



TC03143

Appeal number: TC/2012/10091

EXCISE DUTY – Appeal against decision not to restore excise goods seized on entry into the UK – Whether the decision could reasonably have been reached – No – Appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AMUCHA LIMITED

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
SIMON BIRD**

Sitting in public at Cardiff Civil Justice Centre on 21 November 2013

Chukwuma Joseph Amucha, director of Amucha Limited, for the Appellant

Tara Wolfe, counsel, instructed by the Director of Border Revenue for the Respondents for the Respondents

DECISION

1. Amucha Limited (the “Company”) appeals against the decision of the UK
5 Border Force (“UKBF”), contained in a letter dated 17 October 2012 (the “Decision
Letter”), in which it was notified that, after conducting a further review, the decision
made by the UKBF on 13 August 2012 not to restore 186 litres of ‘Alomo Bitters’,
1,176 litres of beer and 198 litres of palm wine seized when brought into the United
Kingdom from Nigeria was upheld.

10 2. During the hearing Mr Chukwuma Joseph Amucha, the director of the
Company whom we found to be an honest and credible witness, withdrew the appeal
in respect of the Alomo Bitters but not regarding the non-restoration of the beer and
palm wine.

15 3. In addition to the oral evidence of Mr Amucha we were provided with a bundle
of documents which included a witness statement made, on 11 February 2013, by Mrs
Deborah Hodge, the UKBF Officer who carried out the review and against whose
decision the Company has appealed, the Decision Letter and all of the material that
was before Mrs Hodge when undertaking that review.

4. On the basis of this evidence we make the following findings of fact.

20 *Facts*

5. Although Mr Amucha’s business is the sale of new cars and light motor vehicles
from his address in Newport, Gwent, following the death of both his parents in
Nigeria, as he was unable to take cash out of the country, he sought an alternative
method to be able to use his inheritance. After undertaking research he believed he
25 had identified a business opportunity importing ingredients from Nigeria for African
restaurants in in the United Kingdom. He established the Company for this purpose.

6. Having ascertained the type of products that could be imported, Mr Amucha
travelled to Nigeria and purchased the goods. As he did not have any experience of
shipping and importation procedures, after finding the company via a “Google” search
30 and checking that they had experience of importing goods from Africa, he instructed
Grange Shipping Limited to arrange for their import on his behalf.

7. On 16 May 2012, in response to an email from Grange Shipping, Mr Amucha
sent as an attachment to an email a copy of the bill of lading and a “packing list”
setting out the products to be imported. Included (and as stated) in this list were the
35 following items:

- 25 Carton Maggi (stock cubes);
- 20 Carton Alomo small;
- 10 Carton Alomo big;
- 8 Carton Sardines;

- 25 Crate Palm wine cans;
- 40 Cartons Gulder;
- 40 Cartons Herb Beer;
- 40 Cartons Small Stout;
- 5 • 40 Cartons Maltina; and
- 40 Cartons Star Beer.

8. This raised concerns with Grange Shipping and an email, sent to Mr Amucha on 16 May 2012, explained that health certificates, catch certificates and other analytical documents were required to import the sardines. The email also requested details of
10 the percentage of alcohol in the beers and other alcoholic items in the shipment and the ingredients of the items shown as “stock cubes”.

9. Mr Amucha replied by email later the same day providing details of the alcoholic content of the beers but not the Alomo Bitters. He also provided gave details of the maggi stock cubes which contained the following ingredients:

15 Iodized salt, flavour enhancers, glutamate, insinuate, guanylate, sugar, starch, vegetable fat, hydrolysed soya beans, colorant, e150, water, onion, emulsifier, soya ledthin, spices and spice extract, savoury flavour, aromatic plants and yeast extract.

When questioned as to how he was able to provide such detailed information, Mr
20 Amucha explained that having bought maggi stock cubes from a shop in Cardiff, he had taken the packet from his kitchen cupboard and copied the list of ingredients to send to Grange Shipping.

10. On 23 May 2012, by email, Grange Shipping requested confirmation of the percentage proof of the Maltina Beer and Malta Guinness and asked for a the
25 quantity, in litres of all drinks. Mr Amucha replied by email on the same day stating:

no alcohol in malting and Malta Guinness
palm wine can 330 cl and alcohol 1.1 percent
alomo 200 ml
soft drinks 30 cl

30 11. Grange Shipping compiled the appropriate Customs Entry from the information provided to them, declaring 24 litres of each of the four types of beer imported, a total of 96 litres.

12. On 14 June 2012, after its arrival in Felixstowe, the container in which the goods had been brought from Nigeria, was examined by UKBF officers who found
35 and seized the following items:

- (1) 10 boxes containing 12 (750 ml) bottles of Alomo Bitters;
- (2) 20 boxes containing 24 (200 ml) bottles of Alomo Bitters;

- (3) 40 boxes containing 24 bottles (325 ml) of Guinness;
- (4) 40 boxes containing 12 bottles (600 ml) of Gulder;
- (5) 40 boxes containing 12 bottles (600 ml) of Harp;
- (6) 40 boxes containing 12 bottles (600 ml) of Star;
- 5 (7) 25 boxes containing 24 bottles (330 ml) of Palm wine (which according to its label had had an ABV of 1.2% but, when tested, its alcohol content was found to be 1.6%); and
- (8) 16 Kilogrammes of Maggi.

10 13. An email, dated 27 June 2012, explained that the Alomo Bitters and palm wine were seized as they had been imported under an incorrect Commodity Code implying that no excise duty was payable when in fact it was and that the beer had been substantially undeclared. The maggi cubes had been seized as they contained restricted ingredients, namely cattle hide and cattle heads.

15 14. Other than the maggi stock cubes, as it was accepted that these contained animal products, on 27 June 2012, Grange Shipping, on behalf of the Company, requested restoration of the seized items. It was not disputed that the wrong Commodity Codes had been used and was conceded that the bottles of beer:

20 ... were declared as a total of 40 bottles in cartons whereas there were more bottles in each carton than originally thought. This was an arithmetical error and there was no intention to undeclare (sic) excise charges due.

After consideration if you are prepared to restore the goods we will make any amendment to our entry to reflect the litres found upon examination and make payment of the additional revenue due.

25 15. On 12 July 2012 Grange Shipping provided UKBF with proof that the Company owned the goods together with a copy of the bill of lading.

30 16. The request to restore the goods was considered by UKBF Officer H Govier who noted that the general policy was that goods should not be restored and that there were no exceptional circumstances which might justify a departure from this policy. Accordingly a decision was made not to restore the goods and Grange Shipping was notified by letter dated 13 August 2012.

17. On 31 August 2012 Grange Shipping, on behalf of the Company requested a review of the decision not to restore the goods. This review was undertaken by UKBF Officer Deborah Hodge who upheld the earlier decision not to restore the goods.

35 18. Insofar as is applicable, given that the appeal in respect of the Alomo Bitters was withdrawn at the hearing, the reasons for Mrs Hodge's decision, as stated in the Decision Letter, not to depart from the policy not to restore the goods was, in respect of the palm wine, that the tariff code used had been one applicable to wines up to 1.2% ABV whereas the palm wine imported was actually 1.6% ABV.

19. In relation to the beer she could not:

5 ... accept that an arithmetic error of this magnitude could be made or that there was no intention to evade duty. It is my view that had the shipment not been intercepted by the Officers, no excise duty would have been paid on the vast majority of the consignment.

Law

20. Under the Alcoholic Liquor Duties Act 1979 excise duty is charged on spirits, wines and beer imported into the United Kingdom.

10 21. Where excise duty has not been paid on imported alcoholic goods, s 49 of the Customs and Excise Management Act 1979 (“CEMA”) provides that:

... those goods shallbe liable to forfeiture.

22. Section 139(1) CEMA provides that:

15 Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable, or any member of Her Majesty’s armed forces or coastguard.

23. Under s 141(1) CEMA: where any thing has become liable to forfeiture under the Customs and Excise Acts-

20 (a) any ship, aircraft, vehicle, animal, container (including any article of passengers’ baggage) or other thing whatsoever which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and

(b) any other thing mixed, packed or found with the fittings so liable, shall also be liable to forfeiture

25 24. Section 152 CEMA establishes that:

The Commissioners may, as they see fit –

(a) ...

(b) restore, subject to such conditions (if any) as they think proper, anything forfeited or seized under the Customs and Excise Acts.”

30 25. Section 14(2) of the Finance Act 1994 provides that:

Any person who is –

(a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,

35 (b) a person in relation to whom, or on whose application, such a decision has been made, or

(c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,

may by notice in writing to the Commissioners require them to review that decision.

26. Section 15(1) of the Finance Act 1994 states:

5 Where the Commissioners are required in accordance with this Chapter to review any decision, it shall be their duty to do so and they may, on that review, either –

(a) confirm the decision; or

(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.

10 27. Section 16(4) to (6) of the Finance Act 1994 sets out the powers of the Tribunal on an appeal against a decision as follows:

15 (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this sections shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say -

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

20 (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and

25 (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

(5) In relation to other decisions, the powers of an appeal tribunal on 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;

30 (6) On an appeal under this section the burden of proof as to –

(a) the matters mentioned in subsection (1)(a) and (b) of section 8 above;

(b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and

35 (c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1) or 23(1) of the Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid).

40 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

28. Section 16(8) Finance Act 1994 and Schedule 5 paragraph 2(1)(r) provides that an “ancillary matter” is:

45 ... any decision under section 152(b) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored

to any person or as to the conditions subject to which any such thing is so restored.

Summary of submissions

29. Mr Amucha emphasised that it was the first time that he had sought to import goods from Nigeria and that he had researched the market before doing so. He said that the quantity of beer imported was clear from the packing list and the bill of lading. However, he did accept that this did not state the amount in litres.

30. With regard to the palm wine he asked how was he to know that its alcohol content was not as stated on the label?

31. Ms Wolfe, for the UKBF, contended that the decision not to restore the goods was one that could reasonably have been made as Mr Amucha, through the Company, had been deliberately attempted to evade excise duty.

32. She submitted that examples of this could be seen in Mr Amucha's failure to provide details of quantities of beer in litres despite being asked for this by Grange Shipping, giving the wrong alcohol content for the palm wine and by providing a detailed list of ingredients for the maggi stock cubes but failing to mention the animal products that these contained.

Discussion and Conclusion

33. The jurisdiction of the Tribunal in an appeal such as this is limited.

34. The issue for us to determine is not whether the goods (ie the beer and palm wine now that the appeal in respect of the Alomo Bitters has been withdrawn) should be restored to the Company but whether, having regard to our findings of fact, the decision taken by UKBF not to restore the goods is one that could reasonably have been reached. It is not sufficient that we might ourselves have reached a different conclusion.

35. Lord Phillips of Worth Maltravers MR (as he then was) said in *Lindsay v Commissioners of Customs and Excise* [2002] STC 508 at [40]:

“... the Commissioners will not arrive reasonably at a decision if they take into account irrelevant matters, or fail to take into account all relevant matters”

36. Therefore, we are required to consider what matters were taken into account and whether any relevant matters were excluded from consideration when the review into the decision not to restore the palm wine and beers was undertaken.

37. With regard to the palm wine, although the Decision Letter does refer to the an ABV of 1.2% being stated on the label whereas tests showed the ABV to be 1.6% it is clear that Mr Amucha's explanation for this, which is that he had no way of knowing that this was the case, has not been considered.

5 38. Turning to the beer, although the quantities declared do not correspond to the amount imported it is clear that this cannot properly be described as an “arithmetical error” but appears to have arisen as a result of the confusion by Mr Amucha, who had never previously imported goods, in his replies to Grange Shipping rather than a deliberate attempt to evade excise duty.

39. It is also apparent from the Decision Letter, and indeed the way in which the case was advanced on behalf of the UKBF before us, that there was a failure to consider any explanation other than deliberate evasion for the discrepancy in the quantity of beer imported.

10 40. For the above reasons we do not consider that the decision taken by UKBF was one that could reasonably have been reached and therefore allow the appeal.

41. In the circumstances we direct that a further review be undertaken taking account of our findings of fact in particular:

15 (1) This was the first time that Mr Amucha or the Company had sought to import excise goods into the United Kingdom;

(2) Mr Amucha’s explanation for the use of the wrong Commodity Code based on the alcohol content as stated on the label of the palm wine; and

20 (3) That the failure to declare the correct quantities of beer cannot properly be described as an “arithmetical error” but appears to have arisen as a result of the confusion by Mr Amucha in his replies to Grange Shipping rather than a deliberate attempt to evade excise duty.

Right to Apply for Permission to Appeal

25 42. 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**

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RELEASE DATE: 16 December 2013