



**TC06796**

**Appeal number: TC/2016/03284**

***CUSTOMS DUTY – can retrospective Inward Processing Authorisation be granted for a date more than one year prior to application -***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KEY PLANT AUTOMATION LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO  
DEREK ROBERTSON**

**Sitting in public at Manchester on 7 November 2017**

**Mr Parton, office manager for the Appellant**

**Mr Millington, counsel instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

### Introduction

- 5 1. This is an appeal against a decision by HMRC on 26 October 2015, upheld on review on 4 April 2016, to refuse to grant retrospective Inward Processing Authorisation (IPA) in respect of the importation and later re-exportation of gearboxes by the appellant (“Key Plant”) for the period 1 January 2012 to 23 October 2012.
- 10 2. IPA is a trade facilitation measure which allows goods to be imported with suspension of customs duty and VAT where those goods are to be processed and re-exported.
- 15 3. A C18 Post Clearance Demand Notice was issued to Key Plant for customs duty for the period 1 January 2012 to 23 October 2012 on the basis that the gearboxes imported during that period were incorrectly declared to a duty rate of 0%, when the correct duty rate was 3.7%.

### Appellant’s submissions

- 20 4. Key Plant manufactures machines, both standard and bespoke. As part of its manufacturing process, it became necessary to import gearboxes of a specific design in late 2011/early 2012.
- 25 5. Key Plant explained that it had researched the appropriate tariff codes for the gearboxes, using the gov.uk tariff website. The gearbox manufacturer had advised that Key Plant should apply for IPA but the tariff website indicated that the appropriate code was a tariff of 0%. Key Plant contacted the HMRC Tariff Helpline who agreed that the proposed code was correct. On discussing the matter with their freight forwarder, it seemed unnecessary to apply for IPA as a result and that paying any VAT and reclaiming it would be more straightforward in terms of paperwork. It was agreed that no Binding Tariff Information was obtained from HMRC.
- 30 6. Key Plant explained that the word “gearbox” was always clear on the import invoices and there was never any intention to hide the description of the goods imported.
- 35 7. However, on 20 December 2013 HMRC refused an application for repayment of duty paid in relation to an import dated 27 September 2013. The reason for HMRC’s decision in December 2013 was that the imported goods were not gears and gearing spare parts (code 8483402190, tariff 0%) but was a complete gearbox and so needed to be classed as such even though it was to be incorporated into a machine (code 8483405190, tariff 3.7%).
8. Key Plant explained that HMRC’s decision was sent to their freight forwarders and not to Key Plant themselves, even though Key Plant was noted as the importer on

that letter. Key Plant only received a copy of the letter on 10 October 2014 and, as soon as they became aware of the problem, applied for the IPA. The freight forwarder had not asked for payment in the meantime.

5 9. Key Plant applied for authorisation on 21 October 2014. The authorisation was issued on 16 January 2015, covering the period 17 October 2014 to 16 October 2015. This was subsequently amended on 29 July 2015 to grant retroactive authorisation with effect from 23 October 2013.

10 10. At the beginning of 2015, HMRC reviewed all of Key Plants imports over the previous three years, to the start of 2012. As a result of the review, Key Plant were required to pay backdated duty and VAT of £50,673.59.

11. Key Plant submitted that, if they had been sent a copy of the decision letter in December 2013, they would have applied for the IPA on that date, for retrospective authorisation to December 2012. This would have enabled Key Plant to claim additional relief of £22,370.42 in duty and VAT.

15 12. Key Plant submitted that they had no way of knowing that they were applying an incorrect code. Although they accept that the IPA legislation only allows for twelve months retrospective authorisation, they consider that HMRC should have taken into consideration, when calculating the duty and VAT due for the period between December 2012 and the effective date of the IPA, the fact that they had not  
20 advised Key Plant of their decision in September 2012.

13. Key Plant submitted that if HMRC had copied the letter to Key Plant, rather than sent it to the freight forwarders only, Key Plant would have applied for the IPA at that time and, as the imports met the criteria for IPA, HMRC should have adjusted the amount due accordingly so that common sense could prevail. Accordingly, they  
25 do not accept that they should be liable for duty for a period where HMRC knew that the wrong code was being used but did not inform Key Plant.

14. Key Plant also submitted that it was unfair that HMRC could review imports for a three year period but a taxpayer could only obtain retrospective authorisation for a one year period.

30 15. Key Plant therefore requested that the Tribunal a repayment of duty and VAT for the period between December 2012 and the effective date of the IPA.

### **HMRC's submissions**

#### *Tribunal power*

35 16. HMRC submitted that the refusal to grant an IPA falls within para 1(f) of Schedule 5 Finance Act 1994 and that it is an ancillary matter within section 16(8) Finance Act 1994 and so, under s16(4) Finance Act 1994, the powers of this Tribunal where it considers that the decision to refuse to grant the IPA could not have reasonably been arrived at, are confined to a power to (in summary):

- (1) Direct that the decision is to cease to have effect; or
- (2) Require HMRC to review the decision; or
- (3) Declare the decision unreasonable and direct HMRC as to steps to be taken to ensure that the unreasonableness is not repeated in similar circumstances in future.

17. HMRC therefore submitted that the Tribunal has no power to grant repayment of the customs debt accrued between September 2012 and October 2013.

#### *Retrospective authorisation*

18. HMRC submitted that retrospective authorisation cannot be granted for a period prior to 23 October 2013 as Article 508(3) of Council Regulation 2913/92, which sets of the provisions for IPAs, does not permit retrospective authorisation to be granted from a date more than a year before the date of application.

#### *Communication in September 2012*

19. HMRC submitted that they had correctly corresponded with Key Plant's representative in relation to the repayment. The original correspondence, requesting a repayment, came from the representative and not from Key Plant. It was clear from correspondence that Key Plant were aware of the repayment claim as, in particular, they had produced a statement that all refunds for the duty paid on the 27 September 2013 import should be made directly representative and there was email correspondence between Key Plant and the representative as to the detail to be provided to HMRC in response to HMRC's queries in relation to the import.

20. It was submitted that any failure by the representative to inform Key Plant was a commercial matter between the representative and Key Plant and not a matter for this Tribunal.

#### **Discussion**

21. Although there were submissions as to the period for which retrospective can be granted, I note that in the hearing it was accepted by Key Plant that the legislation does not permit retrospection more than one year before the date of application and so their case is not that further retrospection should be granted but, instead, that it was not fair that they should be liable for a proportion of the debt for the period between December 2012 and October 2013 because:

- (1) HMRC did not inform them directly that they were using the wrong code; and
- (2) HMRC had power to review up to three years of imports but a taxpayer could only obtain retrospective authorisation for up to one year of imports.

22. Having reviewed the documentation and submissions, I do not consider that HMRC had any duty to correspond specifically with Key Plant in relation to the repayment claim. I find that Key Plant were aware that HMRC were querying the

repayment and so should have checked with their representative what the outcome of that query was.

23. It is well established that this Tribunal has no general judicial review function and so does not have jurisdiction to consider the fairness, or otherwise, of HMRC's actions where it does not have specific jurisdiction to do so (*Hok Limited* [2012] UKUT 363 (TCC)).

24. Accordingly, we have not power to grant the repayment sought by Key Plant.

### **Decision**

25. The appeal is DISMISSED.

26. 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.

**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 5 NOVEMBER 2018**