[2017] UKFTT 0493 (TC)

TC05947

Appeal number: TC/2016/04651

CUSTOMS DUTY – Simplified Inward Processing – whether customs debt incurred – whether customs debt can be suspended or reduced – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

F.W. PARRETT LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE ABIGAIL MCGREGOR

The Tribunal determined the appeal on 9 June 2017 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 30 August 2016 (with enclosures), HMRC's Statement of Case acknowledged by the Tribunal on 12 December 2016, HMRC's skeleton argument, dated 3 May 2017.

DECISION

1. This is an appeal by F.W. Parrett Limited ("FWPL") against a post clearance demand issued by HMRC for £122.10 import VAT and £10.20 duty, which together amounted to a demand for £132.30.

Facts

2. I find the following facts, based on the evidence presented to the Tribunal:

(1) FWPL, at the time of the facts giving rise to this appeal, designed and manufactured microbiological air samplers;

(2) On 24 November 2015, FWPL imported, amongst other goods not relevant to this appeal, an MB2 air sampler, which FWPL had originally sold to a customer in Malaysia in 2007 and was being returned to FWPL for recalibration;

(3) On the import, FWPL used the simplified authorisation process under the inward processing suspension regime;

(4) The MB2 air sampler was re-exported to the customer in Malaysia on 26 November 2015, using Fedex as its shipping agent;

(5) Fedex had, incorrectly, exported the goods under its memorandum of understanding for low value bulk shipping;

(6) HMRC wrote to FWPL on 2 June 2016 confirming its intention to issue a C18 demand for duty and import VAT, totalling £132.30. The demand was issued on 14 June 2016;

(7) FWPL appealed to HMRC against their decision on 22 June 2016;

(8) HMRC conducted a formal departmental review, providing their response, which was to confirm the demand, on 2 August 2016;

(9) FWPL appealed to this Tribunal on 30 August 2016; and

(10) The Tribunal directed, on 10 March 2017, based on agreement between the parties, that the decision be made on the papers.

Parties arguments

FWPL arguments

3. FWPL submitted that:

(1) It did not receive the letter from HMRC welcoming it to the simplified inward processing (SIP) regime and, even if it had, it would not have received it until after the goods had already been exported (because there were only two days between import and export);

(2) FWPL did not know that it needed to follow a specific procedure on re-export of the goods;

(3) The goods were exported, which is supported by the evidence;

(4) Fedex's incorrect coding of the re-export is outside of FWPL's control; and

(5) Levying this charge is contrary to the rules of natural justice and HMRC must have the flexibility not to raise it in circumstances where no avoidance is in issue and the business is very small.

HMRC's arguments

4. FWPL used the SIP regime to import the goods and it was for FWPL, either itself or through its agent, to ensure adherence to the conditions and obligations of that regime on re-export, which required the lodging of a completed C99 bill of discharge containing the correct Customs Procedure Code (CPC).

5. FWPL did not comply with those requirements and therefore a customs debt has been incurred pursuant to Article 204 of the Customs Code (European Council Regulation 2913/92/EEC).

6. The fact that the goods were in fact re-exported is not relevant where the export was made under the wrong procedure.

7. The requirements of the legislation are not complicated, as confirmed in *Euro Trading Limited v HMRC* [2011] UKFTT 56 (TC). FWPL could have readily ascertained the requirements of the regime by referring to HMRC's notice 221 and the obligations to comply with it are not dependent on the receipt of the letter from HMRC. Ignorance of the law does not discharge FWPL's obligations, as confirmed in *Latchways PLC v HMRC* [2014] UKFTT 412 (TC).

8. The only circumstances in which FWPL would not have incurred a customs debt would be if one of the conditions in Article 859 of the Implementing Regulation (European Commission Regulation 2454/93) were met, but they were not. In particular:

(1) The exception (paragraph 9 of Article 859) which specifically applies to the inward processing regime applies only in circumstances where the bill of discharge has been submitted late- in this case there was no lateness, rather an incorrect procedure used; and

(2) the other possibly applicable exceptions (paragraphs 5 and 6), also cannot apply because paragraph 5 requires the goods to be presented and paragraph 6 requires the formalities to be subsequently carried out, neither of which can happen because the goods have been re-exported under the wrong procedure

HMRC submit that the decision in *One World Logistics and Freight Limited v HMRC* [2017] UKFTT 832 (TC) confirms that these exceptions do not apply in the context of a re-export where the wrong CPC has been used.

9. There is no need to consider the actions of Fedex because, as set out in the previous submissions, the customs debt arises anyway. If the Tribunal decided to consider them, the decisions in *One World, Latchways* and *Loudwater Trade and Finance Limited v HMRC* [2012] UKFTT 37 (TC) make it clear that the actions of an agent are attributed to the principal and, in this case, the actions of Fedex were not outside of FWPL's control because FWPL failed to give clear instructions to Fedex to use the IP suspension regime.

Discussion and decision

10. As noted above, it is not disputed that the wrong customs procedure was used when the goods in question were re-exported on 26 November 2015. On that basis, I find that a customs debt prima facie arises under Article 204 of the Customs Code (European Council Regulation 2913/92/EEC) on the following basis:

(1) Article 204 stipulates that a customs debt arises on non-compliance with a condition governing the placing of the goods under a customs procedure;

(2) Inward processing relief is a customs procedure, under Article 114, allowing for suspension of customs duties where non-Community goods are intended for re-export from the customs territory;

(3) The goods in question were imported under the UK's simplified inward processing regime, which required the importer to submit a form C99 Bill of Discharge to HMRC's National Imports Relief Unit no later than 30 days after the end of the six month throughput period; and

(4) There was non-compliance with a condition of placing the goods under that suspension procedure because the wrong CPC was used when the goods were re-exported.

11. Turning to the question of whether there are any applicable exemptions, I agree with the submissions of HMRC that none of the relevant exceptions can apply in these circumstances. The exceptions are set out in Article 859 of the Implementing Regulation (European Commission Regulation 2454/93). The relevant exceptions are those at paragraphs 5, 6 and 9. I agree with HMRC that the decision of Judge Clark in *One World Logistics and Freight Limited v HMRC* [2017] UKFTT 832 (TC) is helpful, in particular paragraphs 61-65 which concluded that the exception in paragraph 5 could not apply because the goods were not available to be presented because they had already been re-exported; and the exception in paragraph 6 cannot apply because FWPL had not complied subsequently with all the necessary formalities (and indeed could not do so because the goods had already been exported). The exception in paragraph 9 is not in point in this case because the bill of discharge was not late, rather incorrect.

12. The decision in *One World Logistics* is also helpful in considering the question of the actions of the agent, in particular paragraph 57, which states:

> "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."

13. I agree with this approach and adopt the same reasoning in this case. FWPL's liability to a customs debt cannot be removed by reason of the fact that they had appointed a shipping agent to make its export declarations.

14. With regard to FWPL's submissions that they were not aware of the obligations relating to inward processing relief and had not received the letter from HMRC, I find, following same principles set out in the *Latchways* decision that ignorance of the obligations is no defence. Information on how to apply inward processing relief was freely available to a prudent taxpayer. It does not affect my decision, but I note that I do not agree with HMRC's interpretation of the *Euro Trading* decision. HMRC suggested that it confirmed that the legislation was not complicated. In fact it was recorded in *Euro Trading* that the taxpayer in question understood the legislation, which is different.

15. While I have some sympathy with FWPL's position, since the amount is small and it seems likely that the relief would have been available if the correct procedure had been followed, the Customs Code is prescriptive and sets out a limited number of circumstances in which customs debts will not arise. The Court of Justice of the European Union in *Terex v HMRC* [2010] STC 575 noted, at paragraph 42:

> "the inward processing procedure, which involves the suspension of customs duties, is an exceptional measure intended to facilitate the carrying out of certain economic activities. Since that procedure involves obvious risks to the correct application of the customs legislation and the collection of duties, the beneficiaries of that regime are required to comply strictly with the obligations resulting therefrom. Similarly the consequences of non-compliance with their obligations must be strictly interpreted".

16. In the absence of any specific right to reduce or eliminate the customs debt, and in the context of the strict interpretation required in the context of inward processing relief, this Tribunal cannot absolve FWPL of their liability for the customs debt.

17. For the reasons set out above, FWPL's appeal must be dismissed and FWPL remains liable for the customs debt.

18. 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.

ABIGAIL MCGREGOR

TRIBUNAL JUDGE
RELEASE DATE: 13 JUNE 2017