[2017] UKFTT 0832 (TC)

TC05557

Appeal number: TC/2015/00013

CUSTOMS DUTY – Simplified Inward Processing – on evidence provided, trader entitled to use procedure – CPC code – whether incorrect code used – yes – held, trader bound by acts of agent, and re-export declaration signed by trader – Article 859 not applicable – customs debt incurred – late submission of C99 Bill of Discharge – held on facts that obvious negligence so Article 859 again not applicable – customs debt incurred for this reason also – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ONE WORLD LOGISTICS AND FREIGHT LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN CLARK

Sitting in public at Reading Employment Tribunal on 30 November 2016

Naresh Sidpra, Director, for the Appellant

Anna Lintner of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant ("OWL") appeals against the decision by the Respondents ("HMRC") to issue a C18 Post Clearance Demand Note to OWL for failing to submit a Bill of Discharge in respect of clothing accessories ("the Goods") which were imported by OWL on 6 January 2015 under the Simplified Inward Processing procedure ("SIP").

The background facts

2. The evidence consisted of a bundle of documents. In addition, Mr Sidpra gave oral evidence. From the evidence, I find the following background facts. I deal later with other factual issues.

3. OWL is an international logistics and freight company. On 6 January 2015, Owl imported the Goods using the SIP procedure. The Goods were exported to a third country on 10 January 2015. Any person using the SIP procedure is required, no later than 30 days after the end of the six month throughput period, to submit a form C99 Bill of Discharge to HMRC's National Imports Relief Unit ("NIRU"). Thus in OWL's case, it was required to submit the C99 to NIRU by 8 August 2015.

4. NIRU, which is the body responsible for monitoring traders who use the SIP system, wrote to OWL on 6 July 2015, shortly before the end of the relevant throughput period, asking OWL to send the C99.

5. NIRU wrote again to OWL on 6 August 2015, stating that no response had been received to the 6 July letter advising that the C99 was due. NIRU stated its intention to issue a C18 post clearance demand note in the amount of £50,692.22 for the duties and taxes that had been suspended on import. The reason for the demand was that OWL had failed to meet the conditions of Inward Processing by failing to render a C99 by the due date. (As explained below, OWL subsequently contended that it had not received NIRU's letter dated 6 August 2015.)

6. As it had not received a C99, NIRU issued the C18 Post Clearance Demand Note on 23 September 2015.

7. On 24 September 2015, OWL sent an email to HMRC attaching a C99 dated 6 January 2015. (According to NIRU's records, it has no record of having received the C99 before receiving that email.)

8. On 7 October 2015, NIRU wrote in response to OWL in the following terms:

> "Further to our letter of 06/08/2015, you did not present any evidence as to why the charges were not due. We issued you with a C18 demand for £50,692.22 under reference C18195369. I regret that we cannot under any circumstances consider your belated evidence."

9. On 15 October 2015 OWL wrote to HMRC to request a review of their decision. On 30 November 2015, HMRC's Reviewing Officer, Mr Palmer, wrote to Mr Sidpra at OWL setting out the result of the review, which was to uphold the decision notified under the C18. The amounts specified as payable under the C18 were £11,579.04 import duty, import VAT of £39,074.68, and £38.50 compensatory interest.

10. As most of the reasons given for upholding the decision were considered at the hearing, I do not set them out here. The one reason which it is necessary to mention at this point is the following paragraph in Mr Palmer's letter:

> "I note that your business has previously submitted a late Bill of Discharge for import entry [*number*] dated 31 January 2012, which was accepted by NIRU and the C18 was subsequently cancelled. I must advise you that NIRU exercised this discretion under Article 859 of Commission Regulation 2454/93, due to the fact that your business was deemed to be inexperienced and not obviously negligent at that time. This discretion can only be exercised once, as you are now deemed to be experienced in this customs procedure."

11. A copy of NIRU's letter to OWL dated 13 March 2011 was included in the evidence. This cancelled the C18 demand in relation to the imports in question at that time, but stated, with reference to Article 859:

> "This Article has an 'obvious negligence' clause which means that any Returns received late in future **will not** result in cancellation of the debt. It is your responsibility to make sure that all Returns reach us in time."

12. That letter also referred to the obligation to ensure that the correct Customs Procedure Code ("CPC Code") was used when re-exporting goods imported under the SIP procedure.

Arguments for HMRC

13. At the beginning of the hearing, I asked Mr Sidpra whether he wished to follow the usual order and be first to set out his arguments as well as the background to the appeal. He decided that it would be more appropriate for the arguments and background to be set out by Ms Lintner on HMRC's behalf, leaving him to make his submissions afterwards. Ms Lintner therefore proceeded with the background, together with HMRC's arguments.

14. In summary, her arguments were that OWL's appeal should be dismissed, for the following reasons:

(1) OWL had not established that it was entitled to use the SIP procedure in respect of the Goods;

(2) OWL had failed to submit a C99 within the prescribed period;

(3) OWL had used the incorrect CPC code on its customs declaration when re-exporting the Goods.

15. For reasons which I will explain, the basis for reason (1) was undermined by evidence which emerged later. As a result, I do not consider it necessary to set out Ms Lintner's submissions on that issue.

16. Ms Lintner referred to the law relating to Inward Processing procedures. This was set out in the Community Customs Code ("CCC") Council Regulation (EEC) No. 2913/92 and in European Commission Regulation (EEC) No. 2454/93 ("the Implementing Regulation"). Information and guidance concerning the operation of the SIP procedure was set out in HMRC's Public Notice 221 entitled "Inward Processing Relief".

17. She dealt first with reason (3). One of the requirements of the Inward Processing procedure was that the trader should use the correct CPC codes on the import and export declarations. She referred to the third point in paragraph 2.11 of Notice 221, to paragraph 6.7, and to the final sub-paragraph of paragraph 8.1. Paragraph 8.3 referred to the need for a re-export declaration. Paragraph 16.2 dealt with conditions relating to Inward Processing with a simplified authorisation. SIP was an ad hoc procedure, to deal with specific imports. One condition of using the procedure was that the trader must use the correct simplified authorisation CPC codes. Thus Notice 221 repeatedly stressed the need for use of the correct CPC codes.

18. Article 182(3) CCC was crucial; it required prior notification of the Customs authorities for re-exportation or destruction. Ms Lintner referred to *Terex Equipment Limited v Revenue and Customs Commissioners* (2008 Customs Decision C00250) at [23]-[24]. (The reference to Article 183(3) in the latter paragraph should have been to Article 182(3).) In the first sentence of [42], Sir Stephen Oliver QC had made clear that Terex had neglected to comply with Article 182(3) CCC by its failure to use the correct CPC code. Ms Lintner submitted that the reasoning in the rest of that paragraph concerning the absence of obvious negligence did not apply in the case of OWL. She referred to the section in italics in the letter from HMRC to OWL dated 13 March 2012, explaining the need for the use of the appropriate CPC code on re-exporting Inward Processing goods.

19. She submitted that as far back as 2012, OWL had been warned that failure to use correct CPC codes on re-export would give rise to a customs debt.

20. She referred to Annex 37 to the Implementing Regulation (headed "Single Administrative Document Explanatory Notes"). This stated that at Box 37 the trader should enter the procedure for which the goods were declared, using the relevant CPC code from Annex 38. The latter showed that where there was no previous procedure, the appropriate code was 00. Where re-export was involved, the appropriate code was 31. For importation under the Inward Processing procedure, (involving suspension of duties) the code was 51.

21. The documentation relating to the importation showed that the code used began with the digits 5100. The latter digits referred to the previous procedure; there had

been none, as the Goods had been imported into the EU. The import code used by OWL, 5100, was correct, under the SIP procedure.

22. The export declaration used the CPC code 100042. However, the appropriate code for goods re-exported after importation under the SIP procedure was 3151, to show the procedure being applied for (ie re-export) and the previous procedure (ie importation for Inward Processing).

23. Ms Lintner referred to the UK Integrated Tariff, which drew together information from EC level Regulations and added domestic level provisions to that information. Where there was a dispute between the UK Tariff and EU legislation, the latter prevailed. The full code used by OWL on re-exportation, 10 00 42, covered non EU goods travelling en route via the UK or non EU goods removed from a Temporary Storage facility. The Tariff code 31 51 000 was the one that should have been used by OWL on the re-export declaration. The goods covered by this were "Re export of goods entered to IP suspension".

24. Ms Lintner emphasised the need for the CPC codes used to marry up with the coding used throughout the procedure under which the relevant party was operating. OWL was under an obligation to use the correct CPC code. The effect of using an incorrect CPC code was that a customs debt would be incurred under Article 204(1) CCC.

25. She referred to Article 859 CCC, which dealt with exceptions from the application of Article 204(1), and submitted that the exceptions which might have been relevant, namely Article 859(5) and (6), did not apply in OWL's case. She referred to *Terex* at [44] and [49]-[51], and also to the subsequent judgment of the CJEU in *Terex Equipment Limited and Others v Commissioners for Her Majesty' Revenue & Customs* (Joined Cases C-430/08 and C-431/08). The CJEU had decided that it did not need to answer the fourth question relating to Terex, because it determined that Article 203 CCC applied.

26. In OWL's case, it had used a code that related to non-Community goods, so that (unlike in *Terex and Others* before the CJEU) its use of that code had not had the effect of conferring Community status on the Goods. This was why the customs debt had been incurred by OWL under Article 204 CCC rather than Article 203.

27. Ms Lintner emphasised the comments of the CJEU in *Terex and Others* at [41]-[42]. She commented that it was not just a question of having put down wrong numbers on the relevant form. The use of the applicable CPC code was a very important part of the supervision of the correct use of customs procedures and the customs regime. It was important to bear this in mind in deciding whether the use of incorrect codes should give rise to a customs debt. She submitted that it did so in OWL's case under Article 204.

28. The final basis on which HMRC argued that a customs debt had been incurred in the present case was the late submission of the C99 Bill of Discharge. Ms Lintner referred to Article 521(1) CCC. The relevant supervising office in the present case

was NIRU. The Goods had been exported on 10 January 2015. The throughput period relating to these Goods was six months. Consequently, the C99 Bill of Discharge was calculated by HMRC to be due by 8 August 2015. She explained that the throughput period relating to the Goods was the period which the user of the authorisation under the Inward Processing procedure had to carry out the procedure. In SIP cases, this was six months.

29. It followed that the period for providing the C99 was effectively six months and 30 days from the date of import. Ms Lintner referred to the chronology. It was clear from NIRU's letter dated 6 July 2015 that it had not received the C99 from OWL. In the final paragraph of NIRU's letter dated 6 August 2015, it had asked OWL to send (within 30 days of that date) further evidence or arguments that could change NIRU's decision that it intended to issue a C18 post-clearance demand. OWL had contended that it did not receive this letter. Ms Lintner referred to correspondence sent by Mr Sidpra to HM Courts and Tribunals Service in July 2016 and previously to HMRC in October 2015. She also referred to correspondence in 2012, and made submissions concerning the reason given for the earlier failure to ensure that a C99 reached HMRC and the same reason given in 2015.

30. The obligation to submit a C99 was not contingent on receipt of a letter from HMRC.

31. Ms Lintner made submissions on the question whether OWL had or had not sent the C99 as it had claimed; she invited the Tribunal to find on the balance of probabilities that it had not.

32. The next question was whether sending a late C99 gave rise to a customs debt under Article 204 CCC, to which she had already referred. With reference to Article 859, the introductory wording of this set out three prerequisites for failures to be considered to have no significant effect on the correct operation of the customs procedure in question. The second was that the failures did not imply obvious negligence on the part of the person concerned. In HMRC's submission, the relevant failure did. OWL had previously failed to submit a C99 on time. Ms Lintner referred to Article 859(9).

33. OWL would have been conscious of the requirement and the consequences of failing to submit a C99 on time. It had been sent a reminder in July 2015 to submit the C99. If it had acted following the reminder, it could have submitted the C99 on time.

34. HMRC had asked the Tribunal to find on the balance of probabilities that the C99 had not been sent on time. Even if the Tribunal were to find that it had been sent on time, in HMRC's submission the failure to ensure that the C99 did arrive within the permitted period did amount to obvious negligence.

35. Ms Lintner referred to *Euro Trading Limited v Revenue and Customs Commissioners* [2011] UKFTT 56 (TC), TC00934. She submitted that it was factually analogous to the present case. In that case, the appellant had said that it did send the C99, and argued that NIRU had lost it. She referred to [12], which was factually

similar to OWL's position, as was [27]. It was clear from [39] that Euro Trading had previously been warned by NIRU. The Tribunal had found at [40] that Euro Trading's conduct amounted to obvious negligence for the purposes of Article 859.

36. Thus, if a trader had been previously warned and knew the consequences of a failure, it was incumbent on that trader to ensure that the C99 Bill of Discharge was received on time by HMRC.

37. Ms Lintner repeated the need to bear in mind that the SIP procedure was an ad hoc regime, designed to be used only occasionally. It was reasonable to ensure that the formalities were complied with. She submitted that it was clear from the correspondence that NIRU had not received a C99 from OWL.

38. As OWL was unrepresented, Ms Lintner referred to her obligation to draw the Tribunal's attention to any cases which might support OWL's case. She therefore referred to *Sat-Comm Broadcast Limited v Revenue and Customs Commissioners* [2014] UKFTT 215 (TC), TC03355. In that case the appellant had submitted a C99 late; this had been a subsequent failure. In that case, the Tribunal had decided that this failure did not amount to obvious negligence.

39. Ms Lintner submitted that the facts in *Sat-Comm* were obviously different. The declarant in that case did not have any connection to the consignee. She referred to the decision at [14]-[15]. She submitted that the decision demonstrated that where a party submitted a late C99 for a second time, this would be obvious negligence unless there was a special circumstance. In OWL's case there was no special circumstance. *Euro Trading* established that believing that a C99 had been submitted on time did not amount to a special circumstance.

40. Ms Lintner referred to *Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg* (C-262/10) at [41]-[42]. This explained why the Bill of Discharge was so important. She submitted that there had been a failure on OWL's part, and that this involved obvious negligence, so Article 859 did not apply to afford any relief. Consequently, in HMRC's submission OWL had incurred a customs debt because of its failure to submit a Bill of Discharge on time.

41. Article 18 CCC allowed domestic Customs authorities to set throughput periods. In the case of authorised inward processors, the period was based on the nature of such a person's operations; the period could be three months to two years, depending on the process involved. For simplified inward processing, HMRC set a standard six month throughput period.

Arguments for OWL

42. The grounds for appeal set out in OWL's Notice of Appeal were the following:

> "The paper work was sent as evidence the goods were sent out of the country and the correct procedure code used, we are however in dispute of the hard copy paper to support our actions which albeit late we have demonstrated compliance."

43. In his letter to HMRC dated 15 October 2015, Mr Sidpra had made four points in support of OWL's appeal:

> "Letter dated the 06/08/2015 – C18195369 was not received – "Post room is shared with other tenants occupying the same building".
>
> Letter dated on the 23rd September 2015 was received and responded to via e-mail on sent 24th September 2015
>
> Evidence of the goods sent out of the UK to third country using the correct procedure code evidence of the same was e-mailed to HMRC
>
> C99 letter posted on the 10/01/2015 but would appear not recorded"

44. In the course of his evidence, Mr Sidpra gave an explanation of the work carried out on the Goods, as explained below. He also made a statement concerning the agent which had dealt with the export entries.

Consideration and conclusions

45. In relation to the work on the Goods, Mr Sidpra's evidence was that it had been necessary to import them into the UK from Switzerland because OWL could only use the airline from Heathrow for shipment to the consignee in Nigeria. The Goods had been brought to OWL's warehouse premises by TNT. The only thing which OWL had done with the Goods was to shrink wrap them in black, and put them into a bag. The bags had been relabelled with the flight number, the master air bill number from the airline, and the agent name. The fourth day after import to the UK was the day on which Virgin had given OWL a space on the aircraft. What had been done was simply a packaging operation. The size of the consignment was a box 60 by 60 by 60.

46. Ms Lintner explained that this was the first time that HMRC had heard what had happened to the Goods. In the light of Mr Sidpra's explanation, it was necessary to refer to HMRC's Policy Division to establish whether the operation qualified as SIP.

47. I adjourned the hearing to enable HMRC to investigate the position. After about 25 minutes, the hearing resumed. Ms Lintner indicated that HMRC were happy to concede that OWL was entitled to use the SIP procedure in respect of these goods. She added that if OWL had provided that information back in September 2015, it would not have been necessary for HMRC to go to the trouble of preparing that part of their case.

48. I must emphasise that HMRC's concession removed only one of the three reasons advanced by HMRC for the C18 demand. I deal with these in the order adopted by Ms Lintner at the hearing.

49. OWL maintained in its grounds of appeal that the correct CPC codes had been used. However, Mr Sidpra explained in that part of his evidence given after the lunchtime adjournment that he had telephoned the agents involved in dealing with the export entries for OWL. They had told him that they had used the wrong CPC codes; they had made a mistake.

50. He explained that OWL used a third party to deal with the export entries. Information was faxed to them by TNT. The agents, "Heathrow Export", picked up the CPC codes. All paperwork was emailed to them; they dealt with the CPC entries into CHIEF. Once such an entry was done, the goods in question would be treated as in category "H", ie held for verification. Customs would then decide whether they were happy for the goods to travel.

51. In relation to the export of the Goods, the export company had made a mistake.

52. Ms Lintner's response was that completion of the documentation by an agent did not remove OWL's responsibility. She referred to Article 199(1) Implementing Regulation.

53. She commented that if HMRC had been aware of OWL's position concerning the use of an agent, she would have come armed with authorities concerning the use of agents. She submitted that OWL was bound by the actions of its agent. She left it to the Tribunal to consider the authorities.

54. With reference to *Sat-Comm*, had the person been that appellant's own agent, Sat-Comm would have been in a very different position.

55. Referring also to Article 199, which was in point in OWL's case, the customs declaration had been completed in its name. In the re-export, the declarant was OWL. Article 199 applied even where the declaration had been completed on the declarant's behalf. OWL and Heathrow Export had nothing to do with each other, ie they were independent parties.

56. I set out the text of Article 199 Implementing Regulation:

> "Without prejudice to the possible application of penal provisions, the lodging with a customs officer of a declaration signed by the declarant or his representative shall render him responsible under the provisions in force for:
>
> — the accuracy of the information given in the declaration,
>
> — the authenticity of the documents attached,
>
> and
>
> — compliance with all the obligations relating to the entry of the goods in question under the procedure concerned."

57. I consider that Article 199 makes it clear that OWL was bound by the entries made on its behalf by Heathrow Export. Even if this was not clear from Article 199, the position is that as a matter of agency law, on which it is not necessary to elaborate in this decision, OWL was bound by the acts of Heathrow Export carried out on OWL's behalf. The agents used the incorrect code: this meant that OWL was treated as having used the incorrect code. Use of an agent cannot absolve the trader of its responsibility to use the correct code.

58. I accept Ms Lintner's submission that the correct code for re-export of the Goods was one using the digits 3151. As the incorrect code was used for the export of the Goods, I find that OWL incurred a customs debt under Article 204 CCC. This provides:

> "1. A customs debt on importation shall be incurred through:
>
> (a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or
>
> (b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,
>
> in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question."

59. For the reasons set out in *Döhler* at [41]-[42], which I do not consider necessary to set out in this decision, I do not consider that the final words of Article 204(1) apply to the failure to use the correct CPC code.

60. Ms Lintner submitted that the possible exceptions to liability under Article 204 under Article 859 Implementing Regulation did not apply.

61. The first possible exception on grounds that it might be considered to be a failure having no significant effect on the customs procedure was paragraph 5, which provides:

> "in the case of goods in temporary storage or placed under a customs procedure, unauthorised movement of the goods, provided the goods can be presented to the customs authorities at their request;"

62. Ms Lintner submitted that this did not help OWL in the present case. It required the goods in question to be presented. In the case of the Goods, this was not possible; they had already been exported.

63. The second possible exception was paragraph 6:

> "in the case of goods in temporary storage or entered for a customs procedure, removal of the goods from the customs territory of the Community or their introduction into a free zone of control type I within the meaning of Article 700 or into a free warehouse without completion of the necessary formalities;"

64. Ms Lintner submitted that this was not available. All the relevant formalities had not subsequently been carried out. It was not possible for OWL to carry out all the formalities.

65. I agree with Ms Lintner's submissions in relation to these possible exceptions. I do not consider that any relief is available under Article 859. In the absence of that

Article applying, a debt is incurred under Article 204 CCC on the basis that there has been a failure to comply with the procedure.

66. As a consequence, OWL is liable to a customs debt, and its appeal must be dismissed for that reason.

67. I entirely understand the position in which OWL finds itself as a result of the acts of its agent. Unfortunately there is no escape from the liability, even if the cause was the act or acts of another party. There is nothing which this Tribunal can do to remove the liability from OWL. Whether other ways are available to OWL to seek recompense is not a question which it is open to the Tribunal to consider.

68. For completeness, it is necessary to deal with the separate question of the late submission of the C99 Bill of Discharge. I am not satisfied that this was sent in January 2015, as OWL maintained. Even if it had been, it should have been apparent to OWL from the later correspondence that the C99 had not been received by HMRC. If OWL had acted following HMRC's letter dated 6 July 2015 requesting the C99 form, it could have provided that form to HMRC before the end of the throughput period (six months and 30 days from the date of import). There was no suggestion that OWL had not received that letter, even if it failed, as it argued in correspondence, to receive HMRC's letter dated 6 August 2015 indicating that they intended to issue a post clearance demand.

69. I accept Ms Lintner's argument that the obligation to submit a form C99 on time did not depend on receipt of a letter from HMRC. The obligation arises under the applicable legislation, where the acts of the party in question bring it within the terms of that legislation.

70. I also accept her submission that OWL had provided no evidence, other than the date on the C99 eventually supplied to HMRC on 25 September 2015, some considerable time after the end of the throughput period, that the C99 had been sent to HMRC at any earlier date. (Ms Lintner referred to what appeared to be a correspondence addressing error made by OWL in the course of the correspondence between the parties and the Tribunals Service in 2016, citing it as an indication of lack of care; I do not find that this assists the position.)

71. I find that OWL has not established on the balance of probabilities that the C99 Bill of Discharge was sent to HMRC on 6 January 2015, the date shown on the copy sent to HMRC in September 2015.

72. I consider Ms Lintner's submissions on the question whether the late submission of the Bill of Discharge gave rise to a customs debt under Article 204 CCC. She referred to Article 859 of the Implementing Regulation. She referred to the requirement in the opening words of Article 859 that failures should not imply obvious negligence on the part of the person concerned. In HMRC's submission, OWL's failure to submit the form C99 on time did imply obvious negligence. She referred to the 2011 correspondence (see [11] above). The final sentence was important in the context of OWL's present appeal. She submitted that OWL would

have been conscious of the requirement to submit a C99 and the consequences of failing to do so. She also submitted that there were similarities between OWL's position and that of the appellant in *Euro Trading*, in particular to [39]-[40].

73. In relation to Article 859 Implementing Regulation, the relevant failure in question is that specified by Article 859(9):

> "In the framework of inward processing and processing under customs control, exceeding the time-limit allowed for submission of the bill of discharge, provided the time limit would have been extended had an extension been applied for in time."

74. I consider that, as Ms Lintner submitted, OWL's behaviour in not ensuring that the C99 was received in time by HMRC did imply obvious negligence. OWL had been made aware in 2011 that any such further failure would be regarded by HMRC as involving obvious negligence; OWL had been made aware of the consequences of late submission.

75. Ms Lintner referred to *Sat-Comm* as a decision possibly assisting OWL, but I agree with her analysis; the facts of that case are obviously different, in that the declarant did not have any connection to the consignee. Further, that decision makes clear that where the declarant is an agent of the trader, the consequences of the failure to submit a Bill of Discharge on time fall upon the trader. In the present case, the declarant was OWL, even though agents were involved. As a result, the responsibility clearly falls on OWL. I also accept Ms Lintner's argument that the *Sat-Comm* decision demonstrates that where a party submits a late Bill of Discharge having done the same on a previous occasion, this will be obvious negligence unless there is some special circumstance. As Ms Lintner contended, *Euro Trading* established that believing a C99 to have been submitted on time did not amount to a special circumstance.

76. I find that OWL failed to submit the C99 on time, and that this amounted to obvious negligence, so Article 859 of the Implementing Regulation does not apply to relieve OWL of liability. I further find that OWL incurred a customs debt under Article 204 CCC because of its failure to submit the form C99 on time.

77. It follows that, even if OWL were to be found not to have incurred a customs debt under Article 204 CCC because of the use of the incorrect CPC code on re-export of the Goods, its appeal would still have to be dismissed on the basis of its failure to submit the C99 on time.

78. For the above reasons, OWL's appeal must be dismissed. It therefore remains liable for the customs debt. In correspondence, it argued that its inability to pay the sum demanded should be taken into account. The question of ability or otherwise to pay fiscal liabilities is not generally a question within the jurisdiction of the Tribunal, so it is not appropriate for me to comment on this. I will simply indicate that it may be appropriate for OWL to take advice as to the treatment of the VAT element of the liability; in any event, it must bear the ultimate cost of the import duty.

Right to apply for permission to appeal

79. 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 CLARK
TRIBUNAL JUDGE

RELEASE DATE: 16 DECEMBER 2016