



TC02908

Appeal number: TC/2012/08638

EXCISE DUTY – Whether appellant a “qualified claimant” under Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1997 – No – Whether compliance with conditions in Notice 263 “Marine Voyages–excise duty relief for mineral (hydrocarbon) oil” – No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OIL 4 WALES LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
DAVID BATTEN**

Sitting in public at Eastgate House, Newport Road Cardiff on 13 August 2013

Adam Corbin, counsel, instructed by Bear Wilson Lloyd solicitors, for the Appellant

Alan Bates, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

5 1. Oil 4 Wales Limited (the “Company”) appeals against a decision of HM Revenue and Customs (“HMRC”) contained in a letter dated 15 May 2012 (the “Decision Letter”) to deny 12 claims for repayment of Excise duty in the sum of £12,002.22 and an assessment (the “Assessment”), issued on 26 June 2012, for the payment of duty of £3,899.00 which had been previously repaid by HMRC to the Company.

10 2. The appeal gives rise to the following issues:

(1) whether the Company is a “qualified claimant” under the Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1997; and

(2) whether it had complied with the conditions set out in HMRC’s Notice 263.

15 *Law*

3. Insofar as relevant to the present case, s 20AA of the Hydrocarbon Oil Duties Act 1979 (“HODA”) provides:

Power to allow reliefs.

20 (1) The Commissioners may make regulations allowing reliefs as regards—

(a) any duty of excise which has been charged in respect of hydrocarbon oil...;

(2) The regulations may include such provision as the Commissioners think fit in connection with allowing reliefs, and in particular may—

25 (a) provide for relief to take the form of a repayment or remission ...

(b) provide for relief to be allowed in cases or classes of case set out in the regulations;

(c) provide for relief to be allowed to the extent set out in the regulations;

30 (d) provide for relief to be allowed subject to conditions imposed by the regulations;

(e) provide for relief to be allowed subject to such conditions as the Commissioners may impose on the person claiming relief;

35 (f) provide for the taking of samples of hydrocarbon oil in order to ascertain whether relief should be allowed or has been properly allowed;

(g) make provision as to administration (which may include provision requiring the making of applications for relief);

4. The Hydrocarbon Oil Duties (Marine Voyages Reliefs) Regulations 1997, were made under s 20AA HODA and any subsequent reference to Regulations in this decision is to these Regulations.

5. Insofar as the Regulations are material to the present appeal they provide:

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2. Interpretation

In these Regulations—

...

“qualified claimant” means—

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(a) the owner of the ship on which the hydrocarbon oil was, or will be, used;

(b) the charterer to whom that ship is, or was at the time of the marine voyage, demised;

(c) a person appointed by the person mentioned in sub-paragraph (a) or (b) above to act as sole agent for that ship;

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(d) if he is authorised to do so by the person mentioned in sub-paragraph (a) or (b) above, the master of that ship; and

(e) where the claim relates to hydrocarbon oil used on that ship while undergoing trials for the purpose of testing her hull or machinery, the builder or other person conducting the trials.

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3. Reliefs

(1) Subject to the provisions of these Regulations—

25

(a) where hydrocarbon oil has been used as fuel for the machinery of a ship that has been engaged on a marine voyage the Commissioners shall, in respect of that fuel, repay any excise duty that has been charged and paid; or

(b) where heavy oil is delivered for use as fuel for the machinery of a ship that will be engaged on a marine voyage the Commissioners shall, in respect of that fuel, repay any excise duty that has been charged and paid; or

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(c) where heavy oil is delivered for use as fuel for the machinery of a ship that will be engaged on a marine voyage the Commissioners shall, in respect of that fuel, remit the payment of any excise duty that has been charged.

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(2) No relief shall be allowed in the case of a ship that is a private pleasure craft.

(3) No relief shall be allowed otherwise than upon the written application of a qualified claimant.

(4) No relief shall be allowed by paragraph (1)(a) or (b) above in the case of drawback goods.

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(5) No relief shall be allowed by paragraph (1)(b) above unless the heavy oil is supplied by an approved person.

(6) No relief shall be allowed by paragraph (1)(b) or (c) above unless the heavy oil is delivered directly from a warehouse or refinery to the ship that will be engaged on a marine voyage.

...

5 **11. General Conditions**

(1) Relief is allowed subject to the following conditions.

(2) The amount of relief applied for shall not exceed the amount of relief that may be allowed by regulation 4 [the amount of duty paid less any rebate or other repayment that has been allowed] above.

10 (3) Where relief is allowed by regulation 3(1)(a) above—

(a) the qualified claimant must, on being so required by the Commissioners, furnish to their satisfaction evidence that the duty that is the subject of the application for relief has been paid and has not been repaid, remitted or drawn back,

15 (b) the hydrocarbon oil must not have been used otherwise than as fuel for the machinery of the ship specified in the application for relief while engaged on a marine voyage, and

20 (c) the duty that is the subject of the application for relief must not be the subject of any other application or claim for repayment, remission or drawback.

(4) Where relief is allowed by regulation 3(1)(b) or (c) above—

25 (a) the qualified claimant (or someone authorised to act on his behalf) shall, upon delivery of the hydrocarbon oil to the ship, provide the supplier of that oil with an acknowledgement of receipt in such form as the supplier may require,

(b) the hydrocarbon oil must not be used otherwise than as fuel for the machinery of the ship to which it was delivered while that ship is engaged on a marine voyage,

30 (c) the hydrocarbon oil must not be relanded at any place in the United Kingdom, and

(d) the duty that is the subject of the application for relief must not be the subject of any other application or claim for repayment, remission or drawback.

...

35 **12. Conditions imposed by the Commissioners**

Relief is allowed subject to such conditions (if any) as the Commissioners [ie HMRC] impose on qualified claimants in a notice published by the Commissioners and not withdrawn by a further notice.

40 6. HMRC have published such conditions in their Notice 263 “Marine Voyages—excise duty relief for mineral (hydrocarbon) oil” (the “Notice”).

7. We were provided with the June 2013 edition of this Notice which came into effect after the Company's transactions took place. However, the parties accepted that edition of the Notice did not differ materially from that in force at the time of the transactions and were content for us to rely on the 2013 edition.

5 8. Paragraph 4.1 of the Notice, which is headed "Who may claim repayment of excise duty?" provides:

You can only claim repayment of excise duty which has

- been paid, and
- in respect of which no drawback or other claim has been or will be made.

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You can claim if you are:

- the owner, commercial charterer or hirer or the ship's master, or
- a sole agent if authorised in accordance with this paragraph (see the glossary for the definition of sole agent), or
- a supplier of the oil acting as sole agent.

15

If you are the ship's master you may be authorised to claim and receive payment on behalf of an owner, commercial charterer or hirer who must give their written authority in the following manner:

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To the Officer, Mineral Oil Reliefs Centre, HM Revenue & Customs.

I/We
(owner/charterer/hirer*) (full name in BLOCK LETTERS)*

*of
(name(s) of vessel(s))*

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hereby authorise the ship's master to claim and receive repayment of the Excise duty paid in respect of oil used as fuel for the machinery of the above vessel(s) in respect of which the claims are made under the terms of Notice 263, and I/we hereby authorise the ship's master to make such declarations as may be required for this purpose.*

30

I/We agree that all receipts given by the ship's master shall be sufficient evidence for all such repayments referred to above.*

*Signed.....
(Owner/Charterer/Hirer*)*

Address

35

.....

Date

**Delete as appropriate*

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If you are an agent then you may be authorised to claim and receive payment on behalf of an owner or charterer. You must be a person or firm who:

- is the sole agent for the vessel(s) in question, and
- is to make all claims for the vessel(s) when taking on fuel at any port in the UK, and
- 5 • has a business connection with the vessel(s), (for example, a shipping agent or ships' store supplier)
- is in a position to make the declaration on the claim form that the oil has actually been used as fuel for the machinery of the vessel(s).

10 We will not accept any claim from an agent without these qualifications. Both agents and vessel owners have a responsibility to make sure that any changes in the circumstances concerning the use of agents are notified to HMRC promptly. The use of an agent for one-off transactions should be discouraged. Agents should only be appointed if the situation warrants it – that is, there is a regular and continuing need at a particular port, rather than merely an occasional one.

15 The owner or charterer must give the following written authority in respect of each agent:

To the Officer, Mineral Oil Reliefs Centre, HM Revenue & Customs

20 I/We*
 (owner/charterer/hirer*) (full name in BLOCK LETTERS)

of
 (name(s) of vessel(s))

hereby appoint
 (full name in BLOCK LETTERS)

25 of
 (address)

30 to be my/our* agent to claim and receive repayment of the Excise duty paid in respect of oil used as fuel for the machinery of the above vessel(s) in respect of which the claims are made under the terms of Notice 263, and I/we* hereby authorise the above-named agent to make such declarations as may be required for this purpose.

I/We* agree that all receipts given by the above-named agent shall be sufficient evidence for all such repayments referred to above. I certify that the agent named above:

35 is the sole agent for the vessel(s) in question, and

is to make all claims for the vessel(s) when taking on fuel at any port in the UK, and

has a business connection with the vessel(s) (for example, a shipping agent or ships' store supplier), and

40 is in a position to make the declaration on the claim form that the oil has actually been used as fuel for the machinery of the vessel(s).

Signed.....
 (Owner/Charterer/Hirer*)

Address.....

.....

Date

**Delete as appropriate*

5 The master of a vessel can authorise an agent to apply for repayment on behalf of the owner or charterer provided that written authority as above has been given by the owner or charterer.

9. The Glossary, in the 2011 version of the Notice which applied to the Company's deliveries, defines a "sole agent" as:

10 The ship's agent who makes all claims in respect of that ship for the time when it is in any particular port. It does not have to be the one and only agent for all a ship's claims regardless of where the ship may be at the time of delivery or use of the fuel in respect of which a claim is made. This could mean that a ship may have a different ship's agent
15 for each UK port. Multiple agents are not allowed in order to prevent duplicate claims – HMRC will make checks to make sure this does not happen.

Evidence and Facts

10. We were provided with witness statements from Mr Colin Owens, Mr Robert
20 Young and Mrs Karen Hobbs, the Company's Managing Director, Transport Manager and the employee responsible for its day to day stock taking. These were accepted by HMRC and were therefore admitted without the need for them to give oral evidence.

11. In addition to the witness statements we were provided with a bundle of documentary evidence.

25 12. On the basis of this evidence we find the following facts:

13. The Company, which was established in September 2010, is a distributor of oil and supplies both domestic and commercial customers. It is a family business with Mr Owens, his wife and their son and daughter heavily involved in the running and operation of the business.

30 14. From January 2012 the Company commenced deliveries to marine vessels. These deliveries are tendered by bunkering agents contacting the Company by telephone to request a price per litre for a required number of litres for a named vessel at a specific port.

35 15. On receipt of its first confirmation of an order Mr Young contacted HMRC's helpline to enquire how the Company could recover the excise duty it had paid. He was told to download the Notice and follow the procedure set out in it. As a result there is a paper trail for each delivery made to a vessel which can be followed using the following paperwork:

- (1) confirmation of the details of the delivery and contract for each vessel from the bunkering agent;
- 5 (2) a meter reading delivery ticket stating the product and quantity delivered and details of the customer ie the marine bunkering agent. This document is imprinted with a statement that the fuel must be used by the named vessel for a marine voyage;
- (3) a form signed by the ship's master on completion of the delivery which contained details of the vessel including its engine size, the voyage and net tonnage;
- 10 (4) for deliveries to the port in Milford Haven the Company also completed a Port Authority form signed by the master of the vessel prior to delivery and on which he accepted responsibility for sufficient ullage on his vessel for delivery; and
- 15 (5) a duty paid invoice from the supplier and a bill of lading received from the refinery from which the vehicle loaded before delivering to the vessels.

However, there was no form signed by either the Owner or Charterer of the vessel appointing the Company as its sole agent, either in the form required by the Notice or at all.

20 16. Following the Company's first delivery Mrs Hobbs gathered the relevant paperwork and submitted a claim to the Mineral Oil Relief Centre of HMRC for repayment of the excise duty, a process repeated for each delivery. Between 17 January and 5 April 2012 the Company made 12 claims for repayment of excise duty which related to the supply of gas oil to eight different vessels based at Fishguard and Milford Haven.

25 17. On 2 February 2012 the Mineral Oil Relief Centre of HMRC wrote to the Company thanking it for one of its claims for repayment. The letter continued:

I am writing to advise you that as part of our routine processing procedures your claim has been selected to be verified prior to payment.

30 Your claim will be forwarded to an HMRC officer within your area and they will contact you directly to discuss your claim and if necessary arrange a visit.

When this has been completed they will contact us regarding payment of the claim.

35 18. In early March 2012 HMRC sent the Company a cheque in the sum of £3,899.00. This was a repayment of excise duty relating to the delivery to a vessel on 22 January 2012.

40 19. Officer Kim Fenton, from HMRC's Swansea office wrote to the Company on 21 March 2012 to advise that she would be visiting the Company's premises on 17 April 2012 in relation to its repayment claims. The letter set out the information that

Officer Fenton required the Company to make available to her in support of its repayment claims.

20. However, during the visit Officer Fenton found that the Company was not able to provide the records and information required by the Notice and did not have the
5 necessary written authority from the owner or charterer of the vessels concerned to confirm they had been appointed as sole agent for that vessel.

21. On 15 May 2012 Officer Fenton sent the Decision Letter to the Company. The Assessment was issued on 26 June 2012.

Discussion and Conclusion

10 22. Mr Bates, for HMRC, submitted that the Company was not a “qualified claimant” as defined by Regulation 2 and that even it was it had not complied with the conditions in the Notice, accordingly we should dismiss the appeal.

23. On behalf of the Company, Mr Corbin contended that it had complied with the “spirit” of the Regulations and in any event HMRC had sufficient information to
15 enable a repayment of excise duty to be made to the Company. He further submitted that the Notice was defective and unreasonable as the definition of “sole agent” in the Notice was a restriction or fetter on the definition of a “qualified claimant” contained in the Regulations. As such, the Tribunal was not bound by the Notice.

24. We first deal with Mr Corbin’s submissions that the Company complied with
20 the “spirit” of the Regulations by providing HMRC with sufficient information to allow repayment of the excise duty and that the Notice was defective and unreasonable.

25. This Tribunal, the Tax Chamber of the First-tier Tribunal (the “Tribunal”) was created by statute. Unlike the High Court the Tribunal does not have an inherent
25 jurisdiction, rather its jurisdiction is defined and limited by legislation. This is clear from decisions of the higher courts and Tribunals whose decisions are binding on the Tribunal. The principle was clearly stated in the decision of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TC) in which the judges (Mr Justice Warren, President of the Tax and Chancery Chamber of the Upper Tribunal and Judge
30 Bishop, President of this Tribunal) said, at [56]:

35 “... the First-tier Tribunal has only that jurisdiction which has been conferred on it by statute, and can go no further, ...It is impossible to read the legislation in a way which extends its jurisdiction to include— whatever one chooses to call it—a power to override a statute or supervise HMRC’s conduct.”

26. Therefore, it is clear that we only have jurisdiction to consider the relevant legislation; in the present case this is HODA and the Regulations. Also, we do not have the jurisdiction to be able to consider whether HMRC acted reasonably on the information received or consider the reasonableness of the Notice.

27. With regard to the Notice, as relief is allowed , under Regulation 12, “subject to such conditions (if any) [HMRC] impose on qualified claimants”, we find that HMRC are entitled to impose any conditions that they consider appropriate in the Notice.

5 28. Turning to the question of whether the Company is a “qualified claimant”, it is clear from Regulation 11 that in order to claim relief under Regulation 3, as the Company has sought to do in the present case, it is necessary for it to be a “qualified claimant”.

10 29. We accept Mr Corbin’s submission that any condition imposed by the Notice published in accordance with Regulation 12 does not allow HMRC to modify or further restrict the definition of who or what can be a “qualified claimant” (but do not accept that the Notice does in fact restrict or modify that definition as Mr Corbin contends). Therefore, who or what can be a “qualified claimant” has to be construed solely on the basis of, and in accordance with, Regulation 2.

15 30. In the present case it is accepted that sub-paragraphs (a) and, (b) of Regulation 2 do not apply and that the Company relies on sub-paragraph 2(c), “*a person appointed by the person mentioned in sub-paragraph (a) or (b) above, to act as sole agent for that ship*” to make its claim.

31. As Mr Corbin rightly points out there is no definition of a “sole agent” in the Regulations.

20 32. However, even if we were to accept his submission that a “sole agent” should be defined as an agent who is handling the supply of fuel to the vessel concerned, for the marine voyage concerned, and that the Company fell within that definition it would only be a “qualified claimant” if appointed by the owner of the ship on which the oil was used (sub-paragraph 2(b)) or the charterer of that ship (sub-paragraph 2(c)). As
25 the Company was not appointed as “sole agent” by the owner or charterer of the ships for which it provided oil, it cannot therefore be a “qualified claimant” as defined by the Regulations.

30 33. Although this in itself is sufficient for us to dismiss appeal, even if this were not the case and the Company was a “qualified claimant” it has clearly not met the conditions of the Notice, in particular it has failed to produce a certificate from either the owner or charterer of the vessel in the form required by the Notice.

34. Therefore, for the above reasons, the appeal is dismissed.

35 35. By way of postscript we note that at the commencement of the hearing Mr Corbin, who appeared for the Company, told us that £3,899.00 had been repaid by the Company to HMRC. Mr Bates, representing HMRC, was unable to confirm that this
35 was the case. However, as the overall amount at stake remains the same it should not be difficult for the parties to establish the extent of any amount due, and by whom it should be paid, in accordance with our decision. If this does not prove possible the parties may, within 28 days of the release of this decision, make an application to the
40 Tribunal to determine this issue.

Right to Apply for Permission to Appeal

36. 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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**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 30 September 2013

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