



TC01563

Appeal number: MAN/2007/0755/7016

IMPORT DUTY- two post-clearance demands in the sums of £74,361.48 and £2,684.56 respectively- GPS certificates of origins form As either invalid or forgeries –yes- Singapore bills of Lading not substantiated documentation for purposes of the direct transport rule – yes- appeal dismissed –observations on whether ‘remission of duty’ requested under Article 239 allowable - special situation - yes- no obvious negligence-no.

FIRST-TIER TRIBUNAL

TAX

KAM LEISUREWEAR LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: DAVID S PORTER (TRIBUNAL JUDGE)
PETER WHITEHEAD (MEMBER)**

Sitting in public at Alexandra House, Manchester on 3,5 and 6 October 2011

Mr Aubrey St John Price, FCA, for the Appellant.

Mr Owain Thomas, of counsel, instructed by the General Counsel and Solicitor to H M Revenue and Customs, for the Respondents

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DECISION

1. Karamat Hussain (Mr Hussain) appeals on behalf of Kam Leisurewear Ltd (the Company) against the review decisions confirming the post-clearance demands by way of duty dated 3 June 2007 and 20 October 2007 in the sums of £74,361.48 and £2,684.56 respectively. The review decision confirming the demand issued on 3 June 2007 was a deemed decision pursuant to section 15 (2) Finance Act 1994 because the review had not been carried out within the time limit of 45 days. The two appeals have been consolidated by a direction of the Tribunal. Mr Hussain contends that the Company is entitled to the preferential rate of duty pursuant to the Generalised System of Preferences (GSP) in Commission Regulation 2454/93/EEC on the basis that the Form A Certificate of Origin, issued on behalf of the Bangladeshi customs authorities, were not invalid nor forgeries and the Bills of Lading issued by the Singapore carriers were sufficient alternative evidence that the goods had come from Bangladesh. The Respondents (HMRC) say that the Form A Certificates were either invalid or forgeries, that the Bills of Lading by the Singapore carriers were not acceptable as evidence and that the goods came from Bangladesh..

2. Mr Owain Thomas (Mr Thomas) of counsel appeared for HMRC and called the following people as witnesses all of whom gave evidence under oath:

- Michael Dittrich (Mr Dittrich), a customs investigator for the European Anti-Fraud Office (OLAF).
- Dennis Fuhrmann (Mr Fuhrmann) a customs investigator for OLAF.

Mr Thomas also produced some bundles of documents.

Mr Aubrey St John Price (Mr Price) appeared for the Company and called the following people as witnesses, who gave evidence under oath:

- Mr Hussain a director of The Company.
- Sobat Ali (Mr Hussain's brother) company secretary of the Company

Mr Price produced some further bundles. All Mr Thomas' bundles had been agreed by the parties.

3. We were referred to the following cases:

- *Llumitronica v Chefe da Dvisiao de Procedimentos Aduaneiros e Fiscais* [2002] ECR 1-10433
- *SCI UK Ltd v Commissioners* [2002] ECR 11-2597
- Case V-370/96 Covita [1998] ECR 1-17711
- Case T-290/97 Mehibus Dorstseekan v Commission [2000] ECR 11-15
- Case T -330/99 Spedition Wilhelm Rotermund GmbH v Commissioner of European Communities [2001] ECR 11-1619

Preliminary matters

4. By a direction dated 9 March 2009, the Company was required to serve the statements of those witnesses on whom it intended to rely by 4.00 pm on 30 April 2009. No such statements had been served on behalf of Mr Hussain or Mr Ali. Judge Porter required Mr Price to prepare statements for Mr Hussain and Mr Ali and to make the same available to Mr

Thomas and the Tribunal by 5 October 2011. The Tribunal did not sit on the 4 October 2011 as Mr Fuhrmann, the witness from OLAF for HMRC, was not available until the 5 October 2011. This gave Mr Price sufficient time to produce the statements. Mr Price produced the two statements, which consisted of three quarters of a page of A4 each. Judge Porter, with the consent of Mr Thomas, allowed Mr Hussain and Mr Ali to expand on the same.

The Law

5. We think it would be helpful if we first explain how we understand the importation of goods from Bangladesh, through Singapore, to the United Kingdom occurs. We have been told that the port at Chittagong, from where the goods were to be transported, is a shallow port. As a result smaller vessels of about 100 tons are used to ferry one or two containers to Singapore, which is the trading hub for the area, and could accommodate a substantial number of larger ships, which carried as many as 300 containers. The ocean-going shippers loading the containers in Singapore receive a pre-carriage Bill of Lading prepared by the shippers in Bangladesh. The pre-carriage Bill of Lading should have on it, among other information; the details of the goods; the container number; the seal number and the port of departure (in this case Chittagong) and the date. The feeder vessel proceeds to Singapore where the containers are off loaded on to the dock side. The whole of the Singapore container system is computerised. The ocean-going shippers ‘cut a new Bill of Lading’ (i.e. prepare a second Bill of Lading, which cancels the pre-carriage Bill of Lading), taking the details from the pre-carriage Bill of Lading. Having done that, the ocean-going shippers send their Bill of Lading to the supplier of the merchandise in Bangladesh. The new Bill of Lading indentifies the ship, which will carry the merchandise to the United Kingdom, and the date the container is boarded. The pre-carriage Bill of Lading is then not required.

6. The suppliers of the merchandise take the ocean-going shipper’s Bill of Lading, which they have received from the shippers, to the Export Promotion Board (EPB) in Chittagong and obtain from the EPB a Generalized System of Preferences (GPS) certificate of Origin Form A and a sealed Export Licence duly signed by the appropriate officer. They then send the two forms, the ocean-going Bill of Lading and its commercial documents to the United Kingdom importers. The container is placed on board the ship in Singapore and is brought eventually to the port at Felixstowe or Southampton, as designated on the ocean –going shippers’ Bill of Lading.

7. When the United Kingdom’s importer receives the Form A, the export licence and the ocean-going shippers Bill of Lading through the post, the documents should be checked and sent to the importers freight forwarders, who will have stored the container when it arrives at the appropriate port. On receipt of the appropriate documentation the freight forwarder will deliver the merchandise to the United Kingdom importer. If the merchandise is delivered to Singapore, the United Kingdom importer has to be able to show that they have not been tampered with and that they are the same goods as were purchased from Bangladesh. A document to that effect can be obtained from Singapore.

8. In principle, Textile goods originating in Bangladesh are, in principle, eligible for preferred duty treatment in accordance with preferential tariff measures adopted unilaterally by the European Community (the ‘general system of preferences’). The rules applicable to such goods are contained in Chapter 2 of Commission Regulations 2454/93 EEC (‘the implementing Regulation’). Article 94 of the said Regulation provides for the subsequent verification of proofs of origin by the authorities of the exporting State, at the request of the authorities of the Importing state, and for the refusal of preferential entitlement if such verification does not bear out the declared

origin of the goods in question. It is also agreed that such proof may be declared invalid without the consent of the authorities of the exporting State.

9. Post-clearance decisions may be challenged before the national courts under article 243 of the code. Section 14 (1) and (2) of the Finance Act 1994 provide for a review of the decision. Upon a review taking place, the decision may be confirmed, withdrawn or varied and appropriate consequential steps taken. The Tribunal's jurisdiction is confirmed by section 16 (5) FA 1994, which provides as follows:

“(5) In relation to other decisions, the powers of an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

- i. On an appeal under this section the burden of proof as to-
 - (a) [Various matters not relevant to this appeal]
.... shall lie upon the Commissioners: but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.”

10. The tribunal must, in the first instance, decide whether a liability to customs duty arises. Article 80 requires submission of a Certificate of Origin Form A if the products are to benefit from tariff preference. Article 78 of the Implementing Regulation provides as follows, so far as relevant:

1. The following shall be considered as transported direct from the beneficiary country to the Community--
 - (b) products constituting one single consignment transported through the territory of countries other than the beneficiary country or the Community, with, should the occasion arise, trans-shipment or temporary warehousing in those countries, provided that the products remain under the surveillance of the customs authorities in the country of transit or of the warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition---
2. Evidence that the conditions specified in paragraph 1(b) and (c) have been fulfilled shall be supplied to the competent customs authorities by the production of (a) a single transport document covering the passage from the exporting country through the country of transit; (b) a certificate issued by the customs authorities of the country of transit giving an exact description of the products; stating the dates of the unloading and reloading of the product and, where applicable, the names of the ships, or the other means of transport used, and certifying the conditions under which the products remained in the country of transit; (c) or failing these, any substantiating documents.

11. In order to be entitled to tariff preference the importer must therefore satisfy two conditions:

- It must have a valid/genuine Form A issued by the customs authorities in the beneficiary country, and
- It must satisfy the direct transport rule.

If the importer is unable to establish that it had a valid Form A and that it had complied with the direct transport rule it may, however, obtain relief under Article 239 which provides as follows:-

“ 1. Import duties... may be repaid or remitted in situations other than those referred to in articles 236,237 and 238-

- to be determined in accordance with the procedure of the committee;
- resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the committee procedure. Repayment or remission may be made subject to special conditions.

Article 904 (c) provides that the duties shall not be remitted or repaid where the **only** (our emphasis) grounds relied upon are the presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation, of documents subsequently found to be forged, falsified or not valid for that purpose, even where such documents were presented in good faith."

The facts

12 Mr Thomas produced a bundle entitled Entry/Shipping Documentation, which contained details of the 16 transactions, as prepared by Mr Luty. This bundle represented the only evidence provided to the Tribunal of the transactions and principally revealed :

Tab	Form A Number	Manufacturer	Ocean Bill Singapore to	Agent	Export licence	Pre-carriage Bill of Lading
1	EPB68326	Dewan Textile Mills Ltd	Beacon	Kam (Hong Kong) Ltd	GB40109908	
2	EPB90968	Dewan Textile Mills Ltd	Beacon	Kam (Hong Kong) Ltd	None	
3	EPB74459	Dewan Textile Mills Ltd	Ocean Overseas Container Line (2 of)	Goldbond Industries Ltd	GB 1174	JFE Lines (Container No as per invoice)
4	EPB67171	Dewan Textile Mills Ltd	Ocean Overseas Container Line (2 of)	Goldbond Industries Ltd	GB 5579 and GB8220(same)	JFE Lines (Container No as per invoice)
5	EPB77536	Dewan Textile Mills Ltd	Ocean Overseas Container Line (2 of)	Goldbond Industries ltd	GB40119447 and 14202	JFE Lines (Container No as per invoice)
Tab	Form A Number	Manufacturer	Ocean Bill Singapore to	Agent	Export licence	Pre-carriage Bill of Lading
6	EPB77537	Dewan Textile Mills Ltd	Ocean Overseas Container Line (2 of)	Goldbond Industries Ltd	GB40119448 and 14203	JFE Lines (No container no:)
7	EPB80689	Dewan Textile Mills Ltd	Ocean Overseas Container Line (2 of)	Goldbond Industries Ltd	EPB 1082	JFE lines (Container No as per invoice)*
8	EPB80602	Interstoff Clothing Ltd	Kenmost Container Line Ltd	Kam (Hong Kong) Ltd	None	None
9	EPB 6060	Fashion Club Apparels Ltd	RAF International Forwarding	Kam (Hong Kong) Ltd	None	Babul Cargo International (No)

			Inc			container no:)
10	EPB51991 EPB51992	Sears Fashions (PVT) Ltd	RAF International Forwarding Inc	Kam (Hong Kong) Ltd (Invoice Kam (HK) Ltd (c p 204)	None	A.I.Freight Services Ltd (Container no: do not match)
11	EPB46448	Everest Sweater Ltd	RAF International Forwarding Inc	Kam (Hong Kong) Ltd	None	Aero-Marine Services Ltd (Container no: do not Match)
12	EPB47787 EPB47790	J.P.Garments Ltd	RAF International Forwarding Inc	Kam (Hong Kong) Ltd	None	Premier Freight Limited (Container no: do not match)
13	EPB55093	Sears Fashions (PVT) Ltd	RAF International Forwarding Inc	Kam (Hong Kong) Ltd		A.I.Freight Services Ltd (Container no: do not match)
14	EPB54120	Mask fashion Wears Ltd	RAF International Forwarding Inc	Kam (Hong Kong) Ltd	None	Sailors Shipping Ltd (no container number)
15	EPB48865	Arrow Jeans (PVT) Ltd	None required. Direct from Bangladesh to Southampton	Kam (Hong Kong) Ltd	None	City Network Inc
	Second C18 Post clearance demand					
16	EPB775639 EPB77538	Dewan Fashion Wears Ltd	None	None	None	JFE Lines (?)

13. The bundle has an index, which identifies all the documents made available (including those referred to above) and states the transactions are either based on invalid EPBs or forgeries and why the direct transport rule, required by Article 78, has not been complied with as follows:

- All the EPBs numbered 1to 7, although validly authorised by the EPB in Bangladesh are invalid as the EPB has been given false information.
- **Transactions 1 to 7**
 1. There is no Bill of Lading from Bangladesh to Singapore.
 2. There is no Bill of Lading from Bangladesh to Singapore.
 3. There are separate Bills of Lading, howver the Bill of Lading from Bangladesh to Singapore lists the jeans from Dewan, but not the shirts from S F Apparels. The Bill of Lading from Singapore lists both. The Bill of Lading from Bangladesh does not show a container number. There is no form A for the shirts from SF Apparels. There is no evidence of non-manipulation for the time the goods were in Singapore as required by Article 78.
 - 4, 5, 6, and 7. There are separate Bills of Lading but the Bill of Lading from Bangladesh does not show a container number. As a result there is no evidence of

non-manipulation for the time the goods were in Singapore as required by Article 78.

- All the EPBs from 8 to 16 are forgeries. The EPB certificates were taken to Bangladesh on the 2007 OLAF Mission (referred to below), who confirmed that the EPBs were not genuine and that they had not been issued by the EPB in Bangladesh.
- **Transactions 8 to 16**
 - 8. There is no Bill of Lading from Bangladesh. There is no evidence of non-manipulation for the time the goods were in Singapore as required by Article 78.
 - 9. There are separate Bills of Lading, but the Bill of Lading from Bangladesh to Singapore and the Bill of Lading from Bangladesh do not show a container number. As a result, there is no evidence of non-manipulation for the time the goods were in Singapore as required by Article 78.
 - 10, 11, 12, 13, and 14. There are two separate Bills of Lading, but the Bill of Lading from Bangladesh to Singapore show different container numbers, which indicates that the goods changed containers in Singapore. There is no evidence of non-manipulation for the time the goods were in Singapore, as required by Article 78.
 - 15. There are no direct transport issues as there is one Bill of Lading covering the journey from Bangladesh to the United Kingdom.
 - 16. There is no Singapore Bill of Lading, as a result there is no evidence of non-manipulation for the time the goods were in Singapore as required by Article 78.

Note: Mr Luty had received three further pre-carriage Bills of Lading, which were produced to the Tribunal. They were from JF Lines, but did not relate to the transactions the subject of this appeal. These three together with the 13 referred to above make up the 15 Bills of Lading which Mr Ali said he had sent to HMRC.

14. Mr Fuhrmann gave evidence under oath. He was employed by OLAF as a customs investigator but has since left the organisation. During the periods 19 to 31 March 2007 and from 15 to 25 April 2008 he participated in two missions to Bangladesh. The purpose of the first visit was to verify the authenticity of the Bangladeshi GSP Certificates of Origin Form A. A number of certificates presented in the United Kingdom and Denmark were checked against the EPB database. Mr Fuhrmann told us that the records had originally been manually maintained, subsequently the Bangladeshi authorities had arranged for them to be transcribed onto an electronic list. He confirmed that the electronic list was checked first and then checked against the original handwritten lists. He was satisfied that the resulting list was correct. The mission had checked a sample of the EPBs involving:

- Dewan Textile Mills Ltd
- Dewan fashion Wears Ltd
- Birds A&Z Ltd, and
- Delta Composite Knitting Mills

384 of the forms were not issued by the EPB. Details of those forms are contained in Annex 3 to the report. Mr Fuhrmann produced a redacted list which comprised the following Form As, which were not genuine, and are the subject of this appeal :

Transaction number	False EPB number	Date	Supplier
8	EPB 80602	3/2/2005	Interstoff Clothing Ltd
9	EPB 6060	9/10/2005	Fashion Club Apparels
10	EPB 51991	13/11/2005	Sears Fashions (PVT) Ltd

	EPB 51992	13/11/2005	Sears fashions (PVT) Ltd
11	EPB 46448	18/12/2005	Everest Sweater ltd
12	EPB 47787 EPB 47790	16/02/2006 16/02/2006	J P Garments Ltd J P Garments Ltd
13	EPB 55083 ¹	12/03/2006	Sears Fashion (PVT) Ltd
14	EPB 54120	12/6/2006	Mark Fashion Wears Ltd
15	EPB 48865	12/4/2006	Arrow Jeans (PVT) Ltd

15. The mission also visited the National Board of Revenue in Dhaka. A search of their database revealed that the Dewan Textile Mills Ltd at 36, Purana Palton Lane, (2nd Floor) Dhaka 1000 were not recorded as exporters. The Mission visited Mr Golam Farouque Dewan, (Mr Dewan) the Managing Director of Dewan Textiles Ltd, who stated that the company had been dormant since 2001 due to financial difficulties. A bank statement relating to Dewan Textile Mills Ltd was produced to the Tribunal which revealed no banking details from 3/11/2002 to 7/5/2006. We note that the last transaction with Dewan Textile Mills Ltd, the subject of this appeal, is dated 7 February 2005². Mr Fuhrmann produced a statement sworn by Mr Dewan, which also confirmed that the company had not operated from 36, Purana Palton Lane since 1993. The company's current address was Fatullah Post Office Road, Fatullah, Narayangonj – 1421. He also confirmed that the signature, appearing as his, on the Form As were forgeries³. Mr Dewan confirmed that it was necessary for an exporter to enrol with the BGMEA. He was shown the certificates and he stated that the enrolment certificates were not his and that the photograph was some 15 years old. He also stated that he had never dealt with Kam Leisurewear Ltd. Wahid Uzzaman, his commercial manager, had stated that the certificates were issued by Dewan Textile Mills Ltd . Mr Dewan stated that this had been confirmed in error as Mr Uzzaman had only looked at the certificates briefly. Mr Fuhrmann conceded, however, that the matter had not been taken up again with Mr Uzzaman.

16. In order to verify the existence of Dewan Textile Mills Ltd at 36, Purana Paltan Lane, Mr Fuhrmann went to that address on 17 April 2008 (when on the second mission to Bangladesh) and found no trace of the company. Furthermore, the mission met a representative of the landlord, who stated that the company had left the premises some 10 years previously. Mr Thomas produced confirmation from the landlord, H M Saifuddin, to the effect that this was the case. The confirmation is dated 17 September 2008. Mr Fuhrmann referred to three letters, two from the EPB and one from Dewan Textile Mills Ltd, dated 5 and 7 August 2007 respectively. The two letters from the EPB appear to have been signed by Mr Moyen and confirmed to HMRC that the EPB Form As, which OLAF had been told were invalid or forgeries, were in fact genuine. Prior to the second mission in April 2008, OLAF had been provided with copies of these letters. Mr Fuhrman sated that Mr Moyen had insufficient seniority to sign these letters. Mr Fuhrmann pointed out that the letter from Dewan Textile Mills Ltd not only had the wrong address “36, Purana Paltan Lane, (2nd Floor), Dhaka -1000 Bangladesh” but also HMRC’s reference TBD/VAR1/32 & 1-21 on it. Mr Fuhrmann was unclear as to how HMRC’s reference appeared on the letter. Mr Dewan also confirmed that he had not signed the letter from Dewan Textile Mills Ltd either. As a result of his enquiries Mr Fuhrmann was satisfied that the form As issued by the EPB in relation to Dewan Textile Mills Ltd had, indeed, been issued by the EPB in Bangladesh but the information on them was untrue and the forms were therefore invalid. As to the remainder

¹ This appears to be a typing error 8 for 9

² See transaction 7 above

³ These were the Form As numbered 1 to 7 above

of the forms, he was satisfied from his investigation of the samples taken from the electronic database and original EPB forms in Bangladesh that the remainder were forgeries as they did not appear on the genuine list provided by them.

17. Mr Dittrich gave evidence under oath. He is employed by OLAF as a customs investigator. He went on the OLAF missions to Bangladesh in April 2008 and March 2009. Mr Thomas referred him to the City Network Inc Bill of Lading for transaction 15 above. This Bill of Lading identifies that the merchandise went from Chittagong directly to Southampton. He said that he has seen these shippers used before in other frauds, Chittagong is a shallow port and cannot take ocean going liners, CMA CGM Wagner is an ocean –going liner. We note that the Bill of Lading is dated 6 April 2006 and the EPB Form A 5 April 2006. As explained earlier the Bill of Lading has to be presented to the EPB to obtain the Form A. This could not have happened in this case as the Bill of Lading is dated after the EPB. Mr Dittrich told us that City Network Inc is based in Hong Kong. He was referred to transaction 13. He confirmed that RAF International Inc was also known to him. The suppliers were sending merchandise from China, through Singapore, but claiming that they came from Bangladesh. He noted that the container number CLH 4039710 on the pre-carriage Bill of Lading from A I Freight Services Ltd did not match that on RAF International Inc's of OOL3320094. The contents of the original container appear to have been transferred to a different container when boarding the ocean going vessel. This is known as 'cross stuffing' and is not illegal, but needs to be evidenced by the Singapore authorities. No such authorisation appears with the documentation.

18. Mr Dittrich was referred to the 3 letters, two from the EPB addressed to HMRC and the one from Mr Dewan on behalf of Dewan Textile Mils Ltd. He confirmed that Mr Moyen has no authority to sign such letters. Mr Dittrich said that he had first met Mr Moyen in 1992 and on several occasions thereafter. An email, sent to Mr Dittrich from Mr Moyen and dated 23 September 2011, was produced to the Tribunal confirming that Mr Moyen had not signed the letters. Mr Dittrich had no reason to believe that Mr Moyen was not telling the truth.

19. The witness statements, requested by Judge Porter, provided by Mr Ali and Mr Hussain, and prepared by Mr Price, were incomplete. Mr Price did not expand on them. Mr Thomas, when cross-examining, managed to obtain some further information, but we have had, in the main, to rely on the evidence provided by HMRC in the bundle entitled Entry/Shipping Documentation. Mr Ali told us that HMRC had all the documents that the Company had had with regard to the 16 transactions. He also told us that he had sent all 16 of the pre-carriage Bills of Lading for all the transactions to HMRC. There is a letter from Mr Luty acknowledging receipt of the pre-carriage Bills of Lading. The letter indicated that he would check the same when he had time. Mr Luty has prepared the Entry/Shipping documentation and, where appropriate, he has attached to each of the transactions where appropriate the pre-carriage Bills of Lading. Judge Porter asked HMRC to produce the remaining pre-carriage Bills of Lading, which Mr Luty had received, to ensure that Mr Ali had sent all 16. HMRC provided three further copies. We were told that those copies did not relate to the transactions. In checking the 16 transactions it is clear that Mr Ali did, indeed, send 16 pre-carriage Bills of Lading and that Mr Luty has allocated those that he could to the appropriate transactions.

20. Mr Ali told us that he was the company secretary and that the Company relied on their agent David Turner & Co Ltd of Unit C16, Taylor's Court, Off Mangham Road, Barbot Hall Industrial Estate, Rotherham. S62 6NU. Unfortunately, we were told nothing further about Davis Turner & Co Ltd but we assume that they must have been the company's United Kingdom agents. Mr Ali confirmed that HMRC had had all the documents that the Company

had in relation to these transactions and that all the Company's remaining documents had been destroyed in the Sheffield floods in June 2007. He produced a letter from Davies (Loss Adjusters) to that effect and photographic evidence of the floods from which it appeared that much of the Company's records had been damaged. Mr Thomas noted that some of the boxes appeared to be dry. Mr Ali said that the details for the appeal transactions were in the boxes that had been destroyed. He also told us that he obtained the Company's pre-carriage Bills of Lading from the Company's agent in Hong Kong, Kam (Hong Kong) Ltd.

21. Mr Thomas referred Mr Ali to the three letters, two from the EPB and one from Dewan Textile Mills Ltd. The two letters from the EPB appear to have been signed by Mr Moyen, who confirmed to HMRC that the EPB Form As, which OLAF had been told were invalid or forgeries, were in fact genuine. Mr Ali was unable to explain why the letters should have been written to HMRC. He suggested that as the Company enquired of their agents, he did not say which agent, the agents must have asked Mr Moyen to write to HMRC. Mr Thomas pointed out that the letter from Dewan Textile Mills Ltd not only had the wrong address "36, Purana Paltan Lane, (2nd Floor), Dhaka -1000 Bangladesh" but also HMRC's reference TBD/VAR1/32 & 1-21 on it. Mr Ali was unable to explain why that should be. Mr Ali confirmed that he had never had any direct correspondence with the EPB in Bangladesh. Mr Thomas referred Mr Ali and the Tribunal to HMRC's letter of 25 February 2011 in which HMRC referred Mr Price to the details of the two agents that the Company purportedly used for the transactions. From those companies' websites it appeared that they were manufacturing companies. Kam (HK) Ltd manufactured three types of clothing; Kam Jeans, Lemon Tree and McCarthy Jeans, The other company Goldbond Industries Ltd, was also a manufacturer. Mr Thomas produced a Purchase Contract between the Company and Goldbond Industries Ltd dated 1 October 2004 (not the subject of this appeal but during the period covered by the appeal). The Purchase Contract indicated in its heading, that the Company is the home of Kam Jeans, Lemon Tree and McCarthy jeans. The Purchase invoice also indicates that the Company is part of the Kam Group of companies. Mr Ali insisted that Kam Industries Ltd and Goldbond Industries Ltd were both the Company's agents and that they were not manufacturers. Mr Ali also confirmed that he had not read Public Notice 826 as he and the Company relied on their agents. Mr Ali told us that the appeal transactions were the only transactions which the Company had had with Bangladesh

22. Mr Hussain provided a brief witness statement prepared as above. In it he stated that he was a director of the Company and principally dealt with the purchase and sale of merchandise. Orders were placed with the two agents referred to above. He believed that the documents confirming the transactions were genuine. The Company was only small and had to rely on its agents as it could not afford to employ people to carry out the importing work. Under cross-examination Mr Hussain told us that in 1985 he had originally worked for a company which manufactured jeans. In 1989/90 he started a manufacturing company in Hong Kong. It had been difficult to form a company in China and he had found an agent Edward Eng and they formed the manufacturing company, Kam (Hong Kong) Ltd, together. He was and still is on the board of Kam (Hong Kong) Ltd but played no active part in its affairs. Mr Eng had asked that Mr Hussain should be a director and he suggested to Mr Hussain that the company needed an address in the United Kingdom. Mr Hussain had agreed that Mr Eng could use the Company's address in England. Mr Eng also wanted to form a group of companies, Kam Industries Ltd, as he believed that it would make the organisation appear more substantial. Mr Hussain had agreed. Mr Hussain told us that dealing with Kam (Hong Kong) Ltd in Hong Kong and running his own business in the United Kingdom became too complicated and that he withdrew his involvement in Kam Industries Ltd. Mr Hussain insisted that he had no longer had any involvement with Kam Industries Ltd. He received no remuneration or payments from Kam Industries Ltd. He conceded, however, that

he was still named as a director on the company's documentation. He stated that he went to Hong Kong from time to time and stayed some 10 days. All the transactions for his company were carried out through the Company's agents and the Company has to rely on and trust those agents. The Company purchased all the goods, the subject of this appeal, from Bangladesh, as they are much cheaper than goods from China, but of a lesser quality.

Submissions on behalf of HMRC.

23. Mr Thomas submitted that the Bangladesh authorities are anxious to ensure that the correct EPB forms are used, because the preferential status of its goods exported to Europe is something that they wish to retain. If the preference rate is removed then the merchandise would be subject to duty at the rate of 12%. The rules giving rise to the preference are the European Community's rules and the member states making the decision to allow the preference do not need to consult Bangladesh. An autonomous regime relies on the co-operation of the Commission, which, as a result, needs ready access to Bangladesh. He submitted that the only evidence, provided to the Tribunal as to the transactions, arises from the information made available by the Company to HMRC when the investigation started. There would be no reason to suppose that there was any further information. The pre-carriage Bills of Lading provided by the Company have been accounted for and no further evidence is apparently available because of the destruction of files at the time of the flooding. There is evidence in an unrelated transaction of a purchase of goods from Goldbond Industries Ltd in circumstances in which they were manufacturers and not agents. There must have been negotiations with regard to all the transactions but no evidence of contracts, emails or conversation in relation to the deals has been produced. After all this was apparently the first time that Kam had purchased goods from Bangladesh. If the Company had such information, and needed to produce additional evidence, it could have done so by obtaining appropriate copies from its agents and/or suppliers. It did, after all, obtain the pre-carriage Bills of Lading from its agent in Hong Kong. Kam appears to deal in the same merchandise as Kam (H K) Ltd and although Mr Hussain stated that he had no dealings with that company, Kam appears still to be part of the group. Mr Thomas referred to the index annexed to the Entry/Shipping documents and submitted that there was nothing in those documents, apart from the Form As, which suggested other than that the merchandise were manufactured in China. There is an invoice from Kam (Hong Kong) Ltd which itemises the individual purchases as if they had been manufactured.

24. HMRC has set out in the index to the Entry/Shipping documentation the reasons why it does not accept that the goods came from Bangladesh. None of the container numbers match in the transactions. The NYK Lyra, which allegedly picked up the container in Chittagong, could not have done so because that port is not deep enough to take an ocean-going vessel. Mr Price has suggested that there was no first hand evidence to show that the goods had not come from Bangladesh. This is misconceived. The fact that all the individuals, who have supplied the information, have not been called does not mean that the Tribunal should not accept their evidence as being correct. Mr Fuhrmann has made it clear that the EPB Form A certificates were carefully checked at the EPB in Bangladesh against those physically taken by the OLAF mission to Bangladesh. Mr Fuhrmann has produced a list of those EPB Form As which were false and they correspond to the Form As the subject of this appeal. Mr Pirce is incorrect to suggest that this is the only evidence. OLAF has reported as follows:

- The National Board of Revenue states that the export numbers do not match the ones that they have and Dewan Textile Mills Ltd had no authority to export any goods from Bangladesh.

- The BGMEA enrolled individuals so that they could export goods from Bangladesh. Mr Dewan stated that the enrolment certificates were not his and that the photograph was some 15 years old.
- The address for Dewan Textile Mills Ltd, in relation to the first seven transactions, is incorrect and evidence has been produced to the effect that that company had not operated from that address for 10 years. Mr Dewan also confirmed to the OLAF mission that he had not signed those EPB Form As and the signatures were a forgery. As a result, although the Form As had been properly issued by the EPB in Bangladesh, the Form As were invalid as the information on them was false.

25. Mr Thomas submitted that the Tribunal must dismiss the appeal as the first 7 EPB Form As are invalid. The EPB Form As for the transactions 8 to 15 are forgeries. There is no EPB Form A for the 16 transaction. Without valid Form As it is not possible for Kam to establish where the goods came from nor have they been able to do so. Even if all the Form As had been valid, Kam had not been able to comply with the direct transport rule. They were unable to say what happened to the goods in Singapore and without such evidence they could not show whether the goods had been tampered with, which would give an opportunity for goods from China, or other than from Bangladesh, to be substituted.

26. Mr Thomas provided a written submission with regard to the law, which follows the law as set out in paragraphs 5 to 11. He has also referred us to the appropriate cases. The Tribunal has first to decide whether there is a liability to pay any customs duty? The ECJ in the *Llumitronica v Chefe da Dvisiao de Procedimentos Aduaneiros e Fiscais* [2002] ECR 1-10433, at paragraph 33 noted that

“The circumstances that the declarant [on importation] acted in good faith and with care, unaware of an irregularity which prevented the collection of duties which he should have paid if that irregularity had not been committed, has no bearing on his capacity as the person liable, which results exclusively from the legal effects associated with the formality of declaration”.

Article 80 requires submission of a certificate Form A if the products are to benefit from tariff preferences. By virtue of Article 81, originating products are eligible for tariff preference “*provided they have been transported directly [to the EU] within the meaning of Article 78, [and] on submission of a certificate of origin Form A*” issued by the competent government authority of the beneficiary country. In order to be entitled to the tariff preference Kam must have a valid/genuine Form A issued by the customs authorities in Bangladesh and must satisfy the direct transport rule. In *SCI UK Ltd v Commissioners* [2002] ECR 11-2597 the Court of First Instance stated:

“In that respect, it is clear that the importer is responsible both for the payment of the import duties and for the regularity of the documents presented by him to the customs authorities, and that the adverse consequences of the wrongful acts of his contracting parties cannot be borne by the Community. The possibility that the price undertaking documents are subsequently discovered to be invalid is a trade risk inherent in the importation business (see, by analogy, *Mehibas Dordtselaan*, paragraph 83 *see below*). Moreover, the importer may seek damages against the trader involved in the fraudulent use of the documents in question. Finally, a prudent trader aware of the rules must assess the risks inherent in the market which he is considering and accept them as normal risks. (Case C-97/95 *Pascoal & Filhos* [1997] ECR 1-4209, paragraphs 57 to 61)

On the evidence in this present case it is plain that Kam was not entitled to the preferential rate of duty. The liability to duty is clearly established by reference to the evidence contained in the Entry/ Shipping bundle considered alongside the evidence of OLAF.

27. Although neither Mr Hussain nor Mr Price, on behalf of Kam, have sought remission of the duty Mr Thomas wished to consider the position under Article 239. He submitted that any claim now made would be out of time. In summary, Kam says that it entered into the transactions in good faith. Article 239 provides for remission of the duty if Kam can show a ‘special situation’ when trading with Bangladesh, and that there has been no ‘obvious negligence’ on its part. Article 904 (c) provides that the duties shall not be remitted or repaid where the only grounds relied upon are the presentation of documents, which are subsequently found to be forged, falsified or not valid for that purpose, even where such documents are presented in ‘good faith’. In the case of *Spedition Wilhelm Rotermund GmbH v Commissioners of the European Community* [2001] ECR 11-1619 the Court of First Instance held that article 905 contained an equitable provision intended to deal with exceptional situations faced by an operator and was intended to apply, *inter alia*, where the circumstances of the trader and the administrator were such that it would be inequitable to require the trader to bear the loss which, in normal circumstances, would not have been incurred. In deciding whether a ‘special situation’ existed, the Commission must balance the Community interest against the interests of the trader who had acted in good faith. In order to assess whether a trader is in a ‘special situation’ it is necessary to consider whether he is in an exceptional situation as compared with other operators engaged in the same business.

28. Remission or repayment will be refused if either of the two cumulative conditions are not met. In *Mehibas Dorstselaan v Commissioners*[2000] ECR 11-15 at paragraph 83, the CFI noted in that case:

“ It is settled case law that submitting documents found to be falsified or inaccurate does not of itself constitute a special circumstance justifying the remission or repayment of import duties, even where such documents were presented in good faith (*Eyckeler & Malt, paragraph 162*). A customs agent, by the very nature of his work, assumes liability for the payment of import duties and for the validity of the documents which he presents to the customs authorities. (*Van Gend & Loos paragraph 16*), and any loss caused by the wrongful conduct on the part of his clients cannot be borne by the Community. For that reason, it has been held that the fact that certificates of origin which were subsequently found not to be valid were delivered by the customs authorities of the countries mentioned on them does not amount to a special situation. It is one of the trade risks assumed by custom agents.”

It is the responsibility of the traders to make the necessary arrangements in their contractual relations to guard against the risks of an action for post- clearance payment. In *SCI UK Ltd v Commissioners* the court suggested at paragraphs 58 and 59:

“58. Therefore, as the Commission rightly submits, the presentation of documents subsequently found to be invalid cannot of itself constitute a special situation justifying repayment of import duties even where such documents were presented in good faith...

59. “A different conclusion , namely that there was a special situation, would only be possible in the event of serious failures by the Commissioners or the customs authorities, facilitating the fraudulent use of the price undertaking documents (see to that effect *Eyckeler & Malt, paragraph 163 et seq*, and *Primex Produkter Import-Export*, paragraph 141 et seq). It is therefore necessary to consider whether the applicant has demonstrated the existence of such failures”.

29. It is plain from the circumstances of this case that there was no ‘special situation’ and that there has been ‘obvious negligence’ on the part of Mr Hussian and Mr Ali. As a result Kam would not be entitled to remission of the import duties even if they had requested it

Submission on behalf of Kam

30. In an attempt to hear coherent argument from Mr Price Judge Porter had asked him to prepare appropriate headings for the points he wished to raise by way of submissions. Unfortunately Mr Price had not prepared such headings and the Tribunal has had considerable difficulty in understanding what he wished to submit. His principal concern appears to have been that neither HMRC nor OLAF had provided him with sufficient information to enable him to prepare for this hearing. By way of example he submitted that HMRC could have provided the evidence from the Landlords of the premises at 36, Purana Paltan Lane much sooner than September 2008 to enable Mr Hussain to have time to visit the site. Mr Price said that he had had no opportunity to query the email presented to the Tribunal at the hearing, as to the truth about the location of Dewan Textile Mills Ltd. He submitted to the Tribunal that he and his clients were unable to understand the basis of the post-clearance demands as HMRC had not, even by the time of the hearing , produced the papers he had asked for. He had written a substantial letter to HMRC on 31 December 2007, which he understood had been passed on to OLAF, but to which he had had no meaningful reply. He objected to the evidence produced by Mr Dettrich and Mr Fuhrmann on behalf of OLAF because it was incorrectly numbered and paginated. He further submitted that KAM had been prejudiced because the transactions took place in 2004 to 2006 and it could no longer obtain the necessary information.

31. Mr Price produced to the Tribunal a list of valid EPB Form AS , which he had extrapolated from the electronic list provided in Annex 9 of the OLAF Mission in March 2007. This list had not been put to Mr Hussain, Mr Ali nor to HMRC’s witnesses so we have no means of knowing if the list, as compiled by him, is accurate.. The final report of the March 2007 mission at paragraph 4 states:

“ The EPB has also provided OLAF with a similar list (of valid Form As) for all the Member States of the European Community covering all Form As issued for the period January 2005 to the end of February 2007. Any Form As that are not on these lists or do not correspond with the information provided in these lists should be suspect and false...(see Annex 9).”

Mr Price pointed out that there were numerous references to Form As for Dewan Textile Mills Ltd for periods throughout 2004 to 2006. This, he submitted, must mean that Dewan Textile Mills Ltd had been trading during the period of the appeal transactions, contrary to what Mr Dewan had told OLAF. He submitted that some of the Form A numbers in Annex 9 also appeared on the transactions the subject of this appeal. He did not put any of these matters to the witnesses. He did, however, confirm that when Mr Hussain went to Hong Kong he often stayed for 10 days.

32. Mr Price provided a skeleton argument, which is very difficult to follow as it consists of a series of comments on letters, which passed between Mr Price and HMRC, interspersed with comments on the OLAF Missions. Mr Price raised none of the points, that appear in his skeleton argument, with either his or HMRC’s witnesses. He submitted that the Visit Report for March 2007, Annex 1 contains various references which have not been properly explained. Page 1 quotes, - of the 8 business identification numbers (BIN), five are different for the six referring to Dewan Textiles Mills Ltd and there has been no adequate explanation

for the differences. He also submitted that the operatives on the Mission in 2007 should have re-examined Mr Uzzaman, as to whether Dewan Textile Mills Ltd had traded with Kam, in the light of Mr Dewan's comment that they had not. Mr Dewan's evidence was therefore unreliable. Mr Dewan had merely produced a Bank account as evidence that Dewan Textile Mills Ltd was not trading during that period. Annex 9 clearly shows that valid EPB's were issued during the period of the appeal for Dewan Textile Mills Ltd for other countries than the United Kingdom. It was also unlikely that Dewan Textile Mills Ltd would only have the one bank account. OLAF's investigations had not been thorough enough. As a result there was no cogent evidence arising from the OLAF visits to show that the validly signed EPB Form As used by Kam were forgeries.

33. At the end of his submissions Mr Price repeatedly referred to the fact that HMRC had not adequately answered his questions in his various letters and that, as a result, he had not been able to prepare effectively for the appeal. Judge Porter asked him if he had anything further he wished to say, but Mr Price merely reiterated his concern. As Mr Price failed to raise any other submissions Judge Porter and Mr Whitehead decided to bring the proceedings to an end.

The decision

34. We have considered the evidence and the law and we dismiss the appeals on the basis that the first seven EPB Form As are invalid, as they have not been completed properly, and that the consignments 8 to 15 are forgeries. Consignment 16 cannot give rise to a preference because there is no Bill of Lading from Singapore to Southampton. We would not have allowed the duties to be remitted because Mr Hussain and Mr Ali, on behalf of Kam, have acted negligently. Mr Thomas has rightly submitted that "Section 16 (5) of the Finance Act 1994 states the burden of proof on appeal lies with HMRC ... 'but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established'. Accordingly, as we are satisfied that HMRC have discharged their burden, the burden of proof is on Kam to satisfy the Tribunal that it should exercise its powers under section 16(5) to quash or vary HMRC's decision on review or to substitute its own decision".

35. Mr Hussain explained that he had started a manufacturing company with Mr Eng but that he now has no connection with Kam (Hong Kong) Ltd. That cannot be correct. His name appears on the company's records as a director and Mr Hussain has allowed Mr Eng to use Kam's United Kingdom address as part of Mr Eng's businesses. The web site for Kam (Hong Kong) Ltd clearly shows that it is a manufacturing company as does the site for Goldbond Industries Ltd. On the balance of probabilities we do not accept that they have acted as agents in these transactions. As Kam (Hong Kong) Ltd is based in Hong Kong, there is every possibility that the merchandise, the subject of the transactions, were manufactured in China.

36. Mr Fuhrmann's evidence was concise and straight forward. He had been on two of the Missions to Bangladesh specifically to check up on Dewan Textile Mills Ltd as one of the four companies under scrutiny. He has established that, although the EPB Form As in relation to the first seven transactions were said to be valid by the EPB in Bangladesh, they were invalid as they could not have been issued for Dewan Textile Mills Ltd at the time. The address on the Form As was incorrect. We are satisfied that the company had moved from that address some 10 years earlier.. The address had even been misspelt in some instances. The National Board of Revenue data revealed that Dewan Textile Mills Ltd was not recorded as an exporter. Mr Fuhrmann had spoken to Mr Dewan and he was satisfied that Mr Dewan had neither applied for nor signed the forms.. Mr Dewan had confirmed to him that it was necessary to have an exporter to enrol with the BGMEA. Although the photograph on the

application for that enrolment was of him it was a very old photograph. He also stated that he had never dealt with Kam .

37. Mr Dittrich is an experienced inspector and has seen similar frauds previously. He stated that the port at Chittagong could not accommodate ocean-going vessels as the port was too shallow. For our part we note that the Bill of Lading in relation to the 15th transaction, which would have been relied on to obtain the EPB Form A, is dated 6 April 2006, the day after the EPB Form A was produced as that form is dated 5 April 2006. That is not possible as the Bill of Lading has to be produced to obtain the EPB Form A. He also noted that in transaction 13 above the containers were different, which meant that they had been subject to ‘cross-stuffing’. As a result further evidence is needed for Kam to prove that nothing happened to the goods in Singapore if Kam is to comply with the direct transport rule. No such evidence has been forthcoming.

38. In summing up, Mr Price has made much of the fact that the Annex 9, which contains the lists of genuine Form As as supplied by the authorities in Bangladesh, also identified the first 7 Form As the subject of this appeal. Although he did not identify all the form As we have checked his lists and can confirm that all 7 are included in Annex 9. Mr Thomas confirmed that HMRC accept that, but they say that, although valid EPB Form As appear to have been provided, HMRC have shown that they had been fabricated. We accept that to be the case. We have, however, been unable to find any of the remaining transactions from 8 to 15 in Annex 9. We are not surprised. Mr Fuhrmann has produced a redacted list of false EPB Form As which does include these transactions. We also consider that it is unlikely that a company, dealing for the first time with Bangladesh, would be content to deal with 7 different companies. There is no evidence of the negotiations that Kam had with those companies. Nor is there any evidence that it made any enquiries about the companies, nor visited any of them. We cannot accept Mr Price’s submission that, as HMRC had not supplied sufficient evidence of their case he was unable to deal with the appeal properly. Mr Hussain and Mr Ali entered into all the transactions on behalf of Kam and they must have known how the transactions had been arranged. They had the opportunity to obtain copies of all the documentation either from their importing agents in the United Kingdom or from Kam (Hong Kong) Ltd and Goldbond Industries Ltd. They have failed to do so. We suspect because there is no further evidence than that which they made available to HMRC when first requested. It is unlikely that the flooding would have destroyed all the evidence necessary for this case yet other documentation appears to have escaped the flooding,

39. It is necessary for Kam not only to produce genuine EPB Form AS, which it has not done, but also to comply with the’ direct transport’ rule. Kam has not produced any separate evidence from Singapore of the onward transmission of the merchandise to Southampton. Article 78 does allow Kam to produce any other ‘substantiating documents’. If Kam had produced genuine form As, a certificate of origin, coupled with the pre-carriage and ocean-going Bills of Lading, which precisely identified the goods, the containers and the ships involved, then it might have been able to comply with the ‘direct transport’ rule. It has not been able to do that. In fact none of the pre-carriage Bills of Lading that it has produced support the information on the ocean-going Bills of lading. As Kam has not complied with the ‘direct transport’ rule we dismiss the appeal

40. Mr Thomas has referred us to a possible application for the remission of duty. We confirm that such an application would be out of time and there would appear to be no reasonable excuse for not applying in time. As he has addressed us on the matter we have considered it. Article 239 provides for remission of duty if Kam can show a ‘special situation’ existed at the time of the transactions and that there has been no ‘obvious

negligence'. Article 904 (c) provides that duties shall not be remitted or repaid where the only grounds relied upon are the presentation of documents, for the purposes of obtaining preferential tariff treatment of goods declared for free circulation, subsequently found to be forged, falsified or not valid for that purpose, even where such documents were presented in good faith. Where, however, the grounds are more than just forgery of the documents a 'special situation, can arise. In *Eyckeler & Malt AG v United Kingdom of Great Britain and Northern Ireland* Case T-42/96 the court stated at paragraph 104

"It is also incorrect to claim, with reference to Article 904 (c) of Regulation 2454/93, that expectations as to the validity of a certificate of authenticity were not protected. That provision simply states that import duties will not be remitted **if the only grounds** (our emphasis) in support of the application is the presentation of documents subsequently found to be forged or falsified even where such documents are presented in good faith. In any event, that is not the case here, since the applicant has relied on several grounds."

41. We believe that the procedures in Bangladesh, at the time, were far from satisfactory. Mr Dittrich confirmed that *backsheesh* (bribery) was prevalent in Bangladesh. As far as we are aware there have been four Missions to Bangladesh during 2007 to 2011. Annex 9 reveals a substantial number of transactions with Dewan Textile Mills Ltd when Mr Dewan, the National Board of Revenue and the BGMEA said that Dewan Textile Mills Ltd were not trading. Given that Bangladesh was on notice from 2007 that its EPB Form A procedures were not robust enough, we consider this information to that effect should have been made available to traders prior to the mission in 2007 by both the Bangladeshi authorities and the Commission. As this was not done, we do not believe that the fact the EPB Form As, the subject of this appeal, were invalid or forgeries was the only reason for the production of the invalid and forged form As. In the circumstances we would have found that there were 'special situations' sufficient to give rise to remission. Neither Mr Hussain nor Mr Ali tried to ascertain how the importation rules applied. They said that they have relied on their importer, but no evidence has been given as to what information the importer had on the matter. It appears that they have made no enquiries as to the honesty or otherwise of their agents nor of the 7 suppliers. Mr Hussain was content to visit Hong Kong and we would have expected him to have visited Dewan Textile Mills Ltd and the other suppliers with whom Kam dealt during the period in Bangladesh. In the circumstances we consider that Mr Hussain and Mr Ali on behalf of Kam have been negligent as to their obligations under the importation rule. As a result of that 'obvious negligence' they would not have been entitled to claim remission.
42. We reserve our decision with regard to costs. We consider that costs must be decided under the Value Added Tax Tribunals Rules 1986 as the parties entered into this appeal on the basis of those rules and not the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. We direct that HMRC submit its application for costs to the Tribunal and to Kam within 56 days from the release of the decision. Kam shall reply within 56 days from the date of the receipt of HMRC's application with HMRC's right to reply to Kam's reply within 28 days of the receipt of the same. The Tribunal will decide the costs on the basis of written representations.
43. This document contains the 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.

TRIBUNAL JUDGE
RELEASE DATE: 10 November 2011