfied that the decision appealed against is an unreasonable decision. The test of "unreasonableness" in this context is well established. A decision will be unreasonable in particular if the decision-maker took account of irrelevant factors, or failed to take account of relevant factors, of if the decision is plainly irrational.

50. The reasons given in the decision letter for revoking the licence are set out in eight dot points. It is clear that these dot points are not separate and independent reasons for revoking the licence, but that the decision-maker (Mr Abdul-Karim) considered that the circumstances shown by the eight reasons as a whole amounted to justification for revocation.

51. The first dot point notes that the Appellant company was named as the recipient of imported goods which were seized by UKBA on at least 4 occasions. Ms El-Ghorri's case in relation to this point is that she never received the seizure notices, and she claims that she was unaware of them until HMRC informed her of them at one of the 2011 HMRC visits.

52. The Tribunal considers that it is improbable that the seizure notices were not received by Ms El-Ghorri as they are addressed to her home address. It is unlikely that four separate seizure notices would all be lost in the mail. The point was taken that there is no separate evidence that the seizure notices were actually sent, so that it is just possible that they might have been prepared by UKBA but not actually sent. It is also possible that if, as Ms El-Ghorri claims, she was an innocent party, a fraudulent supplier might have simply replaced a seized load with a new load so that she would remain unaware of any wrongdoing.

53. However, the Tribunal ultimately finds that it is unnecessary to determine whether Ms El-Ghorri was aware of the seizure notices or not at the time that they were issued. At the hearing, it was part of the HMRC case that she must have been aware of the seizure notices, and that she did not contact HMRC immediately to enquire into the seizures, which is what a fit and proper person would have done. However, that reasoning is not found in the decision letter itself. The Tribunal considers it implicit in the wording of the decision, and it was also HMRC's case at the hearing, that the basis of the decision was the following. Even if Ms El-Ghorri had *unknowingly* been involved in activities that were facilitating fraud, she would not be a fit and proper person to hold a WOWGR licence if that had occurred due to naivety on her part, or due to a practice of trading on a "no questions asked" basis. The Tribunal considers that it is entirely reasonable for HMRC to arrive at the conclusion that a person is not fit and proper if they are a naïve person whose naivety can lead that person unknowingly to engage in activities facilitating fraud.

54. The Tribunal is satisfied on the evidence that the UKBA seizures took place. The seizure notices set out the circumstances of the seizures. One seizure notice indicates for instance that the seized load of alcohol was listed on the ship's manifest as foodstuffs and that "There are numerous inconsistencies and indications that the unique ARC number has been used on other occasions". Another indicates that the seized load of alcohol had been manifested as aluminium and that there were other discrepancies in the paperwork. The Tribunal considers all four seizure notices are evidence that goods which the Appellant bought and sold were being traded fraudulently (whether to the Appellant's knowledge or not), and that this was a relevant matter for the decision maker to consider.

55. The second dot point notes that goods bought and sold by the Appellant followed a circular chain of trade, beginning and ending with companies in France controlled by Mr Kotsev. The decision concludes that these circular movements were not commercially viable. Ms El-Ghorri's case in relation to this point is that she sold the goods that she had bought from Petrich Ltd to three customers in the UK and that she simply did not know what happened to the goods thereafter.

56. The Tribunal has considered the evidence in the case. The Tribunal is satisfied that there is evidence that the trade was circular and not commercially viable. Again, this is evidence that the trade was fraudulent (whether to the Appellant's knowledge or not), and a relevant matter for the decision maker to consider.

57. The third dot point concludes that the first two dot points demonstrate that the supply chain of which the Appellant formed part was contrived, and that it existed to facilitate the diversion of excise goods through the movement of multiple loads under the same documentation. Having considered the evidence, the Tribunal finds that the decision maker could reasonably arrive at that conclusion. Indeed, the Appellant did not seek to make a positive case to the contrary. Its case was not that there was no fraud. Its case was that it was not knowingly involved in any fraud.

58. The fourth dot point notes that on Ms El-Ghorri's account of events, both the Appellant's sole supplier and its three customers approached her after she held discussions with "trade contacts". The decision goes on to state that "Despite our repeated requests you refused to provide any details of these contacts or explain further how these business relationships were established". Ms El-Ghorri's case in relation to this point is that she did provide HMRC with the name of one trade contact, a Mr Mann, who introduced her to Mr Kotsev, and that there was one other person whose name she did not give in order to protect the privacy of the person concerned.

59. The Tribunal finds that this is not an answer to the point being made in this dot point. On Ms El-Ghorri's account, she was able to establish a substantial business trade in alcohol with a single supplier and only three customers, under an arrangement whereby she had customers for all goods she sold before she purchased them, and only paid for her purchases after having been paid by her customers. She says that in developing such an arrangement she was able to find customers by word of mouth without advertising. The Tribunal considers that Ms El-Ghorri has still not given any detailed explanation as to how it was possible for her to find suppliers and customers in order to be able to establish such business arrangements, other than the vague information that she was introduced to Mr Kotsev by Mr Mann and that she was introduced to her customers by word of mouth. There are clear plausibility issues around the suggestion that such an arrangement, if at arm's-length, could be established by word of mouth, and the absence of further explanation or detail magnifies those plausibility issues. Having considered the evidence, the Tribunal finds that the decision maker could reasonably conclude that Ms El-Ghorri had not adequately explained how her business relationships had been established. The Tribunal finds that the decision maker could reasonably conclude that this was also relevant to the question whether she was a fit and proper person to hold a WOWGR licence.

60. The fifth dot point states that on receiving the due diligence documents of Petrich Ltd, Ms El-Ghorri immediately engaged in high risk business transactions with that company, without visiting its premises or making further checks to confirm the authenticity of the documents provided. Ms El-Ghorri responds to this point by arguing that the business was not high risk because she was extended credit by Petrich

Ltd and did not have to pay for goods until she was paid by her customers. However, the decision letter does not indicate that the decision maker's concerns expressed by the words "high risk" were confined to specific financial risks to the Appellant. The Tribunal considers that it is not unreasonable for a decision maker to characterise as "high risk" a decision by a trader to make purchases on credit of up to £250,000 from a company that had only been incorporated two months earlier, and to whose director the Appellant had only recently been introduced by another contact, without making more detailed background checks. The Tribunal has considered the due diligence documents provided by the Appellant in relation to Petrich Ltd. Ms El-Ghorri admitted at the hearing, for instance, that she did not know what was the credit rating of Petrich Ltd. She admitted that she had not visited the premises of Petrich Ltd. The Tribunal considers that it was not unreasonable for the decision maker to consider that this showed, at the very least, a lack of business judgment on the part of the Appellant.

61. The sixth dot point relates to a letter dated 1 July 2011 from Petrich Ltd to the Appellant stating that "As a valuable customer and upon your request we agree to offer you a credit limit of £250,000". The decision letter notes that this letter from Petrich Ltd gives no details of the basis, timescales, etc, on which the credit is allowed, and that the extension of such credit was not consistent with the fact that Ms El-Ghorri had only recently met Mr Kotsev for the first time during a visit that he had made to her home address. Ms El-Ghorri's answer to this, in effect, was that she did not consider anything strange about Petrich Ltd offering her a credit line of £250,000 in the circumstances. The Tribunal for its part considers it to be utterly extraordinary that a supplier, if at arm's-length, would in the circumstances immediately extend £250,000 credit to the Appellant which was a single person company whose director Mr Kotsev had only just met. The Tribunal considers that it was not unreasonable for the decision maker to reach the conclusion that he did.

62. The seventh dot point notes that on the same basis the Appellant offered a line of credit to its own customers, based solely on trust, with no formal written confirmation of agreement, and despite several failed attempts to meet one of her customers. Ms El-Ghorri's answer to this point is to say that there was no risk because a statement on the Appellant's invoices had the effect that property in the goods did not pass from the Appellant to the buyer until the buyer had made payment for them, and because the Appellant was not required to pay the supplier until the Appellant had been paid by its customers. However, even despite such an arrangement, extending credit in such amounts to a customer that Ms El-Ghorri had only recently met through word of mouth without formal written documentation could clearly be reasonably described as risky. The Tribunal considers that it was not unreasonable for the decision maker to consider this to be a relevant matter to take into account.

63. The eighth dot point states that in further enquiries with Petrich Ltd, Mr Kotsev had been evasive and failed to provide further evidence on request, and that his businesses had been deregistered as missing traders. Ms El-Ghorri's response to this point is, in effect, that if Petrich Ltd was engaged in wrongdoing, it had nothing to do with the Appellant or Ms El-Ghorri. In relation to this dot point, the Tribunal reaches

the same conclusion as in relation to the first three dot points. This dot point does not say that the Appellant or Ms El-Ghorri were necessarily *knowingly* involved in fraud, but the matters referred to in this dot point are evidence that Petrich Ltd was involved in fraud. The Tribunal finds that to be a decision that the decision maker could reasonably reach.

64. Reading the eight dot points as a whole, the Tribunal considers it necessarily implicit that the decision maker considered as follows. The Appellant had been involved in activities that were facilitating fraud. Either the Appellant did so knowingly, or the Appellant did so out of naivety, or the Appellant did so by trading on a "no questions asked" basis. Whichever was the case, the Appellant was not a fit and proper person to hold a WOWGR licence because a fit and proper person would have realised from the circumstances that there was a risk that these arrangements were fraudulent and either would not have engaged in them or would at least have taken further steps to establish their bona fides before doing so. The Tribunal finds that to be a decision that the decision maker could reasonably have arrived at.

65. Ms El-Ghorri has claimed that she felt intimidated during the HMRC visits, and she claims that things were said by HMRC officials in those meetings that have not been recorded in their notes. The Tribunal is satisfied on a balance of probability, having heard evidence from three HMRC officials, that their witness statements and oral evidence are an objective account of what happened at the visits. In any event, even on Ms El-Ghorri's own account of events, the Tribunal considers that a decision maker could reasonably have arrived at the conclusion that she was so naïve in her business dealings that the company she controlled was not a fit and proper person to hold a WOWGR licence. Ms El-Ghorri claimed that HMRC has not returned business papers that were uplifted from her home and that this was hindering preparation of the Appellant's case. Having considered her evidence in this respect and the competing evidence of HMRC, the Tribunal finds on a balance of probability that the papers were returned to her at the 16 November 2011 visit. The Appellant says that other companies in the trading chain have not been targeted. However, according to the decision letter, Mr Kotsev's two companies have been deregistered as missing traders, and the Tribunal is informed that Can-Do Beers Ltd no longer has a WOWGR licence. The Appellant has not established that there has been unfairness, let alone such unfairness as could render the challenged decision unreasonable.

Conclusion

66. For the reasons above, this appeal is dismissed.

67. If HMRC wishes to pursue its application for costs, it may make a written application within 30 days of release of this decision, to which the Appellant may respond within 30 days. The application will then be decided on the papers unless either party requests an oral hearing.

68. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax

Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DR CHRISTOPHER STAKER
TRIBUNAL JUDGE

RELEASE DATE: 11 November 2014

ANNEX

Principal legislative provisions

Section 100G of the Customs and Excise Management Act 1979 ("CEMA") relevantly provides:

> **100G.— Registered excise dealers and shippers**
>
> (1) For the purpose of administering, collecting or protecting the revenues derived from duties of excise, the Commissioners may by regulations under this section (in this Act referred to as *"registered excise dealers and shippers regulations"*)—
>
> (a) confer or impose such powers, duties, privileges and liabilities as may be prescribed in the regulations upon any person who is or has been a registered excise dealer and shipper; and
>
> (b) impose on persons other than registered excise dealers and shippers, or in respect of any goods of a class or description specified in the regulations, such requirements or restrictions as may by or under the regulations be prescribed with respect to registered excise dealers and shippers or any activities carried on by them.
>
> (2) The Commissioners may approve, and enter in a register maintained by them for the purpose, any revenue trader who applies for registration under this section and who appears to them to satisfy such requirements for registration as they may think fit to impose.
>
> (3) In the customs and excise Acts *"registered excise dealer and shipper"* means a revenue trader approved and registered by the Commissioners under this section.
>
> (4) The Commissioners may approve and register a person under this section for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under the regulations prescribe.
>
> (5) The Commissioners may at any time for reasonable cause revoke or vary the terms of their approval or registration of any person under this section. …

By virtue of s 16(8) of the Finance Act 1994, and paragraph 2(p) of Schedule 5 to that Act, there is a right of appeal to the Tribunal against a decision to revoke an approval or registration under s 100G CEMA, and such decision is deemed to be in relation to an "ancillary matter". Section 16(4) of the Finance Act 1994 provides:

> (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or

other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

Regulation 5 of the Warehousekeepers and Owners of Warehoused Goods Regulations SI 1999/1278 (as amended) ("WOWGR") provides:

5.— Registered owners

(1) For the purposes of section 100G of the Act, the Commissioners may approve revenue traders who wish to deposit relevant goods that they own in an excise warehouse and register them as registered excise dealers and shippers in accordance with section 100G(2) of the Act.

(2) A revenue trader who has been so approved and registered shall be known as a registered owner.

Regulation 7 WOWGR relevantly provides:

7.— Registration

(1) The Commissioners shall furnish every relevant revenue trader with a certificate of registration.

(2) When a person ceases to be a relevant revenue trader he shall immediately destroy his certificate of registration. …

Regulation 12 WOWGR provides:

12.— Privileges of a registered owner

(1) Subject to regulation 14 below, a registered owner shall be afforded the following privileges in respect of relevant goods.

(2) A registered owner may–

(a) hold relevant goods that he owns in an excise warehouse; and

(b) buy relevant goods that are held in an excise warehouse.