



TC01790

Appeal number: TC/2010/06308

Anti-Dumping Duty – candles imported from China by Appellant – goods dispatched prior to imposition of ADD but imported into UK following its imposition – goods liable to ADD - Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

MANCHESTER CANDLE COMPANY LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: DAVID DEMACK (TRIBUNAL JUDGE)
ALBAN HOLDEN (MEMBER)**

Sitting in Manchester on 20 January 2012

The Appellant was not represented

Mr Joshua Shields, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The issue in this appeal by Manchester Candle Co Ltd (MCC) is whether the company is liable to pay anti-dumping duty (ADD) on an importation of candles from China.

2. The disputed decision of the Commissioners is that to issue a Post Clearance Demand Note, commonly referred to as a form C18 (C18), in respect of a quantity of candles imported into the United Kingdom under entry number 290/010777C in December 2008. The C18 was issued on 7 July 2010 for under-payment of ADD of £5,532.08, import VAT for the ADD of £829.81, and the overseas freight omitted of £243.21, making a total assessed of £6605.10.

3. MCC appealed the Commissioners' decision on 15 July 2010 claiming that ADD should not apply to the candles included in its order 2095 and imported under entry number 290/010777C. That was the fifth of six orders it placed in January 2008 with Tianjin Century Shengfa Group Co Ltd (TCS) of Tianjin, China, for candles to be delivered throughout that year. In its reasons for appealing, with which we shall deal in detail shortly, MCC explained that there was no ADD on importations of candles from China until after the candles in question were shipped on or about 19 October 2008, and that the Commissioners had imposed the duty in what it considered to be a "retrospective way".

4. Before us the Commissioners were represented by Mr Joshua Shields of counsel. MCC was not represented but, since we knew of no good reason why no one appeared to represent it and the notice of hearing appeared to have been regularly served, we determined to proceed in its absence.

5. It is perhaps appropriate for us to provide a background to the imposition of ADD on importations of candles. The framework for ADD was put in place by Council Regulation 384/96 (the 1996 Regulation) to protect against dumped imports. Article 7 of that regulation provides for provisional imposition of ADD during investigation and consultation prior to completion of that process.

6. Pursuant to the powers contained in the 1996 Regulation, by Commission Regulation 1130/2008 (the 2008 Regulation) provisional ADD was imposed on certain candles, tapers and similar items imported from the People's Republic of China. By para 3 of art 1 thereof, liability for the provisional ADD arose on the release for free circulation of such products. In practical terms that required payment of the amount of duty specified, which was to be held pending completion of the investigative and consultative process. The rate of provisional ADD was contained in a table contained in para 2 of art 1 of the 2008 Regulation, and that applicable in the instant case was 671.41 euros per tonne of fuel. The 2008 Regulation came into force on 16 November 2008, and was stated to apply for 6 months.

7. By Commission Regulation 393/2009 (the 2009 Regulation) of 11 May 2009 a definitive ADD was imposed effectively replacing the provisional ADD. The general rate of ADD imposed by the 2009 Regulation was 549.33 euros per tonne of fuel, but the products of certain specified manufacturers were liable to a lower, or nil, rate of duty.

8. The one thing we have not so far mentioned is that in terms of the quantum of assessment ADD is payable on the weight of the fuel imported, net of packaging. MCC informed the Commissioners that the net weight of the fuel concerned was 11,909.5 kg. The Commissioners accepted the correctness of that figure, and assessed accordingly.

9. There is no dispute as to the facts, and we take the majority of them from MCC's reasons for appealing, as signed by its director, Mr Bryan Clementson, in its notice of appeal:

“Our order 2095 (5 of 6) [for certain candles] was placed as part of a 6 part order in January 2008. The idea being that the producer [TCS] wished for forward planning and [MCC] wanted security going forward. Through 2007 and at the time this order was placed there was zero duty on imports of candles from China.

The first, second, third and fourth parts of this block order were completed during the period January to August 2008. The law during this period was that zero duty applied. The fifth part of the block of orders 2095 (5 of 6) was partly paid for (20%) before production started sometime in August 2008. Upon completion of the production the remaining 80% was paid prior to packing into a container. Shipment of the container was made on or about the 19th October 2008. The law continued to be that no duty applied. Thus when the goods left China the duty rates were clearly zero. The time of arrival of the container in question here in the UK was 17th November 2008. On the 15th/16th November the law had changed. I understand it was the European courts who pushed through this law under what the authorities were calling an Anti Dumping Duty (ADD). Although we and our suppliers TCS strongly deny being involved in anything remotely connected with “dumping” we needed to take action. Although the new rules and duty rates were almost impossible to decipher we decided to stop this trade because we did not want to be involved with politics and the phrase anti dumping was something we immediately wished to separate ourselves from. Having already paid a US\$5000 deposit for the 6th and final part of the order we had to have emergency discussions with TCS regarding what to do about the 6th part of the block order. The total amount for that 6th order was about US\$31000 and TCS were trying to get another US\$26000 from MCC. The result was MCC allowed TCS to keep the deposit of US\$5000 (MCC wrote off the item as a loss) and we would not continue with the final part of the order. During this difficult period our supplier TCS held onto the documents for several days until matters were resolved. This resulted in several days where the container was held up at the doc(sic) side and further charges of £780 were incurred by MCC for that. Thus the final and official clearance date of the goods into the UK for the order we claim should not have duty applied to it was 10th December 2010 (sic).

In summary. On 17th October 2008 (sic) when our goods left China by ocean shipment there was no duty applicable. MCC feels this new duty should not be applied in what we feel is in a retrospective way to these goods.”

10. The remaining facts can be shortly stated. On 10 December 2008 MCC's clearing agent, Panalpina World Transport Ltd (PWT), declared its importation. PWT acted as

5 MCC's direct representative, which meant that it acted in the name and on behalf of
MCC, but the latter was solely liable for the duty liability which arose. MCC was
selected for an audit by the Commissioners, and they visited it on 29 June 2010. The
visiting officers found the documentation produced to be satisfactory (subject to a
10 small amount of omitted overseas freight on the 5th entry, which was resolved), with
the exception of the 8th entry, that of the candles in entry 290/10777C. The officers
observed that, whereas the code A999 should have been used in the import declaration
SAD since TCS was not a supplier qualifying for a reduced or nil rate of ADD, PWT
had used code A916, indicating the supplier to be Qingdao KingKing Applied
15 Chemistry Co Ltd, to whose products a nil rate of ADD applied. No explanation for
PWT's incorrect use of code A916 was provided, but we find it unnecessary to
consider whether such use was deliberate. During the visit a representative of MCC
explained to the officers that it had tried to cancel the relevant consignment, and that
it was ultimately left with goods it was unable to sell; had there not been delay in TCS
dispatching the order, it would not have attracted ADD.

11. Following the imposition of ADD at the definitive rate, the assessment to the duty
in the form of the C18 Post Clearance Demand Note, which had been originally made
at the higher provisional rate, was reduced; and it is the assessment at the reduced rate
that is under appeal.

20 12. Mr Shields submitted that, on the facts, we must dismiss the appeal. By its
declaration of 10 December 2008, MCC sought the release of the candles imported
under entry number 290/010777C for free circulation and, by the Commissioners'
acceptance and processing of the same, the goods were released. By then, the
provisions of the 2008 regulation had come into force, and duty was due.

25 13. We have considerable sympathy with the position of MCC but, unfortunately,
that is of no help to it. As we have said. The liability to duty, i.e. the duty point,
occurred on the candles being imported into the UK. And, at the date they were
imported, the ADD had been imposed.

14. It follows that we must dismiss the appeal.

30 15. 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE
RELEASE DATE: 31 January 2012

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