



[2019] UKFTT 0363 (TC)

**TC07191**

*Duty assessment – goods not seized at time of interception – assessment issued almost one year later – correspondence between the parties – appeal on grounds of undue and unreasonable delay – no evidence of duty having been paid – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2016/00392**

**BETWEEN**

**GLOBAL FREIGHT (NI) LIMITED**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ALASTAIR J RANKIN  
MS CELINE CORRIGAN**

**Sitting in public at Lands Tribunal, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF on Tuesday 4 June 2019 at 10:30 AM**

We heard Mrs Jennifer Newstead Taylor BL instructed by HM Revenue and Customs' Solicitor's Office for the Respondents. Nobody on behalf of the Appellant Company attended the hearing but the Company's solicitors telephoned to the Tribunal clerk stating that they would not be attending, they believed nobody from the Company would be attending either and they were content for the Tribunal to proceed in their absence. The Tribunal was satisfied that it was in the interests of justice to proceed with the hearing.

### **DECISION**

1. The Tribunal decided that the appeal should be dismissed.

#### **Background**

2. Global Freight (NI) Limited (the Company) is appealing against an assessment of £16,008.00 in respect of 18,432 bottles of Blossom Hill wine outside a duty suspension arrangement and without United Kingdom excise duty having been paid, relieved, remitted or deferred. The assessment was issued pursuant to Regulations 5 and 6(1)(b) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (the 2010 Regulations) and s.12 of the Finance Act 1994 (FA 1994).

3. Ms Joyce Brady, an Assurance Officer of HM Revenue and Customs (HMRC) gave oral evidence to the Tribunal in addition to a witness statement dated 17 November 2016. Ms Brady informed the Tribunal that the police had stopped a vehicle, registration number YX 56 HKU, at Cairnryan Ferry Port (Cairnryan) on 20 December 2014. The vehicle was being driven by Mr Mark McGuinness who stated that his boss was Mr Glen Martin.

4. When the vehicle was searched the police found, hidden behind fish crates, 24 pallets of Blossom Hill wine. Each pallet contained 128 boxes each of which had six bottles giving a total of 18,432 bottles. When asked by the police Mr McGuinness was unable to produce any paperwork in relation to the contents of the vehicle. Mr McGuinness informed the police that he had picked up the consignment from Woolsey Distribution in Coventry and was to deliver it to Mr John McKeown of Newry Wine Sales in Newry, Northern Ireland.

5. The Cairnryan police referred the matter to HMRC in Scotland who passed the information to HMRC in Belfast where Ms Brady is based. She spoke to the police in Cairnryan who were able to confirm that the reason why the wine and the vehicle had not been seized on 20 December 2014 was due to the fact that there was no HMRC officer available to complete the formalities of seizure.

6. Ms Brady advised that checks established that vehicle YX 56 HKU was registered to the Company of which Ms Emma Martin was a director. Mr Glen John Martin was appointed a director of the Company on 18 November 2015, and on the same date Ms Martin resigned as a director. Ms Brady wrote to the driver's boss, Mr Glen Martin, on 18 May 2015 to inform him that she was making enquiries into a seizure of 128 cases of Blossom Hill wine on 19 December 2014 and requesting him to attend for interview on 3 June 2015. She enclosed with the letter two relevant fact sheets – CC/FS1d (General Information about Compliance Checks into Excise matters) and CC/FS9 (The Human Rights Act and penalties).

7. As Mr Martin did not attend for interview, Ms Brady wrote to him again on 29 June 2015 as follows:

“I would refer to earlier correspondence and have since confirmed that the goods of Blossom Hill Wine were intercepted on route from Cairnryan to Larne on 20/12/14 but were allowed to proceed.

HMRC would like to check where the goods originated from and the final destination of the consignment.

I should be obliged if you would contact me as soon as possible to discuss the matter.”

8. On 14 July 2015 HMRC received a copy of their letter dated 18 May 2015 upon which someone had written:

“You must have wrong information as I had no wine or anything seized”

This handwritten note was signed Glen Martin.

9. On 11 November 2015 Ms Brady telephoned to Ms Emma Martin a director of the Company and the daughter of Glen Martin. She informed Ms Martin that she was querying the movement of goods on vehicle YX 56 HKU which was registered to the Company. Ms Martin confirmed she was a director of the Company, informed Ms Brady that she would look into the matter and call her back.

10. On 18 November 2015 Ms Brady paid an unannounced visit to the registered office of the Company at 14 Carrick Road, Banbridge, BT32 3PA. The office accommodation was a converted metal container. A gentleman, who did not identify himself, confirmed that the Company was registered there but was simply used as a postal address with Ms Emma Martin

calling to collect the mail every three to four days. Ms Brady gave the gentleman Notice of inspection form IIP07b in a sealed envelope addressed to the Company. The gentleman confirmed that he would leave it with the mail which he held for the Company.

11. On 20 November 2015 the Company's accountant, Leona Lavery, left a telephone message for Ms Brady asking her to call in relation to the Notice of inspection left at the Company's registered office on 18 November. Ms Brady returned the call to advise that she needed authorisation from the Company before she could speak to Ms Lavery. Ms Brady tried to telephone to Ms Martin on 23 November but there was no reply. On 25 November Ms Brady spoke to Ms Martin to advise her that HMRC needed her authority to speak to Ms Lavery. Ms Martin provided this authority by email on 26 November.

12. Ms Brady telephoned to Ms Lavery on 3 December 2015 to give the background to the visit to the Company's offices. She informed Ms Lavery that she needed details of the customer who had given the instructions for the job and where the goods were going. Ms Brady wished to see the relevant paperwork to ensure duty had been paid on the goods. She informed Ms Lavery that without supporting documentation she had reason to believe an offence had been committed and an assessment for duty liability on the wine would be issued. Ms Lavery queried if the wine should have been seized at the time the lorry had been stopped to which Ms Brady replied by saying that there were no HMRC officers at Cairnryan at the time and the matter had been referred to HMRC by the police. Ms Lavery advised Ms Brady that all paperwork for the Company was dealt with by her accountancy practice.

13. Ms Brady telephoned to Ms Lavery on 7 December 2015 to seek an update but as Ms Lavery was not in she left a message. On 10 December 2015 Ms Brady again telephoned to Ms Lavery but was advised by Mr George Lavery that Ms Lavery was not available that day. Mr Lavery confirmed that Ms Lavery had contacted Ms Martin for the requested information and was waiting on the client coming back.

14. On 10 December 2015 Ms Brady wrote to the Company and to Ms Lavery stating that documentary evidence in relation to the movement had not been submitted and that without documentary evidence of duty paid she intended to issue an assessment for the liability due.

15. Ms Brady wrote to the Company on 17 December 2015 to notify it of an assessment raised in accordance with the 2010 Regulations and FA 1994. The assessment was for £16,008.19.

16. By Notice of Appeal dated 17 January 2016 the Company appealed direct to this Tribunal. After rehearsing the history the Company stated:

“The Appellant grounds the appeal on undue and unreasonable delay on the part of HMRC resulting in irreversible prejudice to the Appellant, namely the extensive passage of time rendering the Appellant's ability to furnish the documentation requested by HMRC impossible.

The Appellant further contends that had the consignment been seized at the relevant time the necessary enquiries from the Appellant could have been made at that stage enabling the Appellant to be in a position to comply in full with same.”

### **Summary findings of fact and reasons for the Decision**

17. The Tribunal in the absence of any evidence from the Company accepts the background information detailed above as being factually correct.

18. Regulation 5 of the 2010 Regulations states:  
“Subject to regulation 7(2), there is an excise duty point at the time when excise goods are released for consumption in the United Kingdom.”
- Regulation 6(1) provides:  
“Excise goods are released for consumption in the United Kingdom at the time when the goods –  
(b) are held outside a duty suspension arrangement and UK excise duty on those goods has not been paid, relieved, remitted or deferred under a duty deferment arrangement;”
19. Regulation 10(1) of the 2010 Regulations states:  
“The person liable to pay the duty when excise goods are released for consumption by virtue of regulation 6(1)(b) (holding of excise goods outside a duty suspension arrangement) is the person holding the goods at that time.”
20. Section 12(1A) of FA 1994 gives HMRC the power to assess the amount of ascertainable duty on any person from whom any amount has become due.
21. The Tribunal is satisfied that, in the absence of any documentation from the Company, the Company has been properly assessed in accordance with the legislation. Indeed the Company has not argued that the assessment is mathematically incorrect.
22. We turn now to the grounds of appeal – undue and unreasonable delay.
23. Section 118A Customs and Excise Management Act 1979 (the 1979 Act) provides that HMRC may by regulations require every revenue trader to keep such records as may be prescribed in the regulations. S118B of the 1979 Act goes on to provide that every revenue trader shall upon demand made by an officer, produce or cause to be produced for inspection by that officer any documents relating to the goods or services or to the supply, importation or exportation.
24. Regulation 3 of The Revenue Traders (Accounts and Records) Regulations 1992 (the 1992 Regulations) provides as follows:  
“3. A revenue trader who receives, prepares, maintains or issues an item described in Schedule 1 to these Regulations shall –  
(a) in the case of a received item, keep and preserve the item;  
(b) in the case of an issued item, keep and preserve a copy of the item; and  
(c) in the case of an item that is prepared or maintained and which has not been received or which is not issued, preserve the item.
25. Schedule 1 details what are received, prepared, maintained or issued items.
26. Regulation 4 requires a revenue trader to keep and preserve a record of –  
(a) the production, buying, selling, importation, exportation, dealing in or handling of any excise goods carried on by him;  
(b) the goods (whether or not they are excise goods) or services received by him in connection with or to enable him to undertake a transaction or activity described in sub-paragraph (a) of this paragraph; and  
(c) the financing or the facilitation, made or effected by him, of a transaction or activity described in sub-paragraph (a) of this paragraph (whether or not that transaction or activity was carried on by him).
27. Regulation 7 requires a revenue trader to keep a record at the time of or as soon as possible after the happening of the event that is required by the Regulations to be recorded.

28. Finally Regulation 8 states:

“Anything that is required by or under these Regulations to be preserved by a revenue trader shall be preserved for a period of six years, or such lesser period as the Commissioners may allow, starting on the day that the obligation to preserve arises.”

29. It is quite clear from the above legislation that HMRC was entitled to demand proof that duty had been paid on the Blossom Hill wine. In the absence of any documentation provided by the Company HMRC had no option but to issue the assessment.

30. Section 12(4) of FA 1994 says that an assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the period of three years beginning with the time when his liability to the duty arose or the end of the period of one year beginning with the day on which evidence of facts came to the knowledge of HMRC.

31. Mr McGuinness was stopped by the police at Cairnryan on 20 December 2014. HMRC issued the Notice of Assessment of Excise Duty on 17 December 2015. The Notice was issued within 12 months of the search at Cairnryan and was therefore within the time limit specified by s 12(4) FA 1994.

### **Decision**

32. As the Company is required by the legislation to keep records for six years and as the Notice was issued within the statutory time limit the appeal on the grounds of undue and unreasonable delay cannot succeed. No documentation of any sort has been provided by the Company.

33. HMRC first wrote to the Company on 18 May 2015, less than five months after the inspection at Cairnryan. Parliament decided that HMRC could issue the assessment up to one year after the inspection. The Company was made aware of the possibility of an assessment within a reasonable period and was given ample opportunity to produce evidence to show why an assessment should not be issued but failed to do so.

34. The argument that if the goods had been seized at Cairnryan on 20 December 2014 the Company could have made the necessary enquiries at that time carries no weight. If the Company did not have the necessary documentation it could have asked either Woolsey Distribution or Newry Wine Sales both of which were under the same duty to retain records for six years.

35. The appeal is dismissed and the duty remains due for payment.

### **Right to apply for permission to appeal**

36. 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.

**ALASTAIR J RANKIN  
TRIBUNAL JUDGE**

**RELEASE DATE: 07 JUNE 2019**