[2017] UKFTT 760 (TC)

TC06168

Appeal number: TC/2014/06113

PROCEDURE – application to strike out appeal – C18 demand notices under Community Customs Code – no appealable decision to which the grounds of appeal are relevant – Tribunal has no jurisdiction – Rule 8 of Tribunal Rules 2009 – application granted

FIRST-TIER TRIBUNAL
TAX CHAMBER

LMD TRADING LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE HEIDI POON

Sitting in public at Tribunal Centre, George Street, Edinburgh on 10 October 2017

No appearance or representation for the Appellant

Mr James Kelly, Office of the Advocate General, for the Respondents

DECISION

Introduction

1. The hearing was to consider HMRC's application of 9 May 2017 to strike out the proceedings in relation to the appeal by LMD Trading Limited against HMRC's review decision by letter dated 14 October 2014. The review decision is the appealable decision, and the subject matter of the appeal.

2. The appealable decision confirmed the issue of two C18 Post Clearance Demand Notices in relation to imports by the appellant comprising aluminium wheels which were liable to anti-dumping duty and related charges.

3. The reason for the strike-out application is that the appellant's case, as pleaded in its notice of appeal to the Tribunal, discloses no legal basis on which its appeal can be considered by this Tribunal. Pursuant to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('Tribunal Rules'), the respondents apply for the appeal to be struck out under Rule 8(2)(a) on the basis that the Tribunal does not have jurisdiction to hear the appeal.

Appellant's absence

4. On 9 October, the day before the scheduled hearing, the tribunal office at the hearing venue wrote to the appellant for the names of those who would be attending the hearing. Mr John Ainsworth, company secretary of the appellant, confirmed that: "Nobody from our side will be in attendance tomorrow." The Tribunal was satisfied that the appellant had been notified of the hearing, and that it had, in effect, given notice for the hearing to proceed in the appellant's absence.

Factual background

5. Between 14 November 2011 to 29 July 2013, the appellant imported into the UK aluminium wheels declared as being of Malaysian origin.

6. In 2012, an investigation instituted by the European Commission's Anti-Fraud Office (OLAF) into activities in Malaysian Free Ports resulted in evidence which established the goods as originating in China and not in Malaysia as claimed. The investigation traced the goods to consignors (such Alcom, Unico, Vitachem, and DM Aluminium) which were not registered with the Ministry of International Trade and Industry for the issuing of any certificate of preferential origin.

7. The goods in question are aluminium wheels of Chinese origin with a full commodity code of 870870 50 10 (wheels of aluminium, whether or not with their accessories and whether or not fitted with tyres), and as such, are subject to 4.5% duty and Anti-dumping duty at the rate of 22.3%.

8. Two C18 Post Clearance Demand Notices were issued by HMRC to the appellant on 28 and 29 July 2014. The C18 demands were in respect of the shipments

to the appellant that matched the OLAF findings of the unregistered consignors. Consequently, a 'debt' in terms of Article 201 of Council Regulation EEC No 2913/92 ('The Community Customs Code') has been incurred by the appellant with the following details:

(1) C18 reference C18165285 for import duty of £4,404.08 and anti-dumping duty of £30,296.04;

(2) C18 reference C18165281 for import duty of £4,522.01 and anti-dumping duty of £22,409.06

9. On 10 November 2014, the appellant appealed to the Tribunal but no point is taken in respect of the origin of the goods. It is therefore taken that the correct place of origin being PRC is not a point in dispute. The notice of appeal also included a hardship application. The certificate of hardship pursuant to section 16(3) of the Finance Act 1994 was issued by the Customs Review and Appeals unit of HMRC on 19 February 2015.

10. The grounds of appeal as stated in the Notice of Appeal are as follows:

> 'The Appellant seeks relief under the principle that the circumstances here are such that it would be inequitable to require the trader to bear a loss it would not normally have incurred … In particular the Appellant relies on Article 220(2)(b) and/or alternatively Article 239 of the Customs code …'

11. The appeal was lodged by Controlled Tax Management Limited ('CTM'), an entity based in Ipswich. The appellant was initially represented by its accountant with regard to the C18 demands; CTM contacted the appellant to offer its service after the issue of the C18 Notices. Mr Liban Ahmed of CTM lodged the Notice of Appeal for the appellant. Upon the appellant's discovery that CTM had not been responding to case management directions in relation to the progress of the appeal, CTM's representation was removed with immediate effect by the appellant's notification to the Tribunal on 6 October 2015.

12. Also on 6 October 2015, the respondents lodged an application to the Tribunal for the appeal to be stood over behind the appeal of Motorsport Wheels (Stockport) Limited (TC/2014/04374). The application was granted on 1 December 2015, having noted that the appellant had provided no observations on the application despite a request from the Tribunal on 29 October 2015.

13. On 5 September 2016, the Office of the Advocate General ('OAG') as the representative for HMRC wrote to invite the appellant to make an application for remission of the duty demands under Article 220(2)(b) of the Community Customs Code. The letter intimated that HMRC have made a similar invitation to other appellants in similar appeals relating to the importation of alloy wheels.

14. On 28 February 2017, Motorsport Wheels (Stockport) Limited withdrew its appeal before the Tribunal was required to consider it.

15. On 9 May 2017, HMRC applied to recall the stay and to strike out the appeal.

16. On 6 July 2017, Douglas Duffy, director of the appellant company, submitted an application for the remission of duties and VAT on form C285 to HMRC. This was the application that OAG was inviting the appellant to make by the letter of 5 September 2016.

HMRC's case

17. The assessments to duty made by HMRC are relevant decisions by virtue of section 13A(2)(a)(iii) of FA 1994. The matters specified in that provision are not raised in the appellant's grounds of appeal.

18. The matters raised in the grounds of appeal fall within section 13A(2)(a)(iv) of FA 1994, but on these matters there remains no 'relevant decision' on which to base an appeal.

19. As at May 2017, when the application for strike-out was lodged, no application for remission had been made by the appellant despite the invitation by OAG to do so in September 2016. Accordingly, no decision has been made by HMRC on the merits of a claim for remission in terms of the Articles of the Code.

20. In the absence of a decision by HMRC on remission of duty, HMRC submit that the Tribunal does not have jurisdiction to consider the appeal which is directed solely to the question of remission; hence the strike-out application.

Appellant's case

21. By letter dated 20 June 2017, John Ainsworth, company secretary of the appellant, wrote to oppose the application to strike out the appeal, stating as the grounds of objection the following:

> '… if the tribunal does not have authority to hear the appeal then HMRC would be able to impose these taxes with no right/ability for the taxpayer to appeal which is contrary to the principals [sic] of tax law and human rights legislation.'

The applicable law

22. A C18 demand is raised under Council Regulation (EEC) No 2913/92, which is commonly referred to as the Community Customs Code.

23. 'Import duties' are defined under Article 4(1) as 'customs duties and charges having an effect equivalent to customs duties payable on the importation of goods'.

24. Article 201 provides for the imposition of a customs debt for any importation of goods that has not met the relevant import duties as prescribed by the Community Customs Code. The article also provides for the persons who can be held liable for the debt by the issue of a C18 Demand Notice.

25. In certain circumstances, a customs debt may be repaid or remitted as provided by the Community Customs Code. Article 220 provides for remission where there

was the issue of an incorrect certificate, and the person liable may plead good faith when he can demonstrate that, during the period of the trading operations in question, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

26. The time limits for seeking remission under Article 236 is three years from the date of a C18 Demand Notice, and under Article 239, it is one year from the date of the C18 Notice.

27. The Tribunal's jurisdiction in an appeal against a customs debt is governed by sections 13A to 16 of the Finance Act 1994 ('FA 1994'). The provision under section 13A(2) is of direct relevance to this application:

> 'A reference to a relevant decision is a reference to any of the following decisions –
>
> (a) any decision by HMRC, in relation to any customs duty or any agricultural levy of the European Union, as to –
>
> […]
>
> (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
>
> (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled.'

28. Under Rule 8(2)(a) of the Tribunal Rules, it is stated that the Tribunal *must* strike out the whole or a part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

Discussion

29. The appealable decision in this instant appeal is the review conclusion that upheld the two C18 Demand Notices. An appeal against the appealable decision falls under section 13A(2)(a)(iii) of FA 1994.

30. The appellant's grounds of appeal', as submitted by CTM on the appellant's behalf, present no valid grounds of challenge against the appealable decision in relation to the C18 Demand Notices.

31. Instead, the grounds of appeal stated that the appellant 'seeks relief' on reliance of Article 220, which provides for the remission of the duties assessed under the C18 Notices. However, no application had been made under Article 236 or 239 for such remission at the time when the appeal was lodged in November 2014.

32. Given that no application for remission had been made, HMRC had made no decision as respects whether remission could have been granted to the appellant. A decision by HMRC in respect of an application for remission has to be made first, and

if the applicant disagrees with HMRC's decision as regards remission, then an appeal can be brought to the Tribunal under section 13A(2)(a)(iv) of FA 1994.

33. As it stands, there is no appealable decision (in relation to remission) by HMRC to match the grounds of appeal as stated in the Notice of Appeal. It follows that the Tribunal has no jurisdiction to hear the appeal, since there is no appealable decision that relates to the appeal that the appellant has sought to be heard.

34. At the hearing, Mr Kelly for the respondents informed the Tribunal that for the purposes of the strike-out application, he contacted the Commissioners on 4 October 2017 to ascertain the status of the C285 application for remission submitted by the appellant on 6 July 2017. He confirmed that no decision has yet been taken by the Commissioners in respect of the application.

35. More importantly, the Tribunal enquired if the Commissioners have accepted the application under Article 236 as having been made within the relevant time limit. Mr Kelly was able to confirm that the Commissioners have accepted the application as lodged within the time limit, albeit only 13 days before the expiry of the 3-year time limit from the dates of issue of the CI8 Demand Notices on 28 and 29 July 2014.

36. For this reason, I am satisfied that the appellant is left with a remedy against the instant appeal being struck out. The application for remission dated 6 July 2017 will, in due course, result in a decision by the Commissioners on the matters relating to remission. That decision by the Commissioners is an appealable decision. If the appellant is not in agreement with the Commissioners' decision in relation to the remission of the duty demands, an appeal can be lodged anew against that decision under section 13A(2)(a)(iv) of FA 1994.

Decision

37. The application to strike out the proceedings is granted under Rule 8(2)(a) of the Tribunal Rules 2009.

Appeal rights

38. 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.

DR HEIDI POON
TRIBUNAL JUDGE

RELEASE DATE: 17 October 2017