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TC03541

Appeal number: TC/2013/04497

*Customs duty – inward processing relief – goods diverted from customs supervision
– appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LATCHWAYS PLC

Appellant

- and -

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

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY
MR JOHN ROBINSON**

Sitting in public at 45 Bedford Square, London, on 4 April 2014

Mr Andrew Ford and Mr Peter Sanders of the appellant company

**Mrs Laura McNair-Wilson, instructed by the Solicitor and General Counsel of
HMRC, for the Crown**

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DECISION

Introduction

1 This appeal is against a post clearance demand note for £46,810.92 issued on 24 April 2013 to Latchways Plc ('Latchways') in respect of goods brought into the United Kingdom from Germany for servicing and sent back again to Germany once the work on them had been done. Mr Ford is the Management Accountant of Latchways and Mr Sanders their Transport Coordinator; both gave sworn evidence, and also represented the company in the appeal. The evidence of these gentlemen was accepted without cross-examination

Facts

2 Latchways is a company which manufactures a kit of safety equipment items together known by the name 'Wingrip', which is used in repair and maintenance of the wing sections of the Airbus aircraft. The product is only made by Latchways whose factory is in England, and it is common ground that the goods in question in this appeal must therefore have originated from Latchways and were probably sent out from England to Germany in 2010. The evidence is that the goods would have been supplied to Airbus in Germany; a company called Hydro Systems KG ('Hydro'), act as subcontractors to Airbus in maintaining the wing sections of the aircraft, and they also acted on their behalf in sending these goods to Latchways for servicing.

3 If the goods had simply gone out to Germany, been sent back to Latchways for servicing and returned to Germany afterwards, no issue would have arisen, and there would have been no question of the inward processing regime being applicable since the goods would not have moved outside the customs territory of the European Union. But Latchways now accepts that at some time prior to their coming to them in 2012 for servicing the goods under appeal had left the European Union since their original dispatch from England. It therefore follows that, to be despatched from Hydro in Germany to Latchways in England in August 2012, they must have been returned to the European Union to enable that to happen.

4 At the start of the hearing, the suggestion was made that Latchways, at the time the goods arrived in England, did not know that they had been exported from the European Union, and subsequently reimported. On that basis, and despite the Community Transit document T1 which accompanied them, Latchways considered them to be goods in free circulation. Accordingly, they were treated as such and when the servicing of the goods had been done they were sent back to Hydro in Germany without customs documentation, as goods made in the European Union and traded between European Union businesses as Community goods as defined by Article 4 of the Customs Code (see below).

5 The records provided to us in the course of the hearing, however, show that the goods in question were sent by Hydro to Latchways for servicing in August 2012 under cover of T1 documentation. When they arrived in England at the port of Dover on 15 August 2012 they were entered by the shipping agent DHL, on instructions from Latchways, to the simplified inward processing regime. This is maybe where some confusion occurred, because the email dated 15 August 2012 from Mr Ford to DHL instructed them to use "CPC code 510001 servicing".

6 The record shows that the goods were duly entered under that code, but the code was in fact the code for entry into the simplified inward processing procedure. This is the procedure described in Article 114(1)(a) of the Customs Code, and is for bringing Non-Community goods into the United Kingdom in transit to another European Union state. A requirement of the simplified inward processing procedure is that 30 days after the discharge period a return is submitted to the National Imports Reliefs Unit ('NIRU'), confirming that goods have left the European Union.

7 On 15 February 2013 NIRU wrote to Latchways reminding them of their obligations under the procedure and the fact that they were required to provide a Bill of Discharge within 30 days of the end of the throughput period. Latchways emailed NIRU on 13 March 2013 informing them that the goods had been sent to them from Germany under the T1 process (which was for Non-Community goods on which import duties had not been paid) and had subsequently been sent back. However Latchways did not provide the requisite paperwork – specifically a Transit Accompanying Document ('TAD'), which would typically have been generated automatically, detailing the origin of the goods, and were only able to show that the goods had been sent back to Germany.

8 Following further correspondence in which Latchways were invited to provide evidence that the goods had originated in Germany, NIRU warned them that in the absence of such evidence, they would have to assume that the goods originated outside the European Union and, moreover, that they had been unlawfully removed from customs supervision. When Latchways failed to produce such evidence the post clearance demand note of 24 April 2013 was issued pursuant to Article 203 of Customs Code, on the basis of the unlawful removal of goods from customs supervision.

9 Latchways attempted to obtain, through Hydro, information about what had happened to the goods once they had been sent back to Germany. The attempt was unsuccessful, but in the course of it Hydro explained the use of the T1 documentation by reference to the goods having been "in bond".

Legislation

10 The relevant provisions of the Customs Code (Regulation EC 2913/92) are:-

Article 4

For the purposes of this Code, the following definitions shall apply:

...

(4) 'Customs office' means any office at which all or some of the formalities laid down by customs rules may be completed.

(4a) 'Customs office of entry' means the customs office designated by the customs authorities in accordance with the customs rules to which goods brought into the customs territory of the Community must be conveyed without delay and at which they will be subject to appropriate risk-based entry controls.

(4b) 'Customs office of import' means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods brought into the customs territory of the Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be carried out.

(4c) 'Customs office of export' means the customs office designated by the customs authorities in accordance with the customs rules where the formalities for assigning goods leaving the customs territory of the

Community to a customs-approved treatment or use, including appropriate risk-based controls, are to be completed.

(4d) 'Customs office of exit' means the customs office designated by the customs authorities in accordance with the customs rules to which goods must be presented before they leave the customs territory of the Community and at which they will be subject to customs controls relating to the completion of exit formalities, and appropriate risk-based controls.

(5) 'Decision' means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; this term covers, *inter alia*, binding information within the meaning of Article 12.

(6) 'Customs status' means the status of goods as Community or non-Community goods.

(7) 'Community goods' means goods:

— wholly obtained in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community.

Goods obtained from goods placed under a suspensive arrangement shall not be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure,

— imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation,

— obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in first and second indents.

(8) 'Non-Community goods' means goods other than those referred to in subparagraph 7.

Without prejudice to Articles 163 and 164, Community goods shall lose their status as such when they are actually removed from the customs territory of the Community.

(9) 'Customs debt' means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Community provisions in force.

(10) 'Import duties' means:

— customs duties and charges having an effect equivalent to customs duties payable on the importation of goods,

– Import charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods.

Article

37

(1) Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.

(2) They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of Non-Community goods and without prejudice to Article 82(1), until their customs status is changed, they enter a free-zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.

Article 89

(1) A suspensive arrangement with economic impact shall be discharged when a new customs-approved treatment or use is assigned either to the good placed under that arrangement or to compensating or processed products placed under it.

Article 91

(1) The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) the Non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

Article 114

(1) Without prejudice to Article 115, the inward processing procedure shall allow the following goods to be used in the customs territory of the Community in one or more processing operations:

(a) Non-Community goods intended for re-export from the Customs territory of the Community in the form of compensating products, without such goods being subject to import duties or commercial policy measures;

Article 203

(1) A customs debt on importation shall be incurred through:

– the unlawful removal from customs supervision of goods liable to import duties

(2) The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

(3) The debtors shall be:

- the persons who removed the goods from the customs supervision,
- any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,
- any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision, and
- where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.

11 Commission Regulation 2454/93, implementing the Code, provides:

Article 199

Without prejudice to the possible application of penal provisions the lodging with a customs official of a declaration signed by the declarant or his representative shall render him responsible under the provisions in force for –

- the accuracy of the information given in the declaration,
- the authenticity of the documents attached, and
- the compliance with all the obligations relating to the entry of the goods in question under the procedure concerned.

Submissions for the taxpayer

12 Latchways submit that they have acted in good faith, that the goods at issue were duly serviced and returned to Hydro in Germany and that they were simply confused about the correct procedure to follow. Moreover, the company had made strenuous efforts through Hydro to obtain information from the German customs administration about what had happened to the goods, but without success.

13 Latchways accepted, with hindsight, that if the goods had been in free circulation they would not have been entered at Dover in the way they had been. Nonetheless, it remained the case that the use of both the simplified inward processing procedure and the use of the T1 documentation were errors, and the latter in particular was an error generated by Hydro for which Latchways were being wrongly held liable.

14 Latchways could not have complied with the relevant re-exportation procedures because they were not made aware of these until after the 30 day limit had expired; in any event, they believed that the inward processing procedure applied only for shipments intended to leave the European Union and so had been unaware of the T1 and TAD procedures. In the outcome, no revenue could in the circumstances, have been lost and it would accordingly be unjust for duty assessed to be payable.

Submissions for HMRC

15 The two critical elements which underpin the decision to issue the post clearance demand note are that Latchways have never supplied evidence which establishes that the goods were received from a European Union Member State, rather than from outside the Community; and that Latchways had removed the goods from customs supervision without prior notification, or complying with the relevant customs procedures set out in Article 91(1)(a) of the Customs Code.

16 The use of the simplified inward processing procedure indicated that these were Non-Community goods to be used in processing operations with the intention of re-exportation. Putting these matters together, it was legitimately inferred that the goods had been imported from a third country under Hydro's inward processing authorisation and forwarded to Latchways for repair.

17 It is not in dispute between the parties that the goods were removed from the United Kingdom without Latchways complying with the relevant customs procedure. The suspension of duty is only permitted on the condition that all the requirements of the simplified inward processing scheme are satisfied. This is not the case here and Latchways' ignorance of the law does not discharge their obligations in this regard. Article 199 of Regulation 2454/93 makes clear that actions taken by a party's representative are deemed to have been carried out by the party in question for the purposes of the statutory remedy. The decision to issue the demand note did not deprive Latchways of any private law rights to pursue a restitutionary remedy against their representative should they so wish.

Conclusions

18 From Hydro's reference to the goods being "in bond" – which we take to mean in a customs bonded warehouse – and to their having dispatched the goods to England with T1 documentation, together with Latchways' acceptance that they had gone outside the European Union, we conclude that the probability is that these articles, having been originally acquired by Airbus and then exported, had been reimported by Airbus, or their agents Hydro, with a view to their servicing by Latchways. When the goods arrived at Dover, Latchways wrongly assumed that they were in free circulation, whereas they would by then have lost their status as Community goods under Article 4(8) of the Code by being exported after their acquisition by Airbus.

19 It unfortunately follows that by sending them back to Hydro without the appropriate customs documentation Latchways removed them from customs supervision, and thereby incurred a customs debt pursuant to Article 203(2)&(3) of the Customs Code. The appeal must therefore be dismissed.

20 This result is harsh. The likelihood is that the goods were in fact re-exported by Airbus after their servicing by Latchways and that no duty has been lost – there has simply been an irregularity along the way. The goods were, moreover, undoubtedly Community goods in the first place and there is no suggestion that they changed their nature or composition as a result of export from the European Union. We very much hope therefore that the commissioners will be able to use the mutual assistance provisions of Community law to ascertain the facts from the German customs administration and, if the law allows, to remit the duty now charged.

Further appeal rights

21 This document contains the full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no 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.

**MALACHY CORNWELL-KELLY
TRIBUNAL JUDGE**

RELEASE DATE: 28 April 2014