



Neutral Citation: [2023] UKFTT 755 (TC)

Case Number: TC08935

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[Location/By remote video hearing]

Appeal reference: TC/2022/11459

EXCISE DUTY – refusal to restore – substantial proportion of errors – previous warning – no evidence of increased due diligence – whether refusal unreasonable – no – appeal dismissed

Heard on: 2 March 2023

Judgment date: 13 September 2023

Before

**TRIBUNAL JUDGE ANNE FAIRPO
SONIA GABLE**

Between

ANRA DEALS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Ahmad, director

For the Respondents: Mr Carey, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

Introduction

1. This is an appeal against a decision by HMRC to refuse restoration of a variety of goods seized under para 1, Schedule 3, Customs and Excise Management Act 1979. The seizure was not challenged in condemnation proceedings.

Background

2. The appellant is an importer of goods to the UK. On 19 February 2021 it submitted an import declaration: the associated goods were examined on 5 and March 2021. The import declaration contained 21 entries. 18 of those entries were found to be incorrect on examination and the goods were seized on 15 March 2021. Following an earlier incorrect import declaration, the appellant had been advised on 4 February 2021 that any future irregularities in import documentation would result in the seizure of goods.

3. The appellant sought restoration of the seized goods on 18 March 2021 on the grounds that the misdeclaration was a genuine error. Having previously used an agent to determine the codes, the business had used a third-party website to get the codes for this import and had forwarded the information to their agent. The agent provided proof of payment to the website for the codes. Assistance had been sought from a different business for future declarations and the appellant had taken advice that advance rulings on the correct codes could be obtained.

4. On 23 March 2021, HMRC refused the restoration request on the grounds that use of an agent did not remove the obligation on the importer to ensure that the codes were correct. There were not grounds for departing from the general policy not to restore incorrectly declared goods, and no exceptional circumstances which justified a departure from that policy.

5. The appellant sought reconsideration of the refusal, on the basis that it was prepared to accept conditional restoration and pay the duty and penalties. The appellant contended that it had made an honest mistake and had approached another organisation to avoid making the same mistake again. It had used a website recommended by HMRC which it considered HMRC should have ensured was understandable. The appellant contended that the refusal to restore was disproportionate.

6. On 12 July 2021 HMRC concluded their review of the refusal decision and upheld the decision not to restore. The decision noted the substantial proportion of incorrect entries and the responsibility of the importer for the accuracy of the declaration. Allowing restoration on payment of the duty and penalty would weaken the deterrent value of the legislation and the appellant had previously been warned of the consequences of incorrect declarations. HMRC also noted that it was not responsible for the contents of third party websites.

7. The appellant appealed the refusal to this Tribunal.

Appellant submissions

8. Mr Ahmad contended that the appellant business had made an honest mistake. It had used a website to check the codes and relied on that website, which held itself out as an expert. The appellant's former agents had refused to provide any advice on codes following the mistakes in the earlier declaration, which the appellant contended had been submitted by the agent without any checks on the information provided by the appellant. The appellant had tried to get another agent but had not been successful, as those who responded were not prepared to provide assistance until his problems with HMRC had been resolved.

9. Following the seizure he had asked the agent to deal with classification advice again and had been advised by the agent that they could not guarantee that the import declarations would be completely correct as no-one could guarantee such a thing. Mr Ahmad noted that in a

number of cases there was no tariff consequence to the incorrect codes and further that the error meant that the business had overpaid as a result of some of the incorrect codes. The appellant was not wilfully refusing to pay and was willing to pay the correct amount. Mr Ahmad had been hoping for clarification of the correct duty in order to be able to pay it.

10. Mr Ahmad contended that HMRC's own tariff website is no assistance as it does not provide any entries for searches against some of the products imported. Mr Ahmad also noted that it was difficult to understand some of the codes which had been considered to be correct. He had since refused to purchase goods which he considered too difficult to categorise.

11. The appellant business had considered obtaining advance tariff rulings, but these took several months to obtain and the rent on the container whilst waiting for such a ruling was disproportionate. The agent cost for obtaining such a ruling was also too much for the business to be able to afford.

12. Mr Ahmad was surprised that the shipment had been seized as he had thought that he would only be fined if there were any errors. The appellant now deals with the declarations directly, as the agents have been unable to advise for a reasonable fee. There had been no further seizures amongst the many imports since this shipment.

HMRC submissions

13. HMRC contended that the seizure was proportionate and that the refusal to restore was reasonable, given the high proportion of incorrect codes and the previous warning. This was not a minor error or omission as over 85% of the goods in the shipment were incorrectly classified. The appellant had not provided any evidence of any steps taken in response to the warning letter on the previous incorrect shipment, which had made it clear that future misclassification would result in seizure. The appellant had not provided any evidence of the interactions given to the website from which the codes were taken, as only an invoice for payment of their fee had been provided.

14. The burden was on the appellant to ensure that it had correctly declared the goods on import. The use of a website to obtain the codes did not alter that, and neither could HMRC take responsibility for the codes provided by the third party.

15. The overpayment referred to by the appellant on three codes was £173.42; the other fifteen incorrect codes resulted in an underpayment of duty of £3,244.55.

16. HMRC considered that it was not appropriate to allow errors such as these to be dealt with by way of fines, as this was not fair to other traders who took care to ensure the codes were correct. This would weaken the deterrent and would not encourage compliance. The evidence of the appellant was that steps to improve compliance were taken only after the seizure, not after the original warning, and HMRC contended that showed the value of seizure and refusal to restore as a deterrent.

17. HMRC submitted that the refusal to restore was in line with HMRC policy and was reasonable and proportionate and, further, that there were no exceptional circumstances which would mean that it was not appropriate to apply the policy in this case.

Discussion

18. The jurisdiction of the Tribunal in respect of restoration refusal is supervisory (s16(4) Finance Act 1994). If the Tribunal is satisfied that the review decision was one which could not reasonably have been arrived at then it can require the Commissioners to further review the original decision; the Tribunal cannot order restoration. The burden of proof is on the appellant to show that the original decision was not one which could not reasonably have been arrived at.

19. The test as to whether a decision is unreasonable in this context was set out in *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223 (p223-24), where Lord Greene stated that a decision would be unreasonable if the decision makers have:

“taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account.”

20. In *Lindsay v C&E Commrs* [2002] STC 588 (“Lindsay”), a case about the restoration of a vehicle (to which the same principles apply as in this appeal), the Court confirmed that a decision by HMRC will be unreasonable if “they take into account irrelevant matters or fail to take into account all relevant matters.”

21. The appellant submissions were, in summary, that an honest mistake had been made and so the decision was disproportionate. HMRC had not taken into account the difficulties involved in establishing the correct codes for imports, nor the appellant’s attempts to get the codes right by use of agents and specialist websites.

22. The review of the refusal to restore considered that a substantial proportion of the shipment had been incorrectly declared, as 18 of the 21 entries (covering 1073 cartons) were incorrect. This was the second incorrectly declared shipment and the appellant business had previously been advised that errors would result in goods being seized.

23. The number of errors indicated that the appellant business had not applied appropriate due diligence in making the import declaration, and the use of third party websites was not sufficient to show that adequate due diligence had taken place. The fact that HMRC suggested third party providers of tariff classification did not mean either that HMRC took responsibility for the information provided by those third parties, nor that a particular provider would be appropriate for the importer. The overpayment on three of the codes did not detract from the underpayment on fifteen codes.

24. The review concluded that there were no grounds to depart from the general policy not to restore.

25. Considering the evidence before us, we consider that the refusal to restore was not unreasonable. We consider that HMRC had considered all relevant points and had not considered anything that was not relevant.

26. The appellant had previously been advised that goods would be seized if there were future errors; the considerable number of errors indicates that no clear effort had been made to improve due diligence as to the correct codes for import declaration. There was no evidence to show that any increase in due diligence had taken place; the use of the third party provider appeared to be because the agent had refused to check the codes rather than because of any additional due diligence.

27. The appellant’s submissions as to the difficulties encountered with agents and code providers, the cost and time involved in obtaining advance rulings, do not mean that the refusal to restore is disproportionate. All traders have to deal with these issues and we also note the appellant’s evidence that no further seizures have occurred since it dealt with declarations directly, which indicates both that the difficulties can be overcome and also that the seizure has had the deterrent effect for which the policy was formulated, particular as Mr Ahmad had thought that errors would result in fines rather than a seizure, despite the clear warning of the letter following the first errors on import declaration.

Conclusion

28. For the reasons set out above, we find that the refusal to restore is not unreasonable and the appeal is dismissed.

Right to apply for permission to appeal

29. 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: 13th SEPTEMBER 2023