



**TC06434**

**Appeal number: TC/2015/06707**

*EXCISE DUTY – revocation of registration to trade in duty suspended alcohol under the Warehouse Keepers and Owners of Warehoused Goods Regulations 1999 – whether HMRC’s decision to revoke registration reasonable – held yes – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RIAZ AHMED (T/A BEEHIVE WINE STORE)**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE PHILIP GILLETT  
DUNCAN MCBRIDE**

**Sitting in public at Taylor House, London on 26, 27 and 28 March 2018**

**David Bedenham, counsel, instructed by Rainer Hughes, for the Appellant**

**Amy Mannion, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This was an appeal against a decision of the Respondents (“HMRC”) made on  
5 29 October 2015 to revoke the registration to trade in duty suspended alcohol held by  
the appellant (“Mr Ahmed”) under the Warehouse Keepers and Owners of  
Warehoused Goods Regulations 1999 (“WOWG Regulations”). This appeal had been  
the subject of an earlier decision of the First-tier Tribunal (Judge Victoria Nicholl and  
Ms Claire Howell), which was released on 7 June 2016. This decision found in  
10 favour of Mr Ahmed and directed HMRC to carry out a review of their decision to  
revoke the registration. That decision was however appealed to the Upper Tribunal  
(Judges Timothy Herrington and John Walters) which, in a decision released on 12  
September 2017, reported under the reference [2017] UKUT 359 (TCC), set aside the  
decision of the FTT and remitted the appeal back to the FTT for a fresh hearing before  
15 a differently constituted panel.

### **Overview of Duty Suspension regime**

2. Mr Bedenham provided us with an overview of the Duty Suspension regime in  
the UK which we think is helpful to summarise here.

3. Excise Duty is a consumption tax which is levied at the Excise Duty point,  
20 being the point of the manufacture of alcoholic products or their importation into the  
UK. Under the Excise Directive suspension of duty is permitted if the goods are held  
in a bonded warehouse approved for the purposes under the WOWG Regulations.  
Trading in goods under duty suspension clearly presents a potentially serious risk to  
the public revenue and therefore HMRC will only give its approval to registration  
25 under the WOWG Regulations to those it considers to be “fit and proper” persons.

4. Unusually, in the UK, this registration applies to both warehouse operators and  
those who trade in duty suspended alcohol, ie, the actual owners of the duty  
suspended goods.

5. There are two common means of committing fraud in duty suspended alcohol:

30 (1) Outward diversion fraud – where duty suspended alcohol is despatched  
from a UK bonded warehouse to a bonded warehouse in, say, France, but in fact  
the goods are diverted onto the black market in the UK, and the (empty) lorry  
continues its journey to France, buys an equivalent load at French duty prices,  
and delivers this load to the French bonded warehouse. The significant  
35 difference in duty levels between the UK and France provides ample  
opportunity for illegal profit in this way.

(2) Inward diversion fraud – which is the smuggling of illicit alcohol into the  
UK by means of a number of trucks, all using the same import documentation,  
carrying “parallel” loads. The documentation is intended to cover a single  
40 legitimate transfer of goods from a non-UK bonded warehouse to a UK bonded  
warehouse, but in this way, a number of parallel loads can be brought into the

UK under a single set of documentation, often within a few hours or days of each other. The tell-tale sign for the owner of the goods is that his goods take longer to reach his bonded warehouse than might be expected.

5 6. Until around 2010, the documentation which was used to cover such duty  
suspended movements was in paper form and was referred to as an Accompanying  
Administrative Document (“AAD”). This system was gradually changed to a  
computerised system known as EMCS which contains information showing the  
ownership and the destination of the goods. This system is operated by the sending  
bonded warehouse and generates a number, an Administration Reference Code  
10 (“ARC”) which is then given to the lorry driver and acts as his passport for the load  
when entering the UK. The haulier therefore only needs this ARC number rather than  
any paper documentation. HMRC have access to the EMCS, as do the bonded  
warehouse keepers and the haulier, but the owners of the goods do not.

15 7. Most trucks entering the UK are not stopped and their documentation or ARC  
number is not therefore checked. If the first lorry carrying one of the parallel loads  
gets through the Customs checks without the ARC being checked the driver then  
sends a text or telephone message to the next lorry, saying he may enter the UK  
without concern. The second lorry driver knows that if he is stopped he has a valid  
ARC number to give to UK Border Force. Even if a lorry is stopped, and the ARC is  
20 checked, further trucks may still attempt to enter, relying on not being stopped. If  
they are stopped, and the duplicate ARC is given to UK Border Force then the lorry  
and its load will be seized, but by then a number of illicit loads will have entered the  
UK.

### **The Law and Excise Notice 196**

25 8. Section 100G of Customs and Excise Management Act 1979 (“CEMA”)  
provides (so far as material):

30 “(1) For the purpose of administering, collecting or protecting the revenues  
derived from duties of excise, the commissioners may by Regulations under this  
section (in this Act referred to as ‘registered excise dealers and shippers  
Regulations’):

(a) confer or impose such powers, duties, privileges and liabilities as may  
be prescribed in the Regulations on any person who is or has been a  
registered excise dealer and shipper; and

35 (b) impose on persons other than registered excise dealers and shippers, or  
in respect of any goods of a class or description specified in the  
Regulations, such requirements or restrictions as may by or under the  
Regulations be prescribed with respect to registered excise dealers and  
shippers or any activities carried on by them.

40 (2) The commissioners may approve, and enter in a register maintained by them  
for the purpose, any revenue trader who applies for registration under this

section and who appears to them to satisfy such requirements for registration as they may think fit to impose.

5 (3) In the customs and excise Acts ‘registered excise dealer and shipper’ means a revenue trader approved and registered by the commissioners under this section.

(4) The commissioners may approve and register a person under this section for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under the Regulations prescribe.

10 (5) The commissioners may at any time for reasonable cause revoke or vary the terms of their approval or registration of any person under this section.”

9. So far as is relevant, s 100H(1) of CEMA provides:

“Without prejudice to the generality of section 100G above, registered excise dealers and shippers Regulations may, in particular, make provision:

15 (a) regulating the approval and registration of persons as registered excise dealers and shippers and the variation or revocation of any such approval or registration”

10. “Revenue trader” is defined in section 1(1) of CEMA and, so far as relevant, includes:

20 “any person carrying on a trade or business subject to [the Act] or which consists of or includes . . . the buying, selling, importation, exportation, dealing in or handling of [dutiabale goods].”

11. The Regulations made under ss 100G-100H are the WOWG Regulations.

25 12. Parts II - III of the WOWG Regulations give power to HMRC to approve and register warehouse keepers (Part II) and owners and duty representatives (Part III) as registered excise dealers and shippers. Regulation 5 is headed “Registered owners” and provides:

30 (1) For the purposes of section 100G of the Act, the commissioners may approve revenue traders who wish to deposit relevant goods that they own in an excise warehouse and register them as registered excise dealers and shippers in accordance with section 100G(2) of the Act.

(2) A revenue trader who has been so approved and registered shall be known as a registered owner.”

35 13. Part VI is headed Privileges and Regulation 12 sets out the privileges of a registered owner, which are essentially to hold or buy dutiable goods in an excise warehouse. Part VII is headed “Conditions and Restrictions.”

14. Regulation 18 is headed “Conditions and restrictions that apply to registered owners” and paragraph (1) provides:

5 “The approval and registration of every registered owner shall be subject to the conditions and restrictions prescribed in a notice published by the commissioners and not withdrawn by a further notice.”

15. The notice published in accordance with regulation 18(1) is Excise Notice 196 (“EN 196”). From 1 November 2014 this notice was amended to contain (at section 10) a due diligence condition. This due diligence condition is fundamental to this appeal.

10 16. The due diligence condition requires approved persons to:

- Objectively assess the risks of alcohol duty fraud within the supply chains in which [they] operate.
  - Put in place reasonable and proportionate checks, in [their] day to day trading, to identify transactions that may lead to fraud or involve goods on which duty may have been evaded.
  - Have procedures in place to take timely and effective mitigating action where a risk of fraud is identified.
  - Document the checks [they] intend to carry out and have appropriate management governance in place to make sure that they are, and continue to be, carried out as intended.
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17. The Notice also states that a registered owner will need to consider the full range of trading relationships it has established and the potential for fraud in each. The Notice details the main risks within the alcohol sector which include receiving goods that have been smuggled or diverted into the UK, noting that a key feature of the smuggling or diversion of alcohol to the UK market is the ability to source a product where the excise duty has been suspended. The Notice goes on to say:

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30 “To assess your exposure to this risk you will need to objectively assess if there is potential for duty evasion resulting from your trading activity. You will need to know who you are selling to and where the goods are destined for and understand the market for these products. Without this, there is a risk of supplying goods directly or through a third party into illicit supply chains. Import and warehousing procedures are often exploited to provide cover for the illicit movement of goods. Fraudsters will seek to distribute duty evaded goods as well as counterfeit alcohol into legitimate retail supply chains. To assess your exposure to this risk you will need to objectively consider whether the supply chain and trading activity is credible which includes knowing who you source goods from and provide a service to.

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High level indicators of risk include goods being received from unusually complex or apparently uneconomic supply routes, for example, regular supplies

of UK produced goods that have been shipped out to another Member State and then re-imported. If you are sourcing duty paid goods you will also need to consider the credibility of suppliers and the level of evidence you can obtain to demonstrate the provenance and duty status of goods.”

- 5 18. The Notice then states that the registered owner’s regular checks during trading should be of a type and level sufficient to establish the integrity of the excise transactions and supply chains it is trading in. It says:

10 “This level needs to be reasonable and proportionate to the risk. Depending on the nature of your business and complexity of your transactions, checks will need to be individually tailored. In particular, they must be sufficiently sensitive, yet robust enough, to pick up potential fraud risks. These checks should provide protection from the threat of fraud or you becoming inadvertently involved in fraudulent activity.”

19. The Notice then gives examples of what the checks should normally focus on:

- 15 - financial health of the company you intend trading with
- identity of the business you intend trading with
- terms of any contracts, payment and credit agreements
- transport details of the movement of the goods involved whether or not you are directly involved in this
- 20 - existence/provenance of goods - where goods are said to be duty paid you should normally seek sufficient detail to satisfy yourself of the status of the goods
- The Deal, understanding the nature of the transaction itself, including:
- 25 ○ how the cost of the goods is built up, for example, whether it includes appropriate taxes, transport etc
- why is it being offered
- whether it is too good to be true
- how the deal compares to the market generally

20. Section 10.4 of EN 196 states:

- 30 - [HMRC] will aim to establish whether you have objectively assessed the risks in your supply chain, and you must be able to demonstrate that you have put in place reasonable and proportionate checks and effective procedures to respond to fraud risks when they arise.

- If your due diligence procedures are considered insufficient to address fraud risks, we will carefully consider the facts of the case before taking further action, but where appropriate we will seek to support you to strengthen your procedures.
- 5 - In more serious cases, such as failure to consider the risks, undertake due diligence checks or respond to clear indications of fraud, we will apply appropriate and proportionate sanctions.
- For serious non-compliance, such as ignoring warnings or knowingly entering into high risk transactions, we may revoke excise approvals and  
10 licences.

## **Evidence**

21. We received witness statements and heard oral evidence from Mr Ahmed, and from Officer Marva Harry and Officer Robin Kendall of HMRC. Unfortunately the documentary evidence available to us was somewhat limited as regards notes of key  
15 meetings and telephone conversations and therefore our conclusions are based on the limited documentary evidence which was available and the oral evidence as set out below.

### *Evidence of Mr Ahmed*

22. Mr Ahmed had provided three witness statements, which he augmented with  
20 oral evidence. He was also subject to cross-examination.

23. Unfortunately we found Mr Ahmed's oral evidence, particularly under cross-examination, to be confused, inconsistent and contradictory, and it was often in conflict with the documentary evidence which he had provided. We did not therefore feel able to place heavy reliance on all parts of his evidence. We did however find the  
25 following facts as set out below.

24. Mr Ahmed had traded in the alcohol sector for a number of years. He had two separate businesses, one being a retail shop, which made approximately £5,000 per annum, and a wholesale trade in beer and wine under duty suspension, which had an  
30 annual turnover of approximately £1.5m and profits of approximately £45,000 per annum. As far as we were told, he did not buy beer for his retail business through the trade in duty suspended goods.

25. His business model was to identify opportunities to buy well-known brands of beer, and occasionally wine, which were being held under bond outside the UK, at competitive prices. As soon as he had identified a possible consignment he would  
35 offer this to his customer(s) in the UK. If he found a willing buyer he would then buy the consignment and import it into the UK, where the goods would be delivered to his account with a bonded warehouse in Barking operated by Seabrook Bonded Warehouse Ltd. He would then sell the goods to his customer but no transportation of the goods took place. The goods were simply re-allocated from his account at  
40 Seabrook to his customer's account.

26. This was therefore a very simple business model with almost no risk to Mr Ahmed, because he would not make the purchase until he had identified a buyer, and he would not pay for the goods until they had been delivered to Seabrook and he had been paid by his customer. This may go some way towards explaining his approach to due diligence.

27. During the year immediately prior to his registration being withdrawn he had purchased goods from only two suppliers, Bugatt, a polish company, and Ellermore, a company based in Cyprus. During this time, he had sold goods only to Empire Trading Ltd, a company based in the UK.

28. He had always paid Ellermore in cash, via a Mr Singh, who he said was Ellermore's representative in the UK, although he was unable to produce any documents which demonstrated any link between Ellermore and Mr Singh. Nor did Mr Ahmed have any identification documents for Mr Singh. When asked why he paid Ellermore in cash he said that he was told by Mr Singh that Ellermore had had some problems with bank transfers in the past and therefore wanted to be paid in cash. Mr Ahmed therefore paid him entirely in cash and never questioned this explanation. It did not occur to him that this might be an indication of something untoward.

29. He had paid Bugatt mostly by way of bank transfer but there was some confusion on this point. The monies had been paid by Mr Ahmed into a UK bank account, but Mr Ahmed did not have any documentary evidence as to the owner of this account. The account seemed to be controlled by Roman Sarnecki, the CEO of Bugatt, but there was no evidence as to whether the account belonged to Bugatt Poland, or to one of two UK companies called Bugatt Investment Spolska Ltd and Bugatt Investments Spolska Ltd, or to Mr Sarnecki personally, and Mr Ahmed certainly did not know. We were unable to make any finding of fact on this issue.

30. Mr Ahmed described how he had first made contact with Bugatt. He stated that Mr Sarnecki, the CEO of Bugatt, had sent him an email of introduction on 29 July 2013. Mr Sarnecki had also visited him at his shop and he had visited Mr Sarnecki in Poland. There was some confusion as to in which order these events had taken place but we find as a matter of fact that Mr Sarnecki had contacted Mr Ahmed first, using contact details given to him by Mr Ahmed's bonded warehouse, Seabrook. Mr Ahmed had started trading with Bugatt shortly after this initial contact.

31. Before commencing trading with Bugatt, Mr Ahmed had visited Mr Sarnecki at Bugatt's offices in Warsaw, Poland. He subsequently described the offices to Officer Kendal as being like serviced offices but with computers and files and a secretary. Mr Ahmed had organised a local translator for the visit because he was unable to speak or read Polish, but Mr Sarnecki spoke good English so a translator was not required for their discussions. Mr Sarnecki showed Mr Ahmed that he had a number of accounts with bonded warehouses in France and Belgium, which Mr Ahmed considered showed that Bugatt was a respectable company. Mr Ahmed had also confirmed that Bugatt was registered for VAT in Poland.



32. Mr Sarnecki gave Mr Ahmed a number of company documents, which were in Polish, which he could not read or understand. Mr Ahmed said that the translator had translated the documents for him and explained that they were company formation and registration documents. Importantly for Mr Ahmed the documents confirmed that the company was authorised to trade in alcohol. We noted however that trading in alcohol was one of 245 activities which Bugatt was permitted to carry out under its incorporation documents. Other permitted activities included coal mining. No activity was shown under a heading subsequently revealed to mean predominant activity. The document also showed that Bugatt had been formed on 27 December 2012, ie, only seven months previously, and contained no reference to Mr Sarnecki being either a director or shareholder. Mr Sarnecki also gave Mr Ahmed a copy of another document, in Polish, which he thought was a bank statement, but in fact it appears to have been an invoice for telephone services for Mr Sarnecki's home address. Mr Ahmed had taken no notes of his conversations with Mr Sarnecki.

33. Having been asked if he thought that any of this was suspicious or concerning, Mr Ahmed said that he was only interested in buying alcohol from Bugatt and since it was permitted to do this he did not see any reason to enquire about other aspects of the company's business.

34. Mr Ahmed was asked if he understood that trading in duty suspended goods was a high risk area for duty fraud and if he had read the HMRC document "Renewal of the Alcohol Fraud Strategy" and he confirmed that he understood this and had read the document.

35. He was also asked if he understood how fraud was carried out using parallel loads. He said that he did, but when he was asked to explain how this worked, he declined, or was unable to, in spite of being asked to do so three times, and simply said that he had no involvement in fraud and therefore knew nothing about how it worked. In addition he said that problems with parallel loads had never happened to him. However, as set out below, seven consignments destined for Mr Ahmed had been seized on their way to Mr Ahmed's bond between May 2010 and November 2014 as there was evidence that the relevant paperwork or ARC for the loads had been used previously.

36. Mr Ahmed was questioned about the seizures as below:

(1) 2 May 2010 – a consignment of mixed beer from Erasmus Logistics. Mr Ahmed said that he immediately stopped trading with Erasmus after he was notified about the seizure.

(2) 13 April 2012 – a consignment of mixed beer was stopped but the consignor was not known.

(3) 22 June 2012 – a consignment of mixed beer from Logi-Drinke. Again Mr Ahmed said that he stopped trading with them immediately after he was notified about the seizure.

(4) 4 October 2013 – a consignment of mixed beer from De Bresser Im-Fon. Again Mr Ahmed said that he stopped trading with them immediately after he was notified about the seizure.

5 (5) 13 February 2014 – a consignment of mixed beer from Bugatt. Mr Ahmed said that following this seizure he had contacted Mr Sarnecki who had told him that it was a mistake and that he had appointed a lawyer to sort things out. Mr Ahmed said that he had been satisfied by this explanation and had continued trading with Bugatt because he had been trading with them for a long time. (Although this had only been for seven or eight months).

10 (6) 26 March 2014 – a consignment of mixed beer from Planted Foods London. Again Mr Ahmed said that he had stopped trading with them immediately after he was notified about the seizure.

15 (7) 28 November 2014 – a consignment of mixed beer from Ellermore. In this case Mr Ahmed decided that he would make one more trade with Ellermore, because it was near Christmas and he needed more stock, but that he would then stop. Reference to supporting documents however revealed that he had carried out a number of further trades with Ellermore and in fact had continued trading with Ellermore until mid-2015.

20 37. Mr Ahmed was asked if he was worried about these seizures, and he stated that in most, but not all, cases he had immediately stopped trading with the companies concerned. However it was also clear that he was not too concerned because he had not owned the goods at the time at which they were seized and therefore had not lost out financially. His sole objective was the protection of his business. He had no concern as to the wider implications of these seizures.

25 38. Mr Ahmed had been visited by Officer Harry a number of times in 2014, following Mr Ahmed's inclusion on the HMRC Closer Working Project, but these had not been particularly eventful from Mr Ahmed's viewpoint and Officer Harry had at no time suggested that his procedures were inadequate.

30 39. On 18 February 2015 however Officer Kendall and another colleague joined Officer Harry on a visit to Mr Ahmed. At this time the tone of the visits changed and Officer Kendall had asked him to change his processes in a number of areas:

35 (1) He was asked to obtain the registration numbers of the trucks carrying his consignments. He did not understand the benefit of doing this but he said that he asked Mr Sarnecki for the registration numbers of the trucks. However, since transportation was under the control of the bonded warehouse, Mr Sarnecki said that he was unable to obtain this information. Mr Ahmed did not pursue this further.

40 (2) He was also asked to put in a system of receipts for his cash payments to Ellermore. He therefore prepared receipts on Beehive headed paper which were signed by Mr Singh on behalf of Ellermore. This is not the conventional way in which receipts are prepared but they were signed by Mr Singh.

(3) He was asked to maintain a proper cashbook for his cash transactions.

40. On a second visit from Officer Kendall, on 18 May 2015, there had been a more extensive discussion about EN 196 and the due diligence requirements contained in Section 10 of EN 196. At that meeting, Mr Ahmed had been advised by Officer Kendall that his way of doing business was open to fraudsters. There was however no suggestion that Mr Ahmed had been involved in any fraud. Officer Kendall had followed up this meeting with a letter dated 26 May 2015 which repeated the advice given in the meeting. Mr Ahmed confirmed that he had read and understood the letter, but it was clear that he had no idea what precise actions he was supposed to take and that he wanted precise instructions from HMRC.

41. At this meeting Officer Kendall had inspected a cash book which Mr Ahmed had started to keep after the February meeting. This was not however acceptable to Officer Kendall, simply being a list of cash payments to Ellermore, and he therefore gave further advice as to what was required. Mr Ahmed subsequently sent a copy of his cash book to Officer Kendall, which had been amended to incorporate some of Officer Kendall's suggestions, but it was still not a proper cash book, in that it did not keep a running total of cash in hand. Officer Kendall had given him a computer spreadsheet at this meeting, setting out what he considered a cash book should look like, but Mr Ahmed had done nothing with this.

42. Mr Ahmed had also received a letter dated 4 June 2015, which was a letter sent to all registered traders setting out HMRC's intention to work together with registered traders to combat tax fraud. It repeated the new due diligence requirements and gave further detailed guidance about these issues. Again, Mr Ahmed confirmed that he had read and understood this letter.

43. Following this meeting and the letters Mr Ahmed had decided to update his due diligence on Bugatt and had obtained an English translation of its company formation and registration documents. His evidence was that this was a direct translation of the Polish documents which he had been given in 2013, but closer examination showed that they were slightly different, in that Mr Sarnecki was now shown as the director and shareholder. The document also contained, in English, the list of 245 activities which Bugatt was permitted to carry out. Mr Ahmed was asked if he was worried by this and again his response was that he was only interested in whether or not the company was permitted to trade in alcohol. The document now showed Bugatt's predominant activity as being that of a holding company. Mr Ahmed thought suggested that this meant it held stocks of goods for sale. He did not understand that this meant that its main activity was stated as being the holding of investments in other companies, or that this might be a cause for concern.

44. He also stopped making cash payments to Ellermore. As a consequence of this his trade with Ellermore ceased entirely. However, he said that he stopped making cash payments because the bank charged him for making large cash withdrawals, not because he had been advised to stop by HMRC.

45. A further meeting had taken place on 27 August 2015 with Officers Kendall and Harry and Mr Ahmed's solicitor John Machnicki, from Rainer Hughes. This seems to have been a somewhat ill-tempered meeting.

46. At this meeting, Officer Kendall had given him new information about Bugatt, including details of the two UK companies with the name Bugatt, and indicated that Bugatt were “of interest” to HMRC in other areas. Officer Kendall also showed him Mr Sarnecki’s LinkedIn page which showed the main activity of Bugatt as being  
5 electrical and electronic manufacturing. At this point Mr Ahmed asked Officer Kendall if he would like him to stop trading with Bugatt, to which Officer Kendall replied that that would be up to Mr Ahmed. Overall, however little seems to have been achieved and Mr Ahmed and his solicitor left the meeting abruptly. Mr Ahmed’s view was that Officer Kendall was aggressive and hostile towards him  
10 whereas Mr Ahmed wanted specific help so that he could comply with Officer Kendall’s requirements.

47. On 4 September 2015 Officer Kendall sent a letter to Mr Ahmed saying that HMRC were “minded to” revoke his registration and that he should make any final representations by 18 September. Mr Ahmed’s version of events at this time was  
15 somewhat confused but he eventually said that he had left for Warsaw, to meet Mr Sarnecki, on 7 September. He said that he had not read the letter before he left, because he was not in the shop for a few days, but he had received a telephone call from his brother and was therefore aware it had been received. He also said that this visit had been organised for some time, and had not been prompted by the HMRC  
20 letter. We were shown copies of Mr Ahmed’s flight tickets and hotel invoice and therefore find that Mr Ahmed did indeed visit Warsaw on 7/8 September.

48. Unfortunately Mr Ahmed did not take notes of this meeting but he said that although he had asked Mr Sarnecki about the two UK companies he had not asked about the reference to electrical manufacturing or the bank accounts, and appears not  
25 to have obtained any further useful information. Interestingly, the final representation letter from Rainer Hughes dated 17 September 2015, written in response to HMRC “minded to” letter, makes no reference to Mr Ahmed’s visit to Poland. Mr Ahmed could not explain why such an important event was not mentioned, but said that it was possible that it was because nothing additional had come from his meeting and that he  
30 believed his due diligence was good enough. We make no finding as to whether or not the meeting took place, but in any case, the lack of notes renders the meeting largely irrelevant save to demonstrate Mr Ahmed’s willingness to do something.

49. Finally, on re-examination, Mr Ahmed said that if his registration was renewed he would obtain the advice of a solicitor to ensure that his due diligence was  
35 satisfactory. He also said that he had recently checked and found that Bugatt was still registered for VAT in Poland.

*Evidence of Officer Harry*

50. Officer Harry explained that she was a VAT specialist and had been assigned to Mr Ahmed as part of the Closer Working Project, but it was clear that she knew very  
40 little about excise matters, which is why she had asked for the assistance of an excise officer on this case.

51. Around that time, Mr Ahmed's VAT number had been hi-jacked and was being used by someone else and Officer Harry was in contact with Mr Ahmed about this.

52. She had uplifted Mr Ahmed's original due diligence documents on Bugatt on 30 June 2014 but we find that she had not read them or even noticed that they were  
5 predominantly in Polish.

53. She confirmed that she had at no time informed Mr Ahmed that his procedures were inadequate. She visited him again in November 2014, shortly after the new due diligence arrangements in EN 196 had come into force but because she had no familiarity with EN 196 she did not discuss this with him.

10 54. Her notes of her visits with Officer Kendall were not helpful since again she had little knowledge of excise matters and had not therefore understood much of what was said.

#### *Evidence of Officer Kendall*

15 55. We found Officer Kendall to be a reliable and robust witness and therefore accept his evidence as factually correct without reservation.

56. He had been an HMRC officer since 2002 and had worked in a number of areas, including VAT, Debt Management and Investigations as well as excise. He had worked in excise from 2006 to 2008 and again from 2014 to date, almost all of this time in relation to alcohol.

20 57. He explained that the risks to excise duty arose because importers such as Mr Ahmed were being used by unscrupulous operators, in that their deals generated ARC numbers which were then used by illicit operators and hauliers to commit duty fraud.

25 58. Officer Kendall said that Seabrook was a long established UK bond and that IEFW, the French bond in the supply chain, was approved by the French authorities. He said that the bonds usually arranged the haulage but not always. All international intra-community loads of duty suspended goods must travel under a duty guarantee, and if the goods are seized that guarantor will have to pay the duty. This can be the bond, the haulier or the owner of the goods.

30 59. Officer Kendall had first visited Mr Ahmed on 18 February 2015 at the request of Officer Harry. He had concerns in that Mr Ahmed did not keep a cash book in spite of the fact that he took cash out of the bank to pay Ellermore. He often took out more cash than was required to pay Ellermore but kept no record of what happened to the excess cash. He also asked Mr Ahmed if he had put in place any additional control since the seizures, to which Mr Ahmed had answered that he had not because  
35 he was not responsible for what had happened. Officer Kendall knew that there had been seizures before he attended this meeting but only found out the precise details when he had checked on his return to his office.

60. Officer Kendall had also asked Mr Ahmed to find out the registration number of the trucks delivering his goods and was asked what benefit this might have. He said

that it would provide additional comfort for Mr Ahmed, but since there was no request that this information should be given to HMRC on a real time basis it was not clear how Mr Ahmed having this information would be of any direct assistance in counter-acting fraud, although clearly if the load took longer than a few days this  
5 might be an indication that something had gone awry, as had happened in the case of one of the seizures discussed above.

61. Turning to the meeting on 18 May 2015, Officer Kendall had looked at the due diligence on Bugatt just before the meeting, and had decided that it was of limited value because it was in Polish.

10 62. At the meeting Officer Kendall had given Mr Ahmed a print-out of section 10 of EN 196, which covered the new due diligence requirements and in particular had read out the part requiring Mr Ahmed to assess the risks of each deal before it took place and also the part requiring him to obtain transportation details.

15 63. When asked if he had given Mr Ahmed any further specific advice Officer Kendall said that he had not. He said that he had not given Mr Ahmed a list of specific actions to take because HMRC's view was that due diligence should not be a box-ticking exercise. It required the registered trader to carry out a proper assessment of the risks (of alcohol duty fraud) involved whenever he entered into a transaction. Simply ticking a prescribed box would not achieve the objective.

20 64. Officer Kendall was asked if he thought that Mr Ahmed understood his due diligence obligations, to which he replied that he thought Mr Ahmed was waiting for a letter to set this out, which he could perhaps read at his leisure. This letter was sent on 26 May 2015 and it set out the due diligence requirements in significant detail, including extensive quotes from section 10 of EN 196, as well as going into more  
25 detail of some of the FITTED checks, as set out above.

65. The letter also contained a warning that unless procedures improved Mr Ahmed's WOWGR registration might be revoked. In response to this letter Mr Ahmed obtained the English translations of Bugatt's formation and registration documents which are discussed above.

30 66. Mr Bedenham suggested to Officer Kendall that by this time it was already his clear intention to remove Mr Ahmed from the WOWGR regime and that nothing Mr Ahmed did would have been good enough to prevent this. Office Kendall denied this.

35 67. At the meeting on 27 August 2015 Officer Kendall explained to Mr Ahmed that the new cash book still did not contain a running total of cash held. He agreed that Mr Ahmed had tried to obtain information on transportation and in fact some was included on one purchase document.

68. Again Officer Kendall had emphasised the importance of carrying out a proper risk assessment. He asked Mr Ahmed why he would pay anyone in cash, to which the response was that he had now stopped doing it because of the bank charges.

69. On 24 September 2015 Officer Kendall issued the “minded to” letter discussed above. In response to questioning, Officer Kendall stated that he had not made up his mind at that time. The letter did not constitute a final decision and it was still open to further representations.

5 70. Again in response to questioning Officer Kendall confirmed that revocation of registration was not a punishment for past behaviour. Past behaviour might be a guide as to what future behaviour might be but future behaviour was the key focus. The key question for Officer Kendall was whether or not Mr Ahmed would correct, or was capable of correcting, his risk assessment practices.

10 71. However, the further representations in the letter from Rainer Hughes did not contain anything which Officer Kendall considered of assistance in this regard and he therefore issued the revocation letter on 29 October 2015. Officer Kendall said that he believed that Mr Ahmed had visited Bugatt in Poland on 8/9 September 2015 but he was not sure how frequently Mr Ahmed had in fact visited Bugatt in Poland before that.

15 72. Discussing his decision, Officer Kendall explained that none of the concerns justified revocation on their own and that his decision was based on a basket of evidence.

20 73. Officer Kendall was not clear as to whether or not he realised that he could have imposed conditions on Mr Ahmed’s trading as an alternative to revocation and we find as a matter of fact that he did not consider this course of action. He said that he would have needed to take advice before doing so, because he had been away from the excise team for a few years and therefore practices may have changed. He accepted that he could have imposed a condition such as no cash deals but felt that this still would not have addressed the key issue that Mr Ahmed had simply failed to carry out any proper assessment of the risks. He therefore considered that any lesser measure would not have been appropriate because he believed that Mr Ahmed simply did not have the ability or the willingness to judge the risks of duty fraud.

## **Submissions**

30 *Submissions for Mr Ahmed*

74. Mr Bedenham reminded us of the limits of our jurisdiction in such cases and the guidance which had been given by the Upper Tribunal in this appeal as to how we should approach our decision. We discuss this in more detail below.

35 75. He also submitted that we should make findings of the facts as at the time the decision was made but that this could include facts which were not known to the decision making officer at that time. This is in line with the decision in *Gora v C&E Commissioners* [2003] EWCA Civ 255 and we accept this as the approach we should take.

76. Mr Bedenham also suggested that we should look at the prospective picture and not just at the past, except to the extent that it shed light on the future. He suggested in particular that we should give weight to the following:

(1) Mr Ahmed had carried out due diligence on Bugatt as follows:

- 5 (a) He had held face to face meetings with Mr Sarnecki,  
(b) He was an experienced operator in this field and therefore well placed to make a sound risk judgement,  
(c) If the making of notes of the meetings was important, HMRC should have told him so,  
10 (d) He had carried out checks to ensure that Bugatt was VAT registered,  
(e) He had assessed the prices offered by Bugatt to see if they were reasonable, although we would comment that he had not asked himself, as he should have done in accordance with EN 196, why beer manufactured in the UK should be for sale from a bonded warehouse in France at prices  
15 which still made it economic to re-import that beer back into the UK.  
(f) Information was obtained about the haulier and the truck.
- (2) He had stopped making cash payments going forward.  
(3) He had tried to put a proper cash book in place.  
(4) He had asked Ellermore about cash payments and had introduced a form  
20 of receipt, albeit not in the usual form.

77. He accepted that Mr Ahmed had not followed the FITTED approach but referred us to EN 196 which stated that HMRC would help traders to comply, and this was specifically mentioned by the Upper Tribunal in cases where the trader was not involved in fraud. His key point was that HMRC should have helped Mr Ahmed  
25 more than they did, in accordance with EN 196.

#### *Submissions for HMRC*

78. For HMRC Ms Mannion also suggested that we should follow the pathway set out by the Upper Tribunal in this case and we therefore set out the relevant paragraphs of that decision below:

30 “50. First, the tribunal should be aware of the purpose of the regulatory regime and the business environment within which it operates and ensure that its decision-making takes account of that issue. It is well known that there continues to be a high-risk of excise fraud in the alcohol sector and the regulatory regime established pursuant to WOWGR and the relevant guidance  
35 in EN 196 is designed to minimise such fraud, particularly fraud in the supply chain. In particular, EN 196 highlights the risk of a trader receiving goods that have been smuggled or diverted into the UK, noting that a key feature of the smuggling or diversion of alcohol to the UK market is the ability to source a product where the excise duty has been suspended. Another common fraud is  
40 committed by non-UK suppliers who have made a legitimate delivery of duty



suspended goods to a registered owner in the UK subsequently using the same documentation for another delivery which purports to be sent to the same registered owner but, in reality, is destined to be diverted and “slaughtered” with the result that dutiable goods on which excise duty has not been paid unfairly compete with the legitimate market.

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51. The due diligence condition introduced in November 2014 was clearly designed to address the problem of fraud in the supply chain and is therefore a crucial tool in tackling excise duty fraud. As Ms Mannion submitted, the regulatory regime is structured so that registered owners, who have the privilege of holding excise duty goods in an excise warehouse, are given the responsibility for assessing the risk of fraud in the supply chain. EN 196 gives registered owners detailed guidance as to how they might undertake proper due diligence on their suppliers, which we have set out in some detail at [14] to [17] above.

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52. As the failure to carry out proper due diligence, taking account of this guidance, can result in a high risk of excise duty fraud in the supply chain, it is no surprise that EN 196 clearly states that serious cases of failure can result in the revocation of a registered owner’s approval under WOWGR.

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53. Clearly, however, there will be a spectrum of circumstances which HMRC will have to consider in each case when deciding whether revocation is the appropriate course. The guidance in EN 196 on this issue, which we reproduce at [19] above, takes account of that principle. In particular, the guidance makes it clear that a business whose procedures are found to be inadequate will in appropriate circumstances be given guidance as to how to improve those procedures and given the opportunity to demonstrate that improvements have been made. In our view, that would be a particularly appropriate course in cases where there is no evidence of the registered owner being implicated in any actual fraud and where there is evidence that the registered owner is both able and willing to make the necessary improvements.

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54. Clearly, a decision to revoke registration should not be taken lightly and such a decision must be proportionate in all the circumstances. Section 100 G (5) CEMA provides that an approval may only be revoked where there is “reasonable cause”. Therefore, in order for such a decision not to be flawed it will be need to have been made after considering all the relevant circumstances, including where revocation follows a warning to improve, what steps the registered owner has taken to demonstrate that he is able and willing to comply with the justifiable high standards that are expected of a registered owner who is on the frontline when it comes to tackling excise duty fraud.

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55. Therefore, when a tribunal is considering an appeal against a revocation of a registered owner’s approval on the grounds that the registered owner has failed to comply with the due diligence condition, as Ms Mannion submitted, the starting point for the tribunal must be to consider all the circumstances that have led to that decision and the factors taken into account by HMRC in making that

5 decision. The tribunal should then consider how HMRC have dealt with any representations from the registered owner as to his compliance with the due diligence condition and the steps he has taken in that regard, both in relation to his initial procedures and any improvements made as a result of HMRC's intervention.

10 56. It follows that will then be necessary for the Tribunal to make findings of fact as to the extent to which the due diligence condition has been complied with. Although it is not necessary for a registered owner to follow the guidance in EN 196 slavishly and it will be open to registered owner to demonstrate compliance with the condition by other means, it would be good practice to measure the procedures and steps that the registered owner has taken as regards due diligence against the detailed guidance set out in EN 196. Having made those findings of fact, the tribunal should then consider the extent to which HMRC may not have taken into account other relevant factors or may have  
15 relied on irrelevant matters, because, as the FTT correctly identified in this case, if that is the case it will need to consider whether HMRC's decision should be set aside. The tribunal will also have to consider whether, in all the circumstances, the decision to revoke can be regarded as a proportionate response.

20 57. However, the fact that HMRC may have relied on irrelevant factors, or taken into account relevant factors, does not inevitably mean that the Tribunal should direct that the decision should be reviewed. The tribunal needs to have in mind the observations of the Court of Appeal in CC & C Ltd at [24] above to the effect that the assessment of the attitude of the trader to due diligence issues is primarily a matter for HMRC to judge. It follows that tribunal should be very  
25 slow to interfere with the decision purely on the basis that HMRC should or should not have given different weight to particular factors, unless it is clear that because of the weight given or not given to particular factors the decision to revoke must be regarded in all the circumstances as disproportionate. Consequently, the tribunal should bear in mind, as established in John Dee, as referred to at [25] above, that a direction should not be made to review a  
30 decision in circumstances where, despite flaws in the decision making process, any review decision would inevitably come to the same result."

79. Ms Mannion summarised the position as follows:

35 (1) There had been four seizures prior to Mr Ahmed becoming part of the Closer Working Programme in January 2014.

(2) There had been three further seizures in 2014

40 (3) When the new due diligence procedures came into force in November 2014 Mr Ahmed said that he was aware of them but made no changes to his procedures.

(4) There was no real response to the seizures of goods from Bugatt and Ellermore.

(5) Mr Ahmed did not ask Mr Singh for the normal form of receipt from Ellermore.

(6) His efforts to obtain details of transportation were not sufficient and he had been easily deterred.

5 (7) Mr Ahmed was operating in an area open to fraud and should therefore have asked more questions.

80. Ms Mannion submitted that the key issue was that Mr Ahmed should have focussed on objectively assessing the risks of alcohol duty fraud within the supply chains in which he operated, as required by section 10 of EN 196. He should have  
10 read the notice, thought about it and then acted, but that is not what he did.

81. She said that the letter of 26 May 2015 set this out very clearly. It was not just a request for Mr Ahmed to obtain a copy of his due diligence documents in English. It set out a list of what he needed to do and a specific warning that failure to act might lead to revocation of his registration.

15 82. Ms Mannion said that following this letter he had stopped paying Ellermore in cash, but at the hearing, he still believed that the English translation of Bugatt's documents which he had obtained were the same as the ones which he had obtained at his first meeting with Mr Sarnecki. They were not. He had no understanding of what was meant by the term "holding company", which was listed as Bugatt's predominant  
20 activity, and was still content that it was sufficient that trading in alcohol was listed as one of 245 permitted activities.

83. In summary, Ms Mannion suggested that Mr Ahmed still did not see any reasons for concern or any risks of alcohol duty fraud. She therefore asked that we find that Officer Kendall's decision was reasonable and that in the circumstances no  
25 lesser measure was available. Traders must be able to carry out this risk assessment for themselves and Mr Ahmed was simply unable to do this.

### **Tribunal's Jurisdiction**

84. This is an appeal under s16(4) Finance Act 1994 and it is well established that in such cases the issue for the Tribunal is whether the decision reached by Officer  
30 Kendall was one that could not reasonably have been arrived at because it:

(1) Failed take into account relevant matters, or

(2) Took into account irrelevant matters, or

(3) Was such that no reasonable officer, properly directed, could have arrived at that decision, or

35 (4) That the decision was disproportionate.

85. Importantly it does not matter whether or not the tribunal would have arrived at the same decision.

86. In *Gora*, at [39], the Court of Appeal held that in an appeal under s16(4) FA 1994, the FTT is to conduct its own fact-finding exercise and to reach a conclusion as to the reasonableness of the decision based on the facts as found by it (not simply on the facts as known by, or as they appeared to, the decision maker).

5 87. When a decision is found to be one that could not reasonably have been arrived at then the appeal must be allowed unless the tribunal concludes that even if there had not been errors in the decision making, the result would inevitably have been the same. Inevitability is however a very high hurdle, as explained in *John Dee v C&E Commissioners* [1995] STC 941.

10 88. If the decision is found to be unreasonable then the only course of action open to the tribunal is to direct that HMRC should review the decision.

### **Discussion**

89. The decision letter of 29 October 2015 sets out the reasons for Officer Kendall's decision as follows:

15 (1) I do not believe you have objectively assessed the risks of alcohol duty fraud within the supply chains in which you operate despite Officer Harry and I outlining the risks to you in meetings on 18 February 2015, 18 May 2015 and my letter dated 25 May 2015.

20 (2) You are not keeping the records of a Revenue Trader as per the Revenue Traders (Accounts and Records) Regulations 1992.

90. In addition, in his evidence, Officer Kendall was careful to point out that his decision was based on a basket of factors and not just one or two individual failures.

91. The decision letter also sets out HMRC's concerns re Bugatt, which the letter states were explained to Mr Ahmed during the meeting on 27 August 2015:

25 "(i) Mr Sarnecki's LinkedIn page suggests the company trades in Electrical or Electronic Manufacturing. There is no mention on this page that Bugatt trades in alcohol.

30 (ii) HMRC requested the Polish authorities to verify Bugatt in 2013, as the company was alleged to have traded in electronics with a UK registered company. The Polish authorities replied that Bugatt did not maintain an office in Warsaw and were only able to provide HMRC with a forwarding address in Birmingham for Bugatt. They did not meet Mr Sarnecki but provided HMRC with a home address for him. This address is located near the Polish Border with the Czech Republic.

35 (iii) The UK company that alleged it traded with Bugatt has provided HMRC with similar due diligence documents to what [sic] you have provided, but also letters of intention from Bugatt. These letters state that Bugatt trades in a number of commodities, [but] noticeably alcohol is not listed amongst them and in their letter Bugatt [say they] would like to supply hard drives. The letters  
40 also state that the company is a growing business in the Czech Republic.

(iv) Since the meeting on the 27<sup>th</sup> I have checked Bugatt's European Community sales declarations and they have not declared any sales to your business. I have checked the last quarter of 2014 and the first quarter of this year."

5 92. Mr Ahmed did in fact provide HMRC with the original "intent" letter from Bugatt and Officer Kendall acknowledged that he had not seen it when he had made his decision. In addition, point (iv) is obviously of limited relevance because this information was not available or given to Mr Ahmed at the August meeting. The  
10 LinkedIn page was however something which Mr Ahmed could easily have accessed for himself but did not.

93. We note that the revocation letter still states that Mr Ahmed may make further representations within 30 days or ask for a review by another officer. Given that Mr Ahmed said that he had felt that there was something personal between Officer Kendall and himself, it is somewhat surprising to us that Mr Ahmed did not ask for a  
15 review.

94. However, the fact that even after receiving the information about Bugatt, at the meeting on 27 August 2015, Mr Ahmed still felt it necessary to ask Officer Kendall if he should stop trading with Bugatt demonstrates clearly to us that Mr Ahmed had no understanding as to what was meant by the requirement to "objectively [assess] the  
20 risks of **alcohol duty fraud** within the supply chains in which [he] operate[d]." To the extent that Mr Ahmed did carry out any due diligence he was quite clear in his evidence that he was only concerned with the implications of any due diligence in so far as it might affect his business. As soon as he knew that trading in alcohol was in the list of permitted activities provided in respect of Bugatt he did not have any  
25 interest in making further enquiries of Mr Sarnecki. Most importantly, if we are considering how Mr Ahmed might behave in the future if his registration were to be reinstated, he reiterated this view at a number of points in his evidence at the hearing. He simply did not understand that he was supposed to assess the risks of alcohol duty fraud within the supply chains in which he operated and, quite clearly from his  
30 evidence, and in the context of any future activities he might undertake, he still does not understand that.

95. This lack of understanding was also demonstrated clearly in his response to the seizures. Although he stopped trading with most of the suppliers involved, which demonstrated that he did realise there was a problem with those suppliers, he had  
35 continued to trade with Bugatt and Ellermore, as they had indicated that they were confused about the seizures and were challenging them. In addition, Bugatt had told him that they were consulting a lawyer. However, Mr Ahmed had not lost out, because the goods which were seized were owned by someone else, and therefore there was in his mind no reason to stop trading with them. He therefore accepted Mr  
40 Sarnecki's response and crucially never followed it up. In the case of Ellermore, he had carried on trading with them because he needed stock for the Christmas trade.

96. We note that HMRC did not examine Mr Ahmed's due diligence on Ellermore apart from noting that Mr Ahmed did not have any documentation linking Mr Singh with Ellermore and did not have any identification documentation for Mr Singh. This

was because at the time of the May meeting Mr Ahmed had stopped trading with Ellermore and Officer Kendall did not therefore see any point in pursuing this.

5 97. In her initial submissions, Ms Mannion encouraged us to consider the four bullet points in section 10 of EN 196 as consisting of an overriding first action, being the assessment of the risks, with the second, third and fourth actions flowing from the first. If the first action had not been carried out properly then it was impossible to put in place the controls and safeguards envisaged in points two, three and four. We share this view.

10 98. On the other hand, looking at the more specific areas which Officer Kendall had criticised, Mr Ahmed had made some efforts to comply and was perhaps on an improving trend:

15 (1) He held face to face meetings with Mr Sarnecki and did try to update his due diligence on Bugatt, by obtaining an English translation of the documents, although it appeared that he had not looked at them carefully or compared them to the original documents provided.

(2) He was trying to improve his cash book, as requested by Officer Kendall. It is unclear to us why he ignored the spreadsheet which Officer Kendall had provided, but he was trying to improve.

20 (3) He had, eventually, stopped trading with Ellermore because they would only deal in cash.

(4) He had introduced a receipt system, albeit an unconventional one, into his dealings with Ellermore.

(5) He had obtained details of the haulier and the registration number of the truck carrying his consignment, as requested by Officer Kendall.

25 99. In addition, at no time does it seem that Mr Ahmed was specifically informed that his risk assessment actions were focussed too narrowly, on the risks to his business rather than to the risk of alcohol duty fraud in general. Section 10 of EN 196 is quite clear that support will be given if appropriate. We find that support was given in some areas, but no specific guidance was given as regards his risk assessment approach. Officer Kendall did however point out that due diligence was not a box-ticking exercise and that Mr Ahmed should be looking at his trading relationships in the round.

35 100. In considering whether or not Officer Kendall failed to take into account relevant issues or took into account irrelevant issues we have found that Officer Kendall ignored the initial “intent” email from Bugatt, because he was not aware of it. In addition he did not consider whether or not he should impose conditions on Mr Ahmed’s registration, as a lesser sanction than total revocation, because he was not aware that this was a possibility. At the hearing however he said that he did not think any condition which he could have imposed would have been sufficient to address the underlying failings of Mr Ahmed’s due diligence processes.

101. We therefore find that Officer Kendall did indeed ignore relevant factors. However, we do not think that the absence of an “intent” letter or email was or should have been a key issue in his considerations. In addition, as regards the imposition of a condition, we agree with Officer Kendall’s view as expressed at the hearing that it is  
5 difficult to think of a condition which would adequately have addressed the failings in Mr Ahmed’s due diligence processes.

102. In summary, the issues which gave Officer Kendall cause for concern were
- The cash book: Mr Ahmed had made some progress on this but in spite of Officer Kendall giving him a spreadsheet showing him what was required  
10 he still didn’t produce an acceptable cash book.
  - He continued to pay Ellermore in cash and only stopped because the bank were charging him to withdraw cash, not because of any concerns expressed by HMRC.
  - He had obtained a signature for the receipt of cash by Ellermore, but this  
15 was not on Ellermore headed paper but his own.
  - The due diligence on Bugatt was woefully inadequate and in spite of support by HMRC Mr Ahmed still did not understand the problem with his approach to due diligence.
  - He had asked for details of the transportation but had not followed things up  
20 and it came as something of a surprise to Mr Ahmed to find the information on one of the documents from his bond.
  - The serious issues raised by HMRC as regards Bugatt merely prompted the question from Mr Ahmed as to whether or not he should stop trading, whereas they should have been enough for him to stop trading without any  
25 further encouragement.
  - He still did not know and had no documentation showing who owned the bank account into which he paid the cash for Bugatt.
  - He had described Bugatt’s Warsaw office as being like a serviced office but again had not thought anything of this.
  - He had not researched Mr Sarnecki’s LinkedIn page even though this was  
30 publically available.
  - He had not taken any notes or other records of his meetings with Mr Sarnecki or Mr Singh.

103. A question still remains as to whether HMRC should have offered more support  
35 to Mr Ahmed. Section 10.4 of EN 196 states:

- “If your due diligence procedures are considered insufficient to address fraud risks, we will carefully consider the facts of the case before taking further action, but where appropriate we will seek to support you to strengthen your procedures.
- 5 - In more serious cases, such as failure to consider the risks, undertake due diligence checks or respond to clear indications of fraud, we will apply appropriate and proportionate sanctions.
- For serious non-compliance, such as ignoring warnings or knowingly entering into high risk transactions, we may revoke excise approvals and  
10 licences.”

104. Setting out as it does HMRC’s approach to traders who are not compliant, we believe that this passage from section 10.4 is a sound basis for assessing whether or not Officer Kendall’s decision was reasonable.

15 105. This passage clearly states that “where appropriate” HMRC will seek to support the trader. We have found that HMRC did seek to support Mr Ahmed as regards the cash book, the receipts from Ellermore and the transportation details, but they did not specifically point out the fundamental weakness of his approach to due diligence. They undoubtedly read out the relevant parts of section 10 of EN 196 to Mr Ahmed, and Mr Ahmed said that he had read and understood section 10, but it is obvious from  
20 his evidence at the hearing that he did not understand that he was supposed to consider the risks of alcohol duty fraud rather than the narrow risks to his own business. We do not know if further education on this aspect would have improved things but, on balance, we consider that it would not.

25 106. The point is that Mr Ahmed simply did not grasp the key role which HMRC required him to play in combatting alcohol duty fraud and could not therefore see the wider enquiries he needed to make, and how to draw inferences from any issues those enquiries might produce.

30 107. Section 10.4 then goes on to say that in more serious cases, “such as failure to consider the risks, undertake due diligence checks or respond to clear indications of fraud, we will apply appropriate and proportionate sanctions.” In our view, Mr Ahmed did fail to consider the risks (of alcohol duty fraud) or respond to clear indications of fraud, such as the seizures of his goods or the insistence of Ellermore that they should be paid in cash, and we must therefore ask if Officer Kendall’s decision was proportionate. His view is that although he did not consider the  
35 application of conditions he could not think of a condition which would have addressed the fundamental failings of Mr Ahmed’s approach to due diligence. We agree with him on this. Mr Ahmed simply did not understand what was required of him and, at the hearing, continued to show that he still did not understand what was required.

40 108. On balance therefore we have come to the conclusion that Officer Kendall’s decision falls within the range of reasonable decisions which he could have made.



## **Decision**

109. For the above reasons we decided that Mr Ahmed's appeal should be DISMISSED.

5 110. 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)"  
10 which accompanies and forms part of this decision notice.

**PHILIP GILLETT  
TRIBUNAL JUDGE**

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**RELEASE DATE: 10 April 2018**