



TC04323

Appeal number: TC/2014/01024

Excise Duty – warehouse – application for registration as an owner of goods under the Warehouse Keepers and Owners of Goods Regulation 1999 (“WOWGR”) – whether decision of HMRC could reasonably have been arrived at – jurisdiction of Tribunal – appropriate remedy under section 16(4) Finance Act 1994 – appeal refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RCM WORLDWIDE TRADING LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MRS EILEEN A SUMPTER, WS**

**Sitting in public at George House, 126 George Street, Edinburgh on Monday
16 February 2015**

Christopher Snell, Counsel, instructed by Rainer Hughes, for the Appellant

**Iain Artis, Advocate, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. This is an appeal against a decision of the Respondents (“HMRC”) to refuse the appellant’s application for registration as a registered owner under the Warehouse Keepers and Owners of Goods Regulation 1999 (“WOWGR”).

Background

2. Goods which are liable to excise duty such as beers, wines and spirits may be held on what is called excise duty “suspension” after those goods have been manufactured or imported. The consequence is that excise duty which would otherwise be payable in respect of those goods is suspended until they are released onto the UK domestic market. Such goods must be physically held in specified excise warehouses. Both the keepers of excise warehouses and owners of goods held in such warehouses must be registered under WOWGR because they control the goods and they must ensure that the goods are not released into the UK domestic market without duty being paid.

The evidence

3. We heard from Mr Singh, for the Appellant and Officer Neil of HMRC. The chronology is not in dispute.

The Facts

4. The appellant is a private company limited by shares and was incorporated on 21 November 2011 with Mr Parminder Singh being the sole director, employee and shareholder.
5. On 25 June 2013 HMRC received an application for the Appellant to be registered as an “owner of duty suspended goods held in excise warehousing” under WOWGR.

The June 2013 letter

6. On 26 June 2013 HMRC wrote to the Appellant acknowledging the application. The terms of that letter are really quite important because the letter sets out exactly what HMRC required from the Appellant. That read as follows:-

“Registration is discretionary; it is our policy to only approve applications where we consider the applicant to be both fit and proper to carry on an excise business, and where the business and the need for approval are genuine. You must be able to demonstrate that you will be able to satisfy requirements and conditions contained in our law and Notices. For example, we would expect you to conduct your business with sufficient transparency to enable us to check your revenue activities to ensure that your business does not present an unacceptable risk to the revenue. It is, therefore, our policy to refuse applications where:

- The legal entity applying, its directors, or its key employees, have been involved in significant revenue non-compliance or fraud (or have direct involvement in other businesses which have themselves been involved with significant non-compliance or fraud);
- Where either the applicant, directors or key employees have an unspent conviction under the Rehabilitation of Offenders Act 1974;

- Where the applicant, directors, key employees or an associated company have a sizeable outstanding debt to HM Revenue and Customs for which immediate payment is required;
- False information has been provided with the application;
- The proposed business is not commercially viable;
- 5 • The applicant cannot demonstrate a genuine business need for the registration;
- Failure to provide adequate financial security when required to do so;
- The applicant was unable to meet a key condition of approval; and/or
- You have failed to supply sufficient information to support your application.

10 Please note that this list is not exhaustive.

The approval process will normally take 45 working days from the receipt of the application form at our registration office. This is to allow our officers sufficient time to fully consider and test your application.

15 **In order to initiate the process you are required to send to this office in addition to your completed application a copy of your business plan. For the purposes of expediting your application it is in your best interest that this is sent in electronic form to our group mailbox at nruwhseapprovals@hmrc.gsi.gov.uk.**

20 **NB. If you do not provide a copy of your business plan within 10 working days from the date of this letter we will be unable to proceed with your application and it will be considered closed as “not pursued”.**

25 During the 45 working day period you will also be visited at your intended principal place of business to allow our officers the opportunity to challenge and test the suitability and ascertain the business need for the approval. The exception to this will be where our internal checks have already identified grounds for refusal.

30 In order for us to process your application within the 45 working day period, it is in your interest to provide our officer with as much information as they may reasonably require when considering the suitability of the approval. Where there is a delay in you providing key information to us, or where you cannot agree a reasonable date for the pre-approval visit, the normal 45 working day period will be extended.

35 The following is a list of the information required (if not already provided in sufficient detail within your business plan), it is not exhaustive and you should ensure that any information relevant to the approval is made available:

- 40 • a copy of your annual accounts;
- detail of how the business will be funded, with relevant documentation to demonstrate how the funding is derived eg loan documents;
- detail of any business assets;
- 45 • a list of your intended customers and any copies of correspondence, orders, contracts, agreed payment terms etc;
- a list of your intended suppliers and any copies of correspondence, price lists, agreed credit terms etc;
- detail of how you propose to publicise the business etc;
- the type of product you intend to warehouse;
- 50 • the name and address of the warehouse (or warehouses) you intend to use; and
- bank and building society accounts, including statements to be used by the business.

Please note that public notice 989, available via the internet will provide further information as to what to expect on a visit.

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It may be that all the information required to enable us to form an opinion is not available in your business plan or at the time of the visit. In this case we will inform you of what is required during the visit and follow this up in writing. Our request letter will provide a reasonable period of time for you to gather the required detail. If you cannot meet the deadline we specify, you should:

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- contact us at the address to which the requested detail should be sent;
- explain why you cannot meet the timescale we have set; and
- agree a date by which you can reasonably provide the information.

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Where it is clear that you will not provide all the detail, within a reasonable time frame, our policy is to not process the application further. Should you be able to provide the information at a later date then you may reapply for approval; we will treat this as a new application and would consider it accordingly.

15

We consider each application fairly on its own merit, we will notify you in writing of our decision. In our decision letter we will provide detail on how you could seek a review of our decision should be disagree with it. Should we decide to grant registration, we may in certain circumstances, require specific conditions of approval to be met; if specific conditions are placed, they will be notified to you in writing on the WOWGR registration certificate.”

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7. At some stage after receipt of that letter the appellant sent his business plan, dated July 2013, to HMRC.

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8. The appellant’s trading status in early 2013 was “dormant”. The business plan of the appellant stated that “The company was formed on 21 November 2011 but is only now commenced to trade”. In July and August 2013, the appellant purchased a quantity of wine from “Triple AAA Limited” which it then sold to “Metrik Galaxy” whilst under duty suspension in an excise warehouse in France (“IEFW”). HMRC are not aware of any other commercial transactions undertaken by the appellant. We were provided with no evidence of any other transactions in 2013.

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August meeting

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9. Notwithstanding the clear indication in the June 2013 letter that the approval process should only take 45 days, it took four abortive telephone calls before Mr Singh responded to an email from Officer Neil and even then he delayed the meeting by almost a further three weeks.

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10. On 19 August 2013, which was after the expiry of 45 days, Officer Neil visited the appellant at its business premises with another officer to discuss the application for approval and registration as a “registered owner”. Mr Singh attended that meeting with his legal representative.

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11. HMRC’s agenda was to ascertain details of the business structure and set up, personnel, premises and assets, business plan and finances. Mr Singh was unable to answer some of the questions asked or provide detail when prompted. An example is that, although he was at his business premises, he was unable to produce letters of appointment for either the accountant or the legal representative, details of the appellant’s bank account, the personal loan from Mr Singh’s friend (Mr Marwar), details of transporters, arrangements surrounding the proposed process of goods being sent to France and information on the identity of the proposed suppliers together with

evidence of intent. The HMRC officers left the meeting indicating that they would communicate by email clearly identifying all of the information which was still required.

5 12. Officer Neil left the meeting so concerned about Mr Singh's apparent lack of understanding both of the nature of the business and also as to how he was going to conduct the business that, unusually, she arranged a meeting with her manager to clarify how she should proceed in this matter.

August e-mail

10 13. Officer Neil emailed Mr Singh on 27 August 2013. She stated clearly the further information which was required. The terms of the said letter are set out as follows:-

"I have reviewed the details provided and would like further information regarding the below list of points:

- 15 • Customers: You have provided me with details of your potential suppliers but I would like more information on who will be buying from you. Have you identified many specific customers? Could you let me know who they are and how you agreed to trade with them. During our meeting you mentioned a company called Metrik Galaxy, could you please provide me with more details on this particular customer? How did you become aware of them and what sort of credibility checks have you carried out on them?
- 20 • Bank account: could you please provide me with a statement for your business bank account? I would also like to see the statement showing the finance for the business (the £20,000 loan from Mr Marwar and money from the sale of your shop). If there is any overdraft details for your account could you please provide these as well.
- 25 • Your friend that helped you to finance the business: Could you please provide me with more details of your friend Mr Marwar – such as his date of birth and address. Could you also provide any formal paperwork relating to the loan of £20,000.
- Transporters: who will provide transport of the goods and evidence that the transporters will provide a movement guarantee.
- When the goods are sent to France – can you tell me, when goods are sent to France for storage will they remain there? Or are they likely to return to the UK?
- 30 • Suppliers – could you give me details of who will be your supplier of spirits?
- Letters of appointment – could you please provide me with letters of appointment for your accountant and legal representative.

35 Please provide me with the above by 10/09/2013. If I do not receive the information requested by this date I will be unable to proceed with your application and it may result in rejection. If you would prefer to set up a meeting to discuss these points further please let me know as soon as possible."

14. It was again made explicit that if the information was not received, rejection might be the outcome.

September letter

40 15. In a letter dated 9 September 2013 the appellant's representative replied providing only some of the information:

- 45 • "Customers – Our client meet with Mr Ali from Metrik Galaxy in Scotland and thereafter our client carried out due diligence on this company. Please find enclosed copies of the due diligence. Once our client's business grows they will off course have more purchasers.

- Bank accountant and financing the business – please find enclosed a copy of our client’s bank statement showing £20,000 been received from Mr Marwar. We have also enclosed copy letter from our client’s solicitor who had conduct of the sale of the convenience store; you will note that the business was sold for £40,000.00.
- 5 • Transporters – our client will be using the bonded warehouses’ own transport which will have its own movement guarantee.
- When the goods are sent to France – it will be the choice of our client’s customers to decide whether the goods remain in France or return to the UK. Our client will have no control over this.
- 10 • Suppliers – Triple AA Ltd is a confirmed supplier and other suppliers will be Elbrook Cash & Carry Intertrading Leicester. This will increase as the business grows.
- Letters of appointment – we enclose herewith a copy of our letter dated 21st August 2013 and copy letter from our client’s accountants, Cohen Accountants.”

15 16. On 27 September 2013, Officer Neil wrote to the Appellant refusing the application and stating

“In reaching this decision the following has been taken into account: you have not provided enough sufficient information and/or evidence to support your application”.

20 The Appellant was invited to submit any further information within 30 days or alternatively request a review or a reference to the Tribunal.

17. The Appellant’s agents wrote to Officer Neil on 4 October 2013 asking if she could confirm what information was still outstanding.

October 2013 letter

25 18. On 11 October 2013 Officer Neil responded in the following terms:-

“From analysis of all of the information provided by RCM Worldwide Trading, I do not feel that the need for a WOWGR approval has been sufficiently evidenced. I have reviewed the business plan, and I am not satisfied that it evidences a viable company. Following my meeting with Mr Singh, there was still information that was unclear about the intended business operations.

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I requested the following information to further support the business plan:

- Specific customer information. I received some documents relating to the company Metrik Galaxy but have not received any further information on any other customers. I requested clarification of how RCM Worldwide became aware of Metrik Galaxy and how/why they agreed to trade with them but this has not been fully explained.
- 35 • I have requested further information in relation to the financing of the business. From the information provided, I understand that there was a personal loan of £20,000 given from Mr Kamal Marwar, however I have not received full details regarding this agreement.
- 40 • I have also requested further information regarding the transport of the goods to evidence the transport and movement guarantees to be used. I have not received full details or evidence surrounding this.

45 For the reasons given above, I feel that I cannot support the application for a WOWGR approval by RCM Worldwide Trading at this time.”

Review request

19. The Appellant's representative wrote to HMRC in response to the October letter stating:-

5 "We write further to Officer Neil's letter dated 11 October 2013.

 We confirm that our client does not accept the decision for the WOWGR approval to be refused and we accordingly request for this to be reviewed by an independent officer."

10 20. Correspondence ensued and on 18 December 2013 HMRC requested an extension
 of time until 31 January 2014 to review the decision. On 30 January 2014 they again
 wrote to the Appellant requesting a further extension until 28 February 2014. On
15 13 March 2014, HMRC wrote to the Appellant intimating that since an appeal had
 been lodged with the Tribunal on 18 February 2014 it had been taken that the
 extension request had not been granted and that accordingly, in accordance with
 Section 15(2) Finance Act 1994, the Commissioners' decision given on
 27 September 2013 is deemed to be upheld and the review is therefore concluded.

Statutory background

20 21. The relevant statutory provisions are contained in the Customs and Excise
 Management Act 1979 ("CEMA"), WOWGR and the Finance Act 1994.

22. Section 100G CEMA provides:

25 "(1) For the purpose of administering, collecting or protecting the revenues derived
 from duties of excise, the Commissioners may by regulations under this section (in this
 Act referred to as "registered excise dealers and shippers regulations") --

 (a) confer or impose such powers, duties, privileges and liabilities as may be prescribed
 in the regulations upon any person who is or has been a registered excise dealer and
 shipper; and

30 (b) impose on persons other than registered excise dealers and shippers, or in respect of
 any goods of a class or description specified in the regulations, such requirements or
 restrictions as may by or under the regulations be prescribed with respect to registered
 excise dealers and shippers or any activities carried on by them.

35 (2) The Commissioners may approve, and enter in a register maintained by them for the
 purpose, any revenue trader who applies for registration under this section and who
 appears to them to satisfy such requirements for registration as they may think fit to
 impose.

 (3) In the customs and excise Acts "registered excise dealer and shipper" means a
 revenue trader approved and registered by the Commissioners under this section.

40 (4) The Commissioners may approve and register a person under this section for such
 periods and subject to such conditions or restrictions as they may think fit or as they
 may by or under the regulations prescribe.

 (5) The Commissioners may at any time for reasonable cause revoke or vary the terms
 of their approval or registration of any person under this section

(6) The regulations may make provision for treating revenue traders as approved and registered under this section in cases where they are members of a group of companies (within the meaning of the regulations) which is approved and registered in accordance with the regulations."

5 23. Regulation 5 of WOWGR provides:

"(1) For the purposes of section 100G of the Act, the Commissioners may approve revenue traders who wish to deposit relevant goods that they own in an excise warehouse and register them as registered excise dealers and shippers in accordance with section 100G (2) of the Act.

10 (2) A revenue trader who has been so approved and registered shall be known as a registered owner."

24. Regulation 18 of WOWGR provides:

15 "(1) The approval and registration of every registered owner shall be subject to the conditions and restrictions prescribed in a notice published by the Commissioners and not withdrawn by a further notice."

25. Section 14(1)(d) Finance Act 1994 (as it was enacted at the relevant time) provided that the provisions of section 14 (which obliges HMRC to review a decision, if required to do so) apply to decisions which are described in Schedule 5 to the Act. Schedule 5, paragraph 2 (p), provides:

20 "(p) any decision for the purposes of section 100G (registered excise dealers and shippers) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions subject to which any person is approved and registered...."

26. Section 14(5) Finance Act 1994 (as it was enacted at the relevant time) provided:

25 "(5) A person shall be entitled to give notice under this section requiring a decision to be reviewed for a second or subsequent time only if –

(a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and

30 (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate."

27. Section 15(2) (as it was enacted at the relevant time) provided:

"(2) Where –

35 (a) it is the duty of the Commissioners in pursuance of a requirement by any person under section 14 above to review any decision; and

(b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to that person of their determination on the review, they shall be assumed for the purposes of this Chapter to have confirmed the decision."

40 28. Section 16(4) Finance Act 1994 sets out the jurisdiction of this Tribunal and provides:

5 "(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 section 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;

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

10 (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."

15 29. Section 16(8) Finance Act 1994 provides that decisions described in Schedule 5 to the Finance Act 1994 are referred to as "ancillary matters" within section 16. Thus, it was common ground that HMRC's decision to refuse the Appellant's application for registration as a WOWGR registered owner is an ancillary matter for these purposes, with the result that this appeal against that decision can be addressed by this Tribunal
20 in accordance with section 16(4).

Summary of arguments

The Appellant

25 30. The primary argument for the Appellant advanced at the hearing was that HMRC had not followed the process laid down by Notice 196 and therefore the decision was unreasonable. They rely on the wording in Section 5.2 of the Notice which reads:

30 "... in considering your application, HMRC will follow the guidelines set out in paragraph 3.2 of this Notice ... As a part of our registration procedure we will ask for further information about you and your business. If you fail to supply this information we will place your application on hold until this information is received."

Specifically, and particularly, they state that they rely on the wording in Section 3.2 which reads:-

35 "If we are not satisfied with the information provided to us, we may refuse to authorise you. In addition, if you fail to provide us with the information requested, we will place your application on hold until the information is received. We will notify you of the reason or reasons for the refusal."

40 They argue that the application should have been placed on hold and not refused.

31. Further they state that HMRC had been provided with sufficient information to enable it to make a decision. They had failed to take account of that information.

HMRC

32. The argument for HMRC was that Officer Neil had taken into account all of the information made available to her and left nothing out of account and all had been weighed in the balance.

33. The decision was made in accordance with the terms of Public Notice 196 and the decision was arrived at reasonably.

The decision

34. Surprisingly, there was a lack of clarity as to the decision which was the subject matter of this appeal and that was not addressed by either party. The Appellant stated in the skeleton argument that the Notice of Appeal sought to appeal the deemed approval of the original decision dated 27 September 2013. HMRC referred to the decision as being the decision issued on 27 September 2013. However, the Notice of Appeal identified at box 3 the decision as being dated 30 January 2014 and then in the grounds of appeal intimated that the appeal challenged the decision dated 27 September 2013 and/or in the alternative the decision dated 30 January 2014.

35. As we indicate above, the very concise standard letter issued on 27 September 2013, although certainly a decision, sought further information, and in response to the Appellant's representatives enquiry the October 2013 letter HMRC considerably amplified the September letter and made it explicit that "at this time" the application could not be supported. It was in response to that that the Appellant's representative sought a review of the decision for WOWGR approval being refused. It is only because the review was not completed timeously that the decision under appeal is the letter of 27 September 2013.

The Tribunal's jurisdiction

36. The Tribunal's powers in this context are limited to those set out in the statute and are as set out in section 16(4) which can be found at paragraph 24 above. The burden of proof lies with the Appellant.

37. The Tribunal has no inherent jurisdiction as to fairness etc and is confined by the jurisdiction given by statute. Essentially the decision must stand unless "... the Tribunal are satisfied that the ... person making that decision could not reasonably have arrived at it". It does not matter whether the Tribunal would have reached a similar conclusion itself. The question is quite simply whether the decision was within the range of decisions that could reasonably have been arrived at.

38. Where HMRC have a statutory discretion it cannot be fettered in such a way that, in exercising that discretion, officers failed to take account of factors which are relevant to their decision and that would include lack of information. Whilst we understand the need and desirability for public guidance to give some indication of how HMRC would typically exercise its discretion, this guidance cannot be so

prescriptive that it effectively prevents the discretion being exercised in the light of all relevant considerations.

Mr Singh's evidence

5 39. Unfortunately we did not find Mr Singh's evidence to be helpful. His stance was quite simply that he had given HMRC everything that they had asked for, that there was nothing wrong with his business plan and that if there was any information missing then it was the fault of HMRC for failing to ask the right questions. When it
10 was pointed out to him that the September letter most certainly had not answered much of what had been asked in the August email, he simply said that he relied on his solicitor who had told him that he had provided sufficient information. He, and they, believed that there was sufficient information.

15 40. We find that there are numerous deficiencies in the information provided to HMRC. In advance of the meeting Mr Singh had been served with the June 2013 letter which set out at length all of the information which would be required and that made it explicit that if he did not provide all of the detail within a reasonable time frame the policy was to not process the application further. Notwithstanding that, although apparently his accountant had produced the business plan, the accountant was not at the August meeting and Mr Singh did not have much of the information
20 which was required.

41. The August email again stated that if the information was not received then the application could not proceed and might result in rejection. Notwithstanding that, much of the information was not produced. Not only did he not produce a statement for the business bank account, other than a statement which had been so heavily
25 redacted that it showed only a deposit of £20,000 with no information apart from a bank account number as to where that money had come from, and it was quite possible that it was uplifted thereafter, but he did not produce any details about the alleged lender, as requested. There is absolutely no evidence of the financial standing of the Appellant.

30 42. A particular problem arose in regard to the funding of the business. In the business plan he had stated that

“All the funding to date for the company has come from the director. As well as his own funds the director has received financial help from relatives and friends. The origin of these funds can be seen if required”.

35 43. At the hearing he repeatedly stressed that the funding had been the £20,000 loan from his friend and the £40,000 from the sale of the shop.

40 44. However, in response to questioning as to how the unsupported statement in the business plan that the business would have a turnover of approximately £1,250,000 in the first year of trading had been arrived at, he stated that each individual trade would be of a value of approximately £50,000 or £60,000. It was then put to him explicitly, firstly, that he had indicated that he had funding of £60,000 in total, that he had also indicated that he had spent £5,000 on IT and office equipment, and, lastly that

5 according to the solicitors' letter, the total sale proceeds for the business had been £40,000 on 4 October 2011. There was no information whatsoever about the expenses of sale or any deductions that would have been made from the sale proceeds. Furthermore, there was no information as to the extent of the funds held by the Appellant or Mr Singh in the summer of 2013 as opposed to October 2011. He was wholly unable to explain that and then suggested that the stock had been sold separately. That was the first time that there had been any such suggestion. On the balance of probability, and we are both lawyers, we do not consider that that is consistent with the terminology utilised by his lawyers in their letter of 29 August 10 2013.

15 45. In giving evidence Mr Singh appeared to be unable to explain what a "bond" was, nor to grasp the relevance of establishing that any transport he used would require to have a movement guarantee. He demonstrated a woeful lack of understanding of the concept of bonded storage and transport and the risks that HMRC might consider it necessary to guard against.

20 46. Mr Singh conceded that HMRC would wish to be sure that appropriate diligence had been implemented. The only information on due diligence provided was in regard to Metrik Galaxy. That was extremely sparse. There were no bank or trade references. Apart from the almost illegible copy of a passport, the other documentation was in Portuguese and simply established that such an entity existed and was incorporated for VAT purposes. Mr Singh was adamant that, because he had met Mr Ali (and neither we nor HMRC were furnished with any details as to when or how that had occurred) that was adequate due diligence. We disagree.

25 47. As far as the business plan itself is concerned, it is extremely scanty in regard to detail, it does not carry the accountant's name, there are no financial projections or supporting documentation and Mr Singh was unable to provide details of his accountant at the August meeting when the business plan had already been provided to HMRC. The accountants' letter confirming that they had been instructed is dated the day after the meeting and is not an engagement letter. It simply states "We write 30 to confirm our appointment as accountants to your above named company". It was put to Mr Singh that the business plan, as produced, was neither adequate nor credible but his response was that his accountant and lawyer thought that it sufficed. We disagree. It contained exceptionally little of the type of information which would be expected in any business plan. Specimen business plans are widely available on the 35 internet, if not elsewhere, and a quick glance at any of those would make it clear to a prudent business man that a great deal more would normally be required for any purpose.

Officer Neil's evidence

40 48. We found Officer Neil's evidence to be clear, credible and very fair. She made it explicit that, if, at any time up to and including the day of the hearing and indeed thereafter, the Appellant had made a new application and produced relevant information in support thereof, then every effort would have been, or would be, made to assist the Appellant. No application has been made in the interim.

49. Officer Neil very fairly said that although she had been given background information that, at the time of the meeting, the Appellant's VAT registration had been suspended following a visit from Specialist Investigations where her colleagues had been unable to establish overall credibility of the business and had identified inconsistencies. Nevertheless, having discussed that with Mr Singh when he had given her further inconsistent explanations, she had taken the view that that was a decidedly minor factor in the balancing exercise which she was required to perform, since excise duty was completely different to VAT.

50. She stressed that although she would not normally make more than one visit to such a trader, because she believed that he had a lack of understanding of what was required, she had offered to go out and visit him again and she would have worked with him to obtain sufficient evidence to vouch the application. Unfortunately he had refused that offer.

51. Her approach was that an application is not just a very short form. It is the totality of the information sought and received. A business plan, with its supporting documentation would normally be detailed and key to any application. She had explained that to Mr Singh.

General

52. It is clear from the evidence before us that notwithstanding Mr Singh's protestations, his co-operation with HMRC, whether directly or through his agents, could, at best, be described as rather limited.

53. We find that Officer Neil made significant efforts to obtain relevant information and that she carefully evaluated all that she received. It was clear from Officer Neil's evidence that she had refused the application because there seemed to be no prospect of getting any further information, and what she had was insufficient.

54. We also find that there is no reasonable prospect of further information being provided by the Appellant. Even in support of this appeal nothing further was produced notwithstanding the clear assertions in the bundle about the perceived deficiencies. Indeed the skeleton argument stated explicitly that there was sufficient evidence.

55. We agree with Officer Neil that the application to HMRC is not just the basic form but consists of all of the evidence obtained including that derived from any meeting. The application in this case has been very far short of complete. We have no hesitation in finding that the Appellant did not provide sufficient evidence to support his application and to enable HMRC to find that there was a genuine business need for the registration or that the business was either genuine or commercially viable.

56. We do take the view that the September letter could, and should, have been more felicitously worded but as we have indicated at paragraph 37 above the criteria are not

what we would have decided or how we would have expressed it. The articulated reason, however badly phrased, is that there was not enough information or evidence.

57. In the Notice of Appeal at paragraph 25 the Appellant indicated that “HMRC Public Notice 196 includes a list, albeit a non-exhaustive list, of reasons for refusing an application ...”. That is not accurate as can be seen from the complete quotation of 3.2 Public Notice 196 which is annexed at Appendix 1. The bullet points are all circumstances which might give rise to a reason for a refusal. The reason we raise that point is that one of the arguments raised for the Appellant was that although they accepted that the list was not exhaustive, a reason should have been one of those bullet points and insufficiency of evidence or information was not included therein. We do not accept that. The wording is clear.

58. Undoubtedly, in this case Officer Neil had come to the view that a number of those circumstances did apply, based on the information which she held, but her reason for refusing the application was as was clearly stated in the September letter, that she simply did not have sufficient information. As can be seen from this Decision we take the view that she did not and nor do we. Accordingly we find that the Decision most certainly was not one that any other person making that decision could not reasonably have arrived at.

Is insufficiency of evidence a reason for refusing an application?

59. As we indicate at paragraph 30 above, the primary argument for the Appellant at the hearing was that since the wording in Notice 196 had not been followed this automatically meant that the decision was unreasonable.

60. The first and most obvious point to make is that insufficiency of evidence is not the same as failure to provide evidence. That distinction is in fact made in the Public Notice at 3.2. In our view where there is an insufficiency of evidence that is a set of circumstances that would fall into the category where HMRC are “not satisfied with the information provided”. Officer Neil does not say in the decision that the Appellant has failed to provide information but rather that there simply is not enough information to support the application. It is clear from the evidence that she had formed the view that, whether or not professionally advised, the Appellant did not understand the business or indeed what HMRC were looking for. It is equally clear to us that that is the case. He is still adamant that he has provided all the information that is required.

61. A failure to provide information is something quite different. That implies that someone who could source the information has neglected or is unable to do so (Collins Dictionary). That is something quite different.

62. Of course, Officer Neil did not have before her any argument on the impact of the Notice 196 and Regulation 18 of WOWGR to the effect that the application should have been placed on hold rather than being refused. We have already addressed the distinction between lack of information and failure to produce information.

63. HMRC argue that Regulation 18 only applies to owners who are already registered and that therefore where there is the reference to “the approval and registration” that means the continuing approval and registration. They did not advance any detailed argument on that and there was certainly no argument from the Appellant.

64. We take the view that there is some force in that argument in that, for example, at 5.4 of Notice 196 which is headed

“Conditions that may be applied to a registration”

it states that all owners

“... must comply with the conditions and restrictions detailed in this Notice ...”.

There are other provisions on renewal and cancellation of approval. The Notice does set out certain restrictions etc but pertinently it makes it explicit at 2 that

“This Notice contains our general requirements for the ... approval of registered owners ...”.

Some of the Notice is prescriptive and some of it is guidance. As we indicate in paragraph 38 above guidance cannot fetter the wide statutory discretion enjoyed by HMRC.

Lastly, should the Appellant have understood why the application had been refused?

65. We find that the Appellant had repeatedly been told that the application would be rejected if information was not provided. The September letter, whether or not taken in conjunction with the 11 October letter, makes it explicit that there was quite simply not enough or sufficient information or evidence available to HMRC to enable them to grant the application. That is quite clear. Patently the Appellant, and his advisers, consider that there was sufficient evidence. We disagree.

Observations

66. As Officer Neil, HMRC’s skeleton argument and we at the hearing have pointed out, the Appellant could at any time have submitted a new application with all relevant information but has not done so. We are less than clear what remedy is sought in this appeal insofar as our options are limited. We can find that the Decision was reasonable, which we have done, in which case it is confirmed.

67. If we had not so found, then we would have had to say that the Decision ceases to have effect which is frankly irrelevant since it places the Appellant in exactly the same position in which it currently stands, or lastly, to require the Commissioners to conduct a further review of the original Decision in accordance with the Directions of the Tribunal. Since the Appellant is adamant that no further information is necessary and given that no application has been made in the interim, it seems unlikely that the outcome would be any different.

Outcome

68. For all of the reasons set out above the appeal is refused.

5 69. 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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**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 13 March 2015

Public Notice 1965 **3.2 The next steps**

It is important that all applicants receive a pre-approval visit so that HMRC may obtain information to assist in the processing of the application.

10 During the visit we will examine all the business' activities and may enquire about your suppliers, customers, business plans, accounting systems, premises, financial viability, and so on. Only when we are satisfied the business is a genuine enterprise which is commercially viable, with a genuine need for authorisation and that all key persons are fit and proper to carry on such a business, will be process the application.

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Reasons for refusing an application may include circumstances where:

- the legal entity (this includes the directors or any of its key employees) has been involved in revenue non-compliance or fraud
- 20 • the application is incomplete or inaccurate
- you (the directors in the case of a limited company) have unspent convictions
- there are proven links between the legal entity or key employees with other known non-compliant or fraudulent businesses
- the business is not commercially viable
- 25 • you have not been able to demonstrate the business is genuine
- you have outstanding HMRC debts
- the legal entity applying for authorisation has been involved in significant revenue non-compliance
- you are unable to provide adequate financial security as required by us
- 30 • you do not have an accounting system that satisfies us
- if you are a warehousekeeper or registered consignor intending to make supplies for which an eAD is required, you do not have adequate IT systems in place to enable you to register and enrol, and use the Excise Movement and Control System (see paragraph 3.3.1)

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The above list is not exhaustive. If we are not satisfied with the information provided to us, we may refuse to authorise you. In addition, if you fail to provide us with the information requested, we will place your application on hold until the information is received. We will notify you of the reason or reasons for the refusal.