Inward Processing Relief – Non-community goods – Commissioners requiring evidence of compliance with the IPR scheme – Refusal to accept inference as evidence – Reasonableness – Appeal dismissed

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| LONDON TRIBUNAL CENTRE<br>PETER GILDER & SONS LTD | Appellant |
| - and -<br>THE COMMISSIONERS OF CUSTOMS AND EXCISE | Respondents |

Tribunal: MR PAUL HEIM CMG (Chairman)

MR P D DAVDA

Sitting in public in London on 14 January 2002

Mr Peter Gilder, director for the Appellant

Mr G Tack of the Solicitor's Office of HM Customs and Excise, for the Respondents



DECISION

1. The Appellant brings this appeal against a decision of the Commissioners notified to it on 20 March 2000 and upheld on review on 11 May 2000, issuing a Post Clearance Demand for duty on two Scania trucks imported by the Appellant under the simplified Inward Processing Relief procedures, representing £6,927.18, which comprises £3,392 in duty, £3,293.44 in VAT and £241.74 in interest.

2. At the hearing of this appeal the Appellant was represented by Mr P Gilder its managing director. The Commissioners were represented by Mr G Tack, of the Solicitors Office of HM Customs and Excise.

3. The parties have agreed the salient facts of this matter. They are that the Appellant between September and December 1998 imported used trucks into the European Community from Malaysia and Indonesia. The Appellant was authorised for inward processing under the simplified procedure. Mr Gilder signed declaration forms under that procedure for the importation of these trucks.

4. It is not in dispute that the inward processing relief transactions in respect of these trucks were audited by officers of HM Customs and Excise and that the Appellant was asked to produce evidence of the disposal of all the imported trucks. Mr Gilder was able to produce the required evidence first for one, then for six, and then for four of the trucks. The Commissioners accepted evidence of exportation for three more. They were not satisfied in respect of two of them, in respect of which a post clearance demand was made. It is this demand which is

the subject of this appea. It relates to two Scania trucks chassis numbers 01207621 and 01207509.

5. Mr Gilder set out the facts of the Appellant's case on which there is no dispute. He said that in 1998 he was invited to go to Indonesia to purchase vehicles which had become available because the economy there had collapsed. It was first intended to sell these vehicles direct to Tanzania. However, there was a problem with the customer in Tanzania so the Appellant decided to keep the goods and asked Ritchie Brothers, well known auctioneers, at the Free Zone in Rotterdam to sell them there. The vehicles were shipped to Rotterdam and the auctioneers were advised that they were from outside the European Community. The Appellant said in its letter with the notice of appeal that they did everything possible to advise the owners and operators of this Free Zone that the goods were not in free circulation within the Community. The Appellant was under the impression that the goods would be exported from the Free Zone in compliance with any export procedures required. The Appellant says that the onus lies on the auctioneers to pay duties if applicable and that they should have advised the Appellant on the procedure of export to a Free Zone of goods originating from outside the Community. In fact these vehicles were originally exported from Sweden to Indonesia and therefore originated from within the Community. The Appellant further said that the vehicles were sent for auction as not in free circulation so that duty should have been paid by the purchaser. They were sold as described. However, the auctioneers forgot to advise two of the purchasers of their obligation to declare the trucks on importation into the United Kingdom.

6. The Appellant referred the Tribunal to an extract from the auctioneers' documentation showing that the two lots in question, there marked 322 and 323, were annotated "not duty free circulation EU". This obviously reduced the value of the vehicles sold. They were sold. The Appellant understood that the auctioneers had collected all duties and the VAT applicable to these two vehicles. Some time later the Commissioners investigated the matter. Their officers were both understanding and helpful. They found evidence for most of the vehicles to confirm that exportation had taken place. However in respect of the two vehicles in question no evidence of exportation had been produced. The Commissioners would not accept that the entry of goods into an auction was evidence that they had been exported outside the Community. The Appellant says that there was no intention on its part to defraud. It was appealing on two issues namely the VAT and the 22% duty. It agreed that the value added tax was due. It disputed however the 22% of duty. The vehicles were produced in Sweden within the European Union. There should be relief for duty on goods manufactured within the European Union, exported from it, and then re-imported. That duty in respect of these two vehicles was £3,392. It had been paid.

7. In answer to questions Mr Gilder said that he did not know what evidence the Commissioners had obtained from the auctioneers.

8. The Commissioners say that the trucks in question were imported for process and re-export under the Inward Processing Relief ("IPR") simplified entry procedure which suspended duty and VAT. These imports were made on the basis of a C101 declaration signed by Mr Gilder. That form is an "application for inward processing relief, simplified entry procedure". It gives the importer's name and address, a description of the process, a description of the processed goods; it states that the time required to process and re-export the goods is 90 days and that the person signing undertakes to comply with the conditions of inward processing relief as listed in Notice 221. Customs Notice 221 explains how to obtain duty relief on goods imported from outside the EU that are processed and

re-exported from the EU using inward processing relief. That relief is to promote exports from the EU and assist EU processors to compete on an equal footing in the world marketing. Duties were relieved on imports of non-EU goods which are processed in the EU and re-exported provided the trade does not harm the essential interests of EU producers of similar goods. It can provide relief from Customs duty, specific Customs duty, anti-dumping duty, countervailing duty but does not relieve excise duties. Import VAT is not due when entered to IPR suspension but is due if not entered into IPR drawback. The notice goes on to state that there must be an intention to re-export goods from the EU and an authorisation to enter goods to IPR will be required. Under the system of relief Customs duties are suspended when the goods are first entered to IPR in the EU. Import VAT is not due unless the goods are released to the EU market. To qualify for relief certain conditions and requirements have to be met.

9. The notice refers the reader to Council Regulation (EEC) No.2913/92 establishing the Community Customs Code and Commission Regulation (EEC) No.2454/93 which lays down provisions for its implementation.

10. In their decision under appeal, their letter of 11 May 2000, the Commissioners informed the Appellant of their position in the following terms:

"The conditions for Inward Processing Relief (IPR) are detailed in Notice 221 at Appendix B and this clearly states that failure to comply with any of these conditions could result in payment of duty. The declaration that you signed on form C101 which accompanied the Entry of goods to IPR states `I undertake to comply with the conditions of Inward Processing relief as listed in Notice 221'. The decision by Mr West and the subsequent assessment is based on his judgment that these conditions have not been met.

Goods are accepted into the IPR regime on the understanding that they will be exported after process and that evidence will be held to confirm that exportation has taken place. It is a requirement that goods exported are presented to Customs at the office of departure with a completed C88(SAD). Goods exported via another member state or put in a free zone also require use of the C88 procedure. In addition all movements of goods not in free circulation (this includes IPR goods under suspension procedures) within the European Community can only be moved under Community Transit procedures. You appear to have failed to meet any of these conditions in respect of vehicles that you have imported under IPR. Mr West has accepted alternative evidence in respect of a number of vehicles despite your failures to comply with regulations. However in respect of the two Scania vehicles chassis numbers 01207621 and 01207509 no evidence of exportation has been produced and the entry of goods in an auction is not evidence that goods have been exported outside the Community. In the absence of any other evidence duty and VAT are due for payment. In the circumstances of this case therefore Mr West's assessment is correct and is confirmed accordingly."

11. The Commissioners say that although it is the Appellant's position that as these vehicles were not in free circulation within the EU, and were described in the auctioneers' sale particulars as not in free circulation, the auctioneers forgot to advise the purchasers of their obligation to declare the trucks to the Commissioners. Even if the Appellant had done everything possible to ensure that all persons knew the duty had not been paid, the vehicles were still liable to charges as no evidence of export had been submitted, and the Appellant had undertaken to comply with the conditions of inward processing relief as listed in Notice 2201 in the C101 form. In order to discharge its obligations under that

procedure the Appellant was obliged to export the imported goods outside the European Union after processing them, or dispose of the goods in an approved manner.

12. The Commissioners say that under article 577 of Commission Regulation 2454/93 the inward processing procedure suspension system was to be discharged when the goods had been declared for another Customs approved treatment or use and all the other conditions for use of the procedure had been complied with. Under Council Regulation 2454/93, article 792, the Appellant was obliged to complete form C88 (Single Administrative Document) (otherwise called SAD), and presented to the Commissioners at the office of export before the goods were shipped. This was required even if the goods were exported to another Member State or put into a free zone. This obligation was made clear in Notice 221 at paragraph 62.

13. Under the simplified IPR procedure the Appellant was also required to keep evidence of export. This was made clear at paragraph 10 of Notice 221. No evidence of export out of the European Union territory was submitted by the Appellant. The Commissioners say that they cannot be expected to rely on the simple statement in the auctioneers' catalogue that the goods were "not duty free circulation EU" to conclude that the duty had been paid.

14. The Commissioners clearly do not accept that by the onward sale the Appellant succeeds in exonerating itself for liability for VAT and duty.

15. In reply to the Appellant's submission that these goods originated from within the European Union, and should not bear value added tax and duty on their return within the European Union the Commissioners refer the Tribunal to article 4(8) of Council Regulation 2913/92 (EEC) which states:

" "Non-community goods" means goods other than those referred to in subparagraph 7. Without prejudice to articles 163 and 164, community goods shall lose their status as such when they are actually removed from the Customs territory of the community".

16. The Commissioners say that the vehicles were exported from their manufacturer in Sweden to Indonesia and has lost their community status. They became "non-community goods". They are required to be dealt with as such under a "Customs-approved treatment …". Article 4 of the Code defined "Customs-approved treatment" as meaning the placing of goods under a Customs procedure.

17. Apart from this last point, neither the facts nor the law are in dispute. The Appellant bought the trucks with others in Indonesia, they having been exported there from within the European Community. As such they became "non-community goods". The Appellant brought the goods back to the Netherlands and had them sold through auctioneers in the free-zone in Rotterdam as not for free circulation in the EU. Apparently the purchasers of two of the trucks were not informed of their obligation to declare the trucks to the Commissioners. The Appellant says it did all it could to ensure that all persons knew that the vehicles were not duty paid. It had not tried to evade any duties at any stage. The goods were brought into this country on the basis of an application for inward processing relief under the simplified entry procedure by the use of a form C101 by the Appellant. This application included an undertaking to comply with the conditions of inward processing relief as listed in Notice 221. That notice, complicated enough in its terms, nevertheless does set out clearly the obligations

under the IPR scheme. The Commissioners considered that the Appellant had not complied with those obligations and that therefore the conditions for obtaining relief were not met. The Commissioners rely for an explanation of the inward processing arrangements on the opinion expressed by Advocate General Slynn in the case of EC Commission v Netherlands (Case 49/82) [1985] ECR 1195 and in particular to the intention to allow persons to import goods from non-member countries without paying import duties where they are to be exported from the community after processing.

18. The Commissioners similarly say that the Appellant was required to keep evidence that goods had been exported. This obligation was not fulfilled. The requirement to give further information on form C&E 825 was not fulfilled.

19. It is worthy of note that Notice 221 does state that authorising an agent to act on ones behalf does not affect the liability to duty.

20. The Commissioners say that without evidence of re-export from the European Union they cannot assume that the conditions for IPR have been satisfied and that there has in fact been such export. Accordingly the Appellant remains liable for duty and VAT.

21. The Commissioners say that accordingly duty is owed to them under the Community Customs Code, that the Appellant is the Customs debtor by virtue of article 204 of that Code, and that accordingly the decision under dispute should be upheld.

22. That decision comes before the Tribunal under section 16(1) of the Finance Act 1994. It follows that what is under appeal is the Commissioners' decision on review, and that the Tribunal can only interfere with it if it is a decision which a reasonable body of commissioners could not have arrived at.

23. The Appellant bases its case on two main arguments. The first is that these goods originated within the European Union and should be treated as such. The legal provisions to which the Commissioners have referred the Tribunal show that community goods lose their status as such when they are actually removed from the Customs territory of the European Union so that the Appellant's argument under this head meets a legislative obstacle which cannot be set aside.

24. The other main argument with which the Appellant advances is that it has done its very best to ensure that the conditions of import relief are met, and that if something has gone wrong it is not the Appellant's fault. The conditions specified in the form signed by Mr Gilder for the Appellant make it clear, as does Notice 221 itself, that the importer undertakes to comply with the conditions of inward processing relief, and that this undertaking is not conditional. The Commissioners have accepted alternative evidence in regard to other vehicles. But they have not accepted as evidence for these two vehicles the simple fact that the auctioneers' in their catalogue stated that the vehicles were not in free circulation. The Appellant states in its letter of 15 May 2000 that it feels strongly that the onus does not lie on it to pay these duties, but the Appellant has accepted the obligation inherent in the use of the IPR scheme, and must in consequence assume the burden of being able to satisfy the Commissioners that the scheme properly applies.

25. The Tribunal sees nothing unreasonable in the way in which the Commissioners treated the matter or in the decision which they took. Accordingly this appeal must be dismissed.

PAUL HEIM CMG

CHAIRMAN

RELEASED:

LON/00/7029-GIL.HEIM