[2013] UKFTT 486 (TC)

TC02869

Appeal number: TC/2012/08160

ANTI-DUMPING DUTY – goods ordered prior to imposition of ADD but imported into UK after its imposition – goods liable to ADD – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

JOHN PARKER & SON LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE J. BLEWITT
MS J. SHILLAKER

Sitting in public at Bedford Square on 4 September 2013

Mr A. Vanburen, Financial Controller of the Appellant Company for the Appellant

Mr Bates, Counsel instructed on behalf of HM Revenue and Customs, for the Respondents

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DECISION

1. By Notice of Appeal dated 20 August 2012 the Appellant appealed against the decision by HMRC to require payment of Anti-Dumping Duty ("ADD") in respect of steel screws, washers and bolts ("the goods") declared to have been consigned to the Appellant by a Malaysian based manufacturer in the sum of £81,636.91.

2. The grounds of appeal submitted by the Appellant can be summarised as follows:

- It is agreed that the goods in question attract anti-dumping duty but the charge levied in unfair;
- HMRC has failed to make clear why the officer responsible for imposing the duty believed he had no authority to override the decision imposed by the EC; and
- HMRC failed to assess whether its decision was reasonable given that the goods were ordered prior to the European Commission's review period had commenced and the delay in delivery of the goods was beyond the Appellant's control.

Background

3. It may assist at this point to provide a brief summary of the background to the imposition of ADD on the goods which are relevant to this appeal. ADD is a customs duty which protects against the dumping of goods in the EU at prices lower than the home market in order to prevent injury to the EU industry. Each ADD measure covers specified goods originating in, or exported from named countries or exporters. The duty is charged independently of and in addition to any other duty to which the imported goods are liable.

4. The provisions for ADD are set out in binding EU Regulations which are applicable in all Member States. HMRC is responsible for the collection, repayment or remittance of such duties in accordance with the Regulations.

5. On 9 November 2007 the European Commission began an investigation into the importation of iron/steel fasteners originating in China. As a result of the investigation a definitive ADD was imposed with effect from 1 February 2009.

6. On 29 October 2010 the Commission (EU Regulation 966/2010) commenced an investigation into the possibility of the same product being consigned from Malaysia. On 26 July 2011 Council Implementing Regulation (EU) No. 723/2011 dated 18 July 2011 was published. The regulation imposed ADD on imports of the product consigned from Malaysia, regardless of origin. The regulation required that Member States retrospectively collect ADD on all imports recorded as a result of EU Regulation 966/2010.

7. Following publication of EU Regulation 966/2010, relevant imports were recorded by HMRC pending the outcome of the Commission's investigation in order to enable the issue of duty demands should the Commission impose ADD on the products.

The Facts and Evidence

8. There was no dispute between the parties as to the facts in this case which can be shortly stated.

9. A check was made for imports of fasteners with Malaysia declared as the Country of Origin or country of dispatch in order to identify if any imports had been incorrectly classified. Three entry numbers were identified which related to the Appellant's imports. Subsequent examination by HMRC of entry documents for the consignments which were provided by the Appellant demonstrated that incorrect commodity codes had been used in the Customs entries relating to the imported goods. The correct commodity codes fall within the scope of the ADD measure and were therefore due for registration and liable under Regulation 723/2011.

10. The first consignment of goods which are subject to ADD entered the UK on 24 November 2010 and the second and third consignments were imported in 14 December 2010. The registration of the importation of relevant steel fasteners from Malaysia commenced on 29 October 2010 and Anti-dumping Notice 1709 was published on HMRC's website in order to notify importers and agents.

11. HMRC Officer Luty notified the Appellant by letter dated 23 April 2012 that he intended to issue a C18 Post Clearance Demand Note relating to ADD which he subsequently did on 13 June 2012.

12. By letter dated 23 May 2012 the Appellant highlighted that it had ordered the goods prior to the European Commission's review period began and consequently could not have known about the possibility that ADD would be charged. The goods were ordered on 13 July 2010 with estimated shipment dates from Malaysia of between 20 and 30 September. The Appellant was subsequently notified that the delivery dates would be delayed until 16 October 2010. The Appellant submitted that it had been innocently caught up in the legislation which could be seen to have been brought in retrospectively.

13. HMRC responded by letter to the Appellant dated 28 May 2012 in which it highlighted that the circumstances as outlined in the Appellant's letter of 23 May 2012 did not alter the decision to collect ADD as the relevant duty point, according to the Regulations, is the date of importation.

14. At the hearing Mr Vanburen explained that the Appellant did not seek to challenge the validity of HMRC's decision but the reasonableness of it. The Appellant was not informed that HMRC had limited powers in conducting a review of the decision to collect ADD nor had Mr Luty provided any guidance as to the type of circumstances which could have altered the decision. Furthermore, the resulting charge to the Appellant is disproportionate.

15. Mr Vanburen provided a chronology of the transaction, which was not challenged by HMRC and which demonstrated that the order date and expected delivery date were prior to the introduction of ADD.

16. HMRC Officer Mr Luty gave evidence to the Tribunal in which he clarified that the decision to collect ADD is straightforward and wholly dependent on the commodity codes and dates of importation. The facts of this case dictated that ADD must be charged and the date upon which the goods were ordered or expected to be delivered could not alter the decision.

Decision

17. We had a great deal of sympathy for the position in which the Appellant now finds itself and we accepted Mr Vanburen's submission as to the dates upon which the goods were ordered and the fact that delivery had been delayed. We accepted that the Appellant had limited experience in importing goods and as such may not have been aware that ADD would be imposed however ignorance of the law does not alter the fact that the Regulations are mandatory.

18. We noted the case relied upon by HMRC, *Manchester Candle Co Ltd v HMRC* [2012] UKFTT 94 (TC) in which the Appellant argued that when the goods left China by ocean shipment there was no duty applicable and in such circumstances ADD should not be applied in a retrospective way. Judge Demack held:

"We have considerable sympathy with the position of MCC but, unfortunately, that is of no help to it. As we have said. The liability to duty, i.e. the duty point, occurred on the candles being imported into the UK. And, at the date they were imported, the ADD had been imposed."

19. Whilst the facts of the case cited were marginally different to those in the present appeal, we found as a fact that the principles applied are equally applicable to the present appeal. Consequently, whilst we accepted that the Appellant had acted in good faith at all times, the law is clear; the relevant point at which a debt for Customs duty becomes due is the date of importation. Neither HMRC nor this Tribunal has any discretion in the application of the mandatory EU provisions and in those circumstances we must, and do, dismiss the appeal.

20. 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.

J. BLEWITT
TRIBUNAL JUDGE
RELEASE DATE: 10 September 2013