

[2013] UKFTT 167 (TC)



**TC02583**

**Appeal number TC/2010/4263**

*Excise Duty – duty suspended movement – whether alcohol left the UK*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LOGISTICAL TRANSPORTATION LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE CHARLES HELLIER  
JAMES MIDGLEY**

**Sitting in public at 45 Bedford Square, London WC1 on 18 February 2013**

**Timothy Brown instructed by Vincent Curley & Co LLP for the Appellant**

**Ewan West, instructed by the General Counsel and Solicitor to HM Revenue and  
Customs, for the Respondents**

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## DECISION

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1. This appeal relates to the dispatch of a consignment of Gallo wine from Edwards Beers and Minerals Ltd ("Edwards") in Leighton Buzzard on 15 July 2009 for delivery to Contrama Logistique in Bologne in France.

10 2. HMRC say that the consignment did not leave the UK; the appellant that it arrived at its destination. If the appellant can show that it is more likely than not that the assignment did arrive it will succeed in this appeal.

15 3. The appellant company is owned by Mr. Tahir Aziz. He set up the company in 2008 and managed its operations on a part-time basis while he remained in employment elsewhere. He told us that his object was to develop a logistical business for the company.

4. Mr. Aziz found a customer for his transport services in the form of Century Trading in Belgium. That company wished him to transport consignments of alcoholic drinks from the UK to France.

20 5. The alcohol was held in bond in the UK (i.e. with the payment of duty suspended - see below) and was to be transported to a bonded warehouse in France. Mr. Aziz was required by Century to provide an excise duty guarantee to HMRC. He applied to HMRC for the approval of a form of guarantee, and a guarantee in the sum of £20,000 was agreed in February 2009.

25 6. The company then started arranging the transport of the consignments for Century. Between 6 April 2009 and 18 January 2010 the company arranged the transport of 41 consignments for Century. By 12 October 2009, 23 consignments had been transported from Edwards, all but six of which had been to Contrama. In almost all cases Mr. Aziz arranged for Fast Haul Limited to pick up and deliver the goods. But in a few cases the transport was carried out by Accelerate 2000.

30 7. HMRC made a visit to Mr. Aziz in November 2009. They selected four movements of goods for further checking. They asked for details of the lorries which transported the goods - the registration number of the tractor unit and the number of the trailer.

35 8. Having obtained this information they checked with their internal databases which recorded the movements of vehicles across the Channel to France.

9. Eventually HMRC satisfied themselves that three of the four consignments had left the UK on the trailers ascribed to them, although pulled by tractor units which were different from those which had picked up the goods from Edwards.

40 10. But for one consignment of wine, picked up on 15 July 2009, HMRC's records indicate that the tractor unit which Mr Aziz had told them was taking the wine across

the channel, WLZ 2046 ("WLZ") with its accompanying trailer, 112 ("112") had left the UK empty. After visits to Fast Haul and Accelerate, HMRC's officers concluded that the wine had not left the UK, and on 15 March 2010 assessed the appellant for the excise duty on the wine, at £26,251.

- 5 11. The appellant sought a review of the decision to assess, and on 26 April 2010 Allan Donnachie of HMRC wrote to the appellant setting out his conclusion that the decision to assess should be upheld. The appellant appeals against the decision.

**The relevant law.**

- 10 12. Alcoholic liquor produced in, or imported into, the UK becomes in principle liable to excise duty when it is produced or imported. But the liability to pay the duty is delayed and arises only at the "excise duty point". This is usually the point at which the alcoholic liquor is released for consumption. But the duty point may be postponed and the duty 'suspended' if the liquor is taken to an approved excise warehouse (a "bonded warehouse"). The outline for the management of the duty was at the relevant  
15 time provided for in Directive 92/12/EC.

13. Article 15 of that Directive provides for arrangements permitting the movement of excise goods between tax warehouses. These are "duty suspended movements". Article 15(30 and the UK regulations require that an intra-community movement of excise goods be covered by guarantee provided by the warehouse keeper or the  
20 transporter. Such movements of goods are required to be accompanied by an "Authorised Administrative Document" ( an "AAD") This is a form prescribed by the Directive and regulations. It contains a number of boxes most of which must be filled in by the consignor. Four copies are prepared: one of the consignor, one for the consignee, one to be receipted by the consignee (and if required also by the fiscal  
25 authorities of the destination state) and returned to the consignor, and the fourth for those fiscal authorities. All but the first copy must accompany the goods whilst in transit.

14. In this appeal the AAD for the movement in question was prepared by Edwards and specified the guarantor as the appellant. It also provided in box 11, 'Other  
30 transport details' the registration number P6 DHT, a trailer number "112" and a seal number for the consignment. The appellant produced a copy of the AAD receipted by Contrama, and indicating that the consignment had been checked (as required by Art 19(2) of the Directive).

15. The Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001 provided for the occurrence of an excise duty point where there was  
35 an "irregularity" in the course of the duty suspended movement.

16. Regulation 3 provides:

"(1) This regulation applies where:

- (a) excise goods are:

(i) subject to a duty suspended movement starting in the United Kingdom ...and

(b) in relation to those goods and that movement there is any irregularity which occurs or is detected in the United Kingdom.

5 (2) Where the Commissioners are satisfied that the irregularity occurred in United Kingdom, the excise duty point shall be the time of the occurrence of the irregularity or, where it is not possible to establish when the irregularity occurred, the time when the irregularity first comes to the attention of the Commissioners

10 (3) Where it is not possible to establish in which member states the irregularity occurred, the excise duty point shall be the time of the detection of the irregularity or, where it is not possible to establish when the irregularity was detected, the time when the irregularity first comes the attention of the Commissioners.

...

15 17. The regulations define "irregularity" to mean "an irregularity or offence within the meaning of Article 20 of the Directive. Article 20 is not particularly informative:

20 "1. Where an irregularity or offence has been committed in the course of a movement involving the chargeability of excise duty, the excise duty shall be due in the Member State where the offence or irregularity was committed from the natural or legal person who guaranteed payment of the excise duties in accordance with article 15 (3), without prejudice to the bringing of criminal proceedings."

25 18. However it seems clear that a movement of excise goods so that they are released into free circulation when they should have been moving between warehouses under duty suspension arrangements is an irregularity. If alcohol destined for France did not leave the UK there must have been an irregularity which occurred in the UK.

19. Regulation 7 provided:

30 "7. (1) Subject to paragraph (2) below, where there is an excise duty point as prescribed by regulation 3 ... above, the person liable to pay the excise duty on the occurrence that excise duty point shall be the person shown as the consignor on the accompanying administrative document or, if someone other than the consignor or is shown in box 10 of that document as having arranged for the guarantee, that other person."

35 20. In this appeal the appellant had arranged to give a guarantee and its name was in box 10. Thus if an excise duty point occurred the appellant would be liable for the duty which had thitherto been suspended.

40 21. Sections 14 to 15F of the Finance Act 1994 provide that the commissioners may be required to review certain decisions including certain decisions to assess excise duty. Section 16 permits an appeal in relation to such decisions of the commissioners on review. Section 16 (6) provides:

"On an appeal under this section the burden of proof ...as to [certain matters not relevant to this appeal] shall lie upon the commissioners; but it shall otherwise be for the appellant to show the grounds on which any appeal is brought have been established."

5 22. In this appeal the appellant's grounds of appeal are:

(1) The review officer was asked for information about the reasons for the assessment but did not reply. The officer thus closed his mind to the information the appellant could have provided in response;

10 (2) The assessed consignment was properly discharged at the approved warehouse in France.

23. So far as concerns ground (1) the Commissioners deployed their evidence before us and the appellant was able to reply to it. In the context of this appeal therefore there was no need to consider this ground further. So far as concerns (2) by reason of section 16(6), the burden is on the appellant to show that the wine did get to the warehouse in France. .

24. To summarise: if the goods do not arrive at the warehouse in France then there must have been an irregularity. If the irregularity occurred in the UK then a duty point arises and the appellant is liable for the duty as guarantor. If it is not possible to determine where the irregularity occurred, a duty point nevertheless occurs and the appellant as guarantor is liable.

#### **The Decision Letters.**

25. In the original decision which gave rise to the assessment, and in Mr Donnachie's review, the reason for the assessment is given as being because the goods did not leave the UK. As the guarantor of the movement of the goods, the appellant was liable for the duty.

#### **The Evidence and Our Findings of Fact.**

26. We heard oral evidence from Mr. Aziz, from Mrs Gurbahsh Donanjh, the officer of HMRC responsible for the assessment under appeal, from Mr. Donnachie, and from Karen Buckthorpe of P&O who provided evidence of the records and procedures at P&O ferry terminals.

*(1) Evidence relating to the dispatch of the goods.*

27. Mr. Aziz told us that on 14 July 2009 he was contacted by Century and asked to move a consignment from Edwards to Contrama.

28. On the same day a "release note" was sent by Coral Management Limited of Isleworth to Edwards asking Edwards to release from goods held for Coral:

(1) 150 cases Gallo red Zinfandel

(2) 1120 cases Gallo W/Grenache

- (3) 224 cases Gallo Shiraz Rose
- (4) 1232 cases Gallo White's internal.

to Contrama, and indicating that Coral's customer Century would arrange their own transport. That was a total of 2726 cases.

5 29. Mr. Aziz told us that on the same day he telephoned Fast Haul to ask them to move the wine, but he was told that they had no driver. Fast Haul recommended that he tried Accelerate 2000. He called Accelerate and was told that they could do the job.

10 30. Mr. Aziz sent a collection note to Accelerate to pick up 2726 cases of mixed wines on 15 July 2009 from Edwards and deliver them to Contrama on 16 July 2009.

15 31. A Movement Guarantee fax from the appellant to Edwards dated the next day, 15 July 2009, confirms that the appellant had arranged for Accelerate to collect at 12 o'clock on 15 July 2009 a 'full load' of wines from Coral's account for delivery to Contrama, and that the wines would be collected by tractor number P6 DHT ("P6") and trailer FH 112. [There was some uncertainty over the date of this fax since the fax header looks as if its date was two days later, 17 July at 13.19, but it was possible that the fax machine had been set wrongly].

32. Tractor unit P6 belonged to Fast Haul.

20 33. It appears that Edwards prepared an AAD showing P6 as the tractor and 112 as the trailer, and specifying the wines noted at [28] above as collected on 15 July 2009.

25 34. Mr. Aziz also told us that after 12 o'clock on that day he would have phoned Edwards and asked if the load had been taken. He would then have been given the vehicle number. Later he would have confirmed with Accelerate that they had picked up the goods and been told where they were. That would have been between 4 and 5 pm. He could not however remember what Accelerate told him about where the goods were. He said that on 16 July he would have rung Contrama to check that the goods have arrived. He would then have awaited the CMR which came in due course.

35 35. But it seems that after collection the tractor unit was switched to WLZ which belonged to Accelerate. The evidence in relation to this is somewhat confused:

30 (1) HMRC's enquiries of Fast Haul resulted (in March 2010) in a telephone call in which a caller identifying herself as the director of Fast Haul confirmed that they had been asked to transport the goods on 15 July 2009 but had not been able to do so, and that Logistical Transportation had asked Accelerate to do it. But she said that Fast Haul had lent its truck (P6) to Accelerate and that the truck had been picked up from Fast Haul by Accelerate's driver;

35 (2) HMRC's enquiries of Accelerate resulted in a discussion with a Mr. Goldsworthy who said that they had only one tractor unit, WLZ, and had only done one alcohol movement which was for Fast Haul. He said that he had been asked by Fast Haul to do a job and his driver (Mayfield) had met Fast Haul at  
40 junction 9 on the M1, swapped trailers (presumably to take 112 on W LZ) and

gone to France and returned the same trailer. He had charged Fast Hall for the job.

5 (3) A copy (sent, we believe, by Accelerate to HMRC) of a fax from Fast Hall to Accelerate asks for Accelerate to collect 112 from P6 at junction 9 M1 lorry park on 15 June 2009 (without a time) and deliver to Contrama;

(4) Mr. Aziz produced an invoice from Accelerate for the movement and evidence of the appellant's payment of it.

10 (5) P&O's records (to which we shall return below) indicate that WLZ travelled to France on 15 July with trailer 112, and that the driver's name was Gould (not Mayfield). They also indicate that WLZ returned the next day with a different trailer.

(6) Mr. Aziz said that the tractor and trailer numbers (P6 and 112) on the movement guarantee fax he had sent to Edwards were given to him by Accelerate.

15 36. We had difficulty making sense of this evidence. We could not understand why Accelerate should borrow P6 to pick up a load from Edwards, but then switch tractor units to WLZ after picking up the wine. We could not work out, if First Haul did not have a driver, who was driving P6 when it arrived to do the trailer swap at junction 9. We could not understand why, if Mr. Aziz commissioned Accelerate directly, First Haul should have written to Accelerate asking them to do a swap. We could not understand why WLZ was recorded as returning with a different trailer.

20 37. The only clear conclusion we could derive was that P6 was not intended to be the tractor which took 112 across the Channel on 15 July, and that it was likely that it was intended that WLZ should. That WLZ took 112 across the Channel so was confirmed by the P&O records (and also by an annotation on the CMR). There was no suggestion that P6 went to France that day.

*(2) The evidence in relation to the journey across the Channel.*

38. Mrs Buckthorpe produced a copy of the waybill from P&O's computer records. The bill showed for a sailing at 5:30 pm on 15 July 2009:

- 30 (1) WLZ with trailer 12,  
(2) driven by D Gould with no other passengers,  
(3) weighing 15,740 kg,  
(4) described as "empty", and  
(5) for the haulier 'ACCELERATE'.

35 39. Mrs Buckthorpe explained that lorries would go to a weighbridge on arrival at the terminal and obtain a weight ticket. Then they would go to the booths. As they arrived their registration numbers would be taken and when they stopped the number would be confirmed with the driver. The booth operator would enter the weight, registration number, driver's name, the haulier and whether the vehicle was empty or not into the computer. The booth operator would normally take the driver's word for whether or  
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not the vehicle was empty unless there was some discrepancy. The booth operators dealt with many hundreds of lorries in a year.

5 40. Mrs Buckthorpe told us that a tractor weighed 9 to 12 tons, and an empty trailer about 6 tonnes: together some 15 to 17 tonnes. She explained the weights of the lorries were important to P & O for safety in the loading of their ships.

41. Mrs Buckthorpe was frank and straightforward. We accepted her evidence.

10 42. We were shown a printout from HMRC's computer records, part of the information for which was drawn from P&O's computer systems. This printout recorded movements of WLZ on the Dover/Calais ferry between 29 June and 28 July 2009 (eight crossings in all). Those records recorded the carrier variously as:

- (1) Accelerating 2000
- (2) Xlr 2000
- (3) ACCELERATE
- (4) Accelerate
- 15 (5) Exelorate 2000
- (6) ACCELERATE 2000
- (7) Accelerate 2000

20 43. Mr. Brown points to these variations. He says that they indicate a lack of precision by the booth operators, and suggests that the same lack of precision and possible error extends to the waybill produced as a result of the entries made by the booth operator. As he set as a result he says we should take the weight of 15,740 kg, and the record of the vehicle as being "empty" with a pinch of salt. There may have been a mix up between two different lorries. He asks how one could know that the weighbridge was accurate.

25 44. We accept that human error is a possibility. However we are not convinced it was likely. The weight of 15,740 kg is consistent with the trailer being empty. The figure of 15,740 kg does not appear likely to be a typographical error for a laden weight: 2726 cases of wine are likely in our estimation to weigh some 20 to 25 tonnes (9 litres (12 x 75cl) of wine will weigh about 9 kg and the bottles will add something to that) ;  
30 the laden weight would therefore be some 35 tonnes. That does not seem to be easily transcribed as 15 tonnes. We think it unlikely that both an error in the weight and an error in the recording of whether or not the lorry was empty would take place at the same time. We think it unlikely that the keying in of entries for a vehicle standing at the booth would be muddled with entries for a prior or subsequent vehicle.

35 45. In our judgement Mrs Buckthorpe's evidence gave weight to, and enabled us to rely upon, the waybill.

*(3) Evidence in relation to Arrival.*

46. We were shown a copy of the AAD bearing a signature for, and a stamp of, Contrama dated 16 July 2009 and also a stamp showing arrival at 9:48 am on 16 July 2009. Mr. Aziz also produced a letter from Contrama which enclosed copies of Contrama's stock records showing the receipt from Century of the consignments of wine with an identifying number replicated on the AAD, and the record of a later dispatch (also on 16 July) of most of the wine from Century's account.

47. In addition we were shown a CMR stamped and signed on behalf of Contrama bearing what looked like the date of 16 July showing the carriage of 2726 cases of wine.

48. One of the copies of the CMR had, in the box containing the carrier's details (which included "P6" and "112") the additional words "onto WLZ" which was consistent with the change of tractor unit. No such annotation had been made to the AAD..

49. The AADs noted seal numbers. Mr. Aziz told us that the trailers were sealed with numbered plastic tags. The numbers were entered on the AADs. The receiving warehouse he said would check that the seals had not been broken and then identify the load.

50. There was nothing inconsistent in this evidence (save perhaps the failure also to annotate the AAD to record the change in the tractor unit). But we were unable to determine the procedures and checks undertaken by Contrama or to assess the care they had taken in checking details.

#### **Our conclusions on the evidence**

51. We had to decide whether the appellant proved that the goods left the UK. We must make that decision on the evidence before us. There are, as outlined above three parts to that evidence: (1) that relating to the departure of the wine from Edwards, (2) that relating to WLZ's journey via the P&O ferry, and (3) the evidence of the CMRs, AADs and Contrama's records.

52. We do not find that (1) provides any weight in favour of a conclusion that the goods arrived at Contrama or left the UK. There were oddities and inconsistencies in the evidence.

53. That leaves us to balance (2) against (3). If WLZ and 112 were empty when they went on to the ferry at Dover, we can see no way in which the wine can have been delivered by WLZ the next day. Likewise if the wine arrived on WLZ and 112 on 16 July it must be that the waybill was wrong. We have to decide which is more likely.

54. In relation (2) we were convinced that it was very unlikely that P & O's record was wrong: the evidence of Mrs Buckthorpe enabled us to test the reliability of the record.

55. In relation to (3) the copies of Contrama's records and forms supported the AADs and CMRs but provided little to help us test the reliability of the systems which gave rise to those records.

5 56. We therefore attached greater rate weight to (2) than to (3). We decided as a result that it was not shown that it was more likely than not and that the goods left the UK or arrived at Contrama.

10 57. That failure to arrive was an irregularity. It was not possible to say it took place in France, therefore it is to be treated as taking place in the UK (and indeed we find that HMRC's conclusion that the wine did not leave the UK is not disproved). Thus an excise point arises in the UK. The appellant, being the guarantor of the delivery is liable for the duty. There was no dispute as to the amount of the duty. The assessment was therefore properly made.

58. In the circumstances therefore it is not necessary for us to consider whether there was any other irregularity.

15 **Disposal**

59. We dismiss the appeal.

**Rights of Appeal**

20 60. 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.

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**CHARLES HELLIER  
TRIBUNAL JUDGE**

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**RELEASE DATE: 6 March 2013**