



**TC04656**

**Appeal number: TC/2014/04772**

*CUSTOMS DUTY– Simplified Inward Processing procedure – Import of replacement parts for specialist equipment – Appellant listed as consignee on Form C88 – Whether person responsible for declaration of appellant as consignee acting in own interests or that of appellant – Satisfactory Bill of Discharge not provided within required six month period – C18 Post Clearance Demand Note issued – Whether appellant consignee – Yes – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SARBOT UK UNDERWATER RESCUE LIMITED      Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE JOHN BROOKS  
                      MICHAEL ATKINSON**

**Sitting in public at Fox Court, Brooke Street, London EC1 on 14 September 2015**

**Christian Cooper, director and trustee of SARbot UK Underwater Rescue Limited, for the Appellant**

**Joanna Vicary, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

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## DECISION

1. SARbot UK Underwater Rescue Limited (“SARbot”) is a small registered charity which was established to assist in the recovery of missing persons by using sophisticated sonar equipment to identify human bodies at great depths underwater in locations inaccessible to divers. As it could not afford the equipment necessary for its work SARbot was sponsored with equipment from the offshore industry. One such sponsor was an American company, SeaBotix. It provided SARbot with a “SARbot” – a specialist sonar with a grab arm to recover drowning victims. However, as a result of the circumstances surrounding this case, SARbot has returned this equipment to SeaBotix in the United States and its operations have ceased thereby bringing to an end, what we understand to have been, the only charity of its type anywhere in the world.
2. Having heard from Mr Christian Cooper, a director and Trustee of SARbot since June 2013, Mr Oladapo Sanusi, of HM Revenue and Customs (“HMRC”) SARbot’s current case officer and read the bundle of documentary evidence with which we were provided it is apparent that there is little, if any, dispute as to how SARbot found itself in this position.
3. On 22 March 2013 replacements parts for a SARbot (the “Goods”) with a customs value of £43,238.13 were imported from SeaBotix in the United States under the Simplified Inward Processing (“SIP”) procedure, which can be used by any trader by declaring the relevant Customs Procedure Code on the import entry form C88, to obtain relief from duty and import VAT on goods imported for processing. In this case a form C88 was completed with SARbot declared as the consignee of the Goods which, although they were liable to import VAT and Customs Duty at a rate of 3.7% was suspended because they had been imported using the SIP procedure (albeit that the relieved Duty of £1,599.81 was paid as security).
4. A letter, dated 28 March 2013, from HMRC to SARbot referred to the import of the Goods and explained (with emphasis as stated in the letter):

We are the National Import Reliefs Unit (NIRU) and we control imports to various duty and VAT reliefs including simplified IPR Suspension. The above entry [ie the import of the Goods] was made by you and this letter has been issued to explain the terms and conditions of the relief:

1. You have been granted 6 months relief to allow you to process or repair the imported goods. We will not grant an extension to this throughout period unless there are exceptional circumstances.

2. Security of £1599.81 Duty has been provided for this import. If we do not receive a **satisfactory** Bill of Discharge by **22/9/13**, this amount will be brought to account or demanded by our Securities Team. Furthermore a C18 demand for VAT of £8991.99 which was relieved on this entry will also be issued to you by us. **A late return will not be accepted by this office.**

5 3. A C99 Bill of discharge has been attached to this letter. Please read the notes on completion. Address your return for the attention of 'The Securities Officer, at this address. Please send us this C99 version and a copy of this letter to allow us to readily identify your IPR import and to authorise speedy repayment of your security. **IPR goods must be declared under CPC 31 51 000 on your export entry. Failure to do so will result in your deposit/security being brought into account.**

10 4. We do not hold a hard copy of the Customs entry. If you need information about this import, please refer to your agent quoting their reference number.

5. We will not issue a reminder on this matter.

6. Please contact us if you have any queries on this matter.

15 5. As a Bill of Discharge had not been received by 22 September 2013 HMRC wrote to SARbot on 8 October 2013 advising of their intention to raise a C18 Post Clearance Demand Note for the outstanding import VAT of £8,991.99 but that if there was "any further evidence or arguments that could change this decision" SARbot was invited to send this to HMRC within 30 days otherwise it would be concluded that there was no additional information to be considered and the C18 issued accordingly.

20 6. On 14 January 2014 HMRC wrote again to SARbot stating that as a Bill of Discharge had no been received they would now issue a C18. This was issued on 17 January 2014 and the decision to issue the C18 was upheld following a review, the result of which was notified to SARbot by HMRC in a letter dated 28 April 2014.

25 7. SARbot appealed to the Tribunal against this decision on 31 August 2014 on the grounds that the person who had authorised the import of the Goods did not have the authority to do so and rather than acting on behalf of SARbot had been acting in his own interests and contrary to the interests of SARbot.

30 8. Before us Mr Cooper, who we found to be an honest and credible witness, explained that the person concerned had been responsible for the day to day running of SARbot describing that person as its "CEO", indeed in an email to HMRC, after he became involved in this matter Mr Cooper, referred to this person as SARbot's CEO.

35 9. Although this person no longer has any connection with SARbot as the result of action taken by Mr Cooper, for the purposes of this case it is not necessary for us to refer to the clearly highly contentious circumstances in which this arose. However, notwithstanding the actions or otherwise of this individual it is clear to us that he did have at the very least the apparent authority to act on behalf of SARbot in respect of importation of the Goods.

40 10. The inward processing procedure, used by SARbot was implemented under Council Regulation (EEC) No 2913/92 ("the Customs Code"). This provides for non-Community goods intended to be re-exported which are to be repaired or restored to be used in the Customs territory of the EU "without such goods being subject to import duties" (see Article 114 of the Customs Code).

11. Article 118 of the Customs Code provides that the Customs authorities shall “specify the period” within which the goods must be “exported, re-exported or assigned another customs-approved treatment or use”. In this case, in their letter of 28 March 2013, HMRC specified that the Goods had to be re-exported by 22 September 2013. If, as in the present case, the goods are not re-exported by the date specified and Bill of Discharge not supplied to HMRC within 30 days of this (as required by Article 521 of Commission Regulation (EEC) 2454/93) a “customs debt” shall be incurred under Article 204 of the Customs Code.

12. In such circumstances the debtor shall be the person required to fulfil the obligations arising from the use of the customs procedure (see Article 205 of the Customs Code) which, in this case is SARbot which, as noted above, was expressly named as consignee on the C88.

13. It therefore follows that as the Goods were not exported by 22 September 2013 and a Bill of Discharge not supplied to HMRC within 30 days of that date, that SARbot has incurred and is liable to pay the customs debt of £8,991.99 that has arisen in this case.

14. Given our finding that the individual responsible for its day to day operation had at least the apparent authority to act on behalf of SARbot, we accept the submission of Miss Joanna Vicary, counsel for HMRC, that SARbot is liable for this customs debt and would be even if it was established that individual was acting for his own gain and contrary to the interests of SARbot. As paragraph 31-062 of Chitty on Contracts (31<sup>st</sup> ed) states:

The fact that the agent acted in his own interests and in fraud of his principal will not relieve the principal of liability if in fact the agent’s act was in other respects within the scope of his apparent authority. This rule is not confined to the case of a contract made by an agent. A principal is bound by acts done by an agent in the scope of his apparent authority whether in contract or tort or otherwise. A third party, dealing in good faith with an agent acting within his ostensible authority, is not prejudiced by the fact that as between the principal and his agent the agent is using his authority in such a way that the principal can rightly complain that the agent is using his authority for his own benefit and not for that of his principal.

15. Therefore, for the above reason we have no alternative but to dismiss the appeal.

16. 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.

**JOHN BROOKS**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 06/10/2015**