CUSTOMS DUTY - External transit movements - Goods released from warehouse for export under forms T1 - Goods failed to reach office of destination - No evidence as to where irregularity occurred - Whether notification of non-discharge of T1s by Commissioners received by Appellant within time limit - Commission Reg EEC 2454/93 Art 379

CUSTOMS DUTY - Goods released for export failed to reach office of destination - Computation of customs value of goods - Evidence required - Calculation of value on statistical basis - Ccil Reg EEC 2913/92 Arts 30 to 32

LONDON TRIBUNAL CENTRE

SEAPORT FREIGHT SERVICES LTD Appellant

- and -

THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: ANGUS NICOL (Chairman)

ALEX McLOUGHLIN

Sitting in public in London on 21 June 2002

Paul Ellis of Mike Hodge Associates, international customs consultancy, for the Appellant

Miss Philippa Whipple, counsel, instructed by the Solicitor for the Customs and Excise, for the Respondents

DECISION

1. This appeal arises out of seven demands by the Commissioners for customs duty in respect of goods moved from the Appellant's warehouse for the purpose of exporting them to Germany, the Appellant acting as principal to the movement. The German customs authorities were unable to confirm that the goods were presented, nor could any information be obtained as to their whereabouts. The Commissioners therefore considered that the irregularity was deemed, under Article 378 of Commission Regulation (EEC) 2454/93, to have taken place in the United Kingdom, and that therefore the Appellant was liable for payment of duty and VAT in respect of those goods. The seven forms T1 were dated 4 and 11 April and 15, 17, 20 and 30 May 2000. The demands and all the documentation relating to the decision and the appeal are identical in each case (apart from the details of each consignment). The demand letter in respect of the first consignment gave its value as being £51,708.90, the total duty as £6,205.07, and the total VAT as £10,134.94, the total charges due being £16,340.01. The total of all the demand letters was £91,362.52. Two of the demand letters were dated 27 March, and the remaining five 18 May 2001.

2. In October 2001 a letter was sent to the Appellant in respect of each of the demands, which said,

"A recent High Court judgment has clarified the legal status of demands for payment of duty and import VAT in cases where external transit movements are not properly discharged. The essence of the judgment was that:

1. Customs must adhere to the time limit for issue of the notification of non-discharge to the Principal;

2. Customs may not issue demands for import VAT unless satisfied the goods were in the United Kingdom at the time of removal. Customs' view is that this covers duty suspended goods intended to be removed to another member state.

3. Movements initiated under the UK transit procedure will continue to be liable to import VAT.

The charges due ... as stated in our letter dated [date] ... which was sent to your company have therefore been amended to withdraw the demand for import VAT."

(The High Court decision was not named in the letter, but it seems likely that it was *PSL Freight Ltd v Customs and Excise Commissioners*, 31 July 2001.)

The total amount of the demands was thus reduced to £34,761.68. This appeal is, accordingly, not concerned with the matter of import VAT.

3. The notice of appeal gave the following grounds:

"(1) Notification of non-discharge of Community Transit form T1 was not received within the time limit as laid down in Article 379 of Commission Regulation 2454/93.

(2) The use of unsubstantiated statistical values for the exported goods for customs duty purposes."

It is not in dispute that the transit movements were required to be and were covered by T1s nor that none of them was discharged. With regard to the second ground of appeal, it is the Appellant's case, to put it briefly at this stage, that the value of the goods shewn on the sales invoices should have been used in calculating the amount of duty, or one of the methods set out in Article 31 of Council Regulation EEC 2913/92, and that the value should be based upon the value of the goods at the time of their arrival in September 1997, not on their value at the time of their removal from the warehouse. This appeal therefore turns, first, upon the factual issue of when the irregularities were notified to the Appellant.

The law

4. The law relating to Community transit procedures is contained in Council Regulation EEC 2913/92, which is the Community Customs Code ("CCC"), and Commission Regulation EEC 2454/93, the Implementing Regulation ("IPC"). The provisions relevant to the appeal are as follows. All references are to the Regulations as they were in force at the relevant time.

5. Article 215 of CCC provides for the incurring of a customs debt. Article 215.1 provides that a customs debt is incurred in the place in which the events giving rise to the debt occur. Article 215.2 provides that if a customs procedure is not discharged a customs debt is deemed to have arisen and to have been incurred in the place where the goods concerned were when the debt was incurred. Article 378 of IPC provides that when an external Community transit procedure is in being, where a consignment of goods has not been presented at the office of destination, and where the place where the offence or irregularity took place cannot be discovered, the offence or irregularity is deemed to have taken place in the Member State of the office of departure.

6. As to the external Community transit procedure, Article 91 of CCC provides that the procedure allows the movement within the customs territory of the Community of non-Community goods without those goods being liable to import duties while the procedure remains in being. Article 92 provides that that procedure comes to an end and the obligations of the principal are met when the goods and relevant documents are produced at the customs office of destination. It is provided by Article 94 that the principal shall provide a guarantee to ensure payment of any customs debt that might arise. Article 341.1 of IPC provides for all goods moving under the external transit procedure to be the subject of a T1 declaration, of which copy 1 is retained by the customs authorities in the Member State of departure, copy 3, having been stamped by the customs authorities, is retained by the exporter; copy 5 is returned by the office of destination to the office of departure, and copy 8 is returned to the consignor by the office of destination.

7. Article 379 of IPC provides:

"1. Where a consignment has not been presented at the office of destination and the place where the offence or irregularity occurred cannot be established, the office of departure shall notify the principal of this fact as soon as possible and in any case before the end of the 11th month following the date of registration of the Community transit declaration [T1].

2. The notification referred to in paragraph 1 shall indicate, in particular, the time limit by which proof of the regularity of the transit operation or the place where the offence or irregularity was actually committed must be furnished to the office

of departure to the satisfaction of the customs authorities. That time limit shall be three months from the date of notification referred to in paragraph 1. If the said proof has not been produced by the end of that period, the competent Member State shall take steps to recover the duties and other charges involved...."

8. Chapter 3 of CCC contains the rules for determining the customs value of goods. Article 29 provides that the customs value of goods shall be the price actually paid or payable for goods when sold for export, with such adjustments as may be necessary in accordance with Articles 32 and 33. Article 30 deals with the situation where customs value cannot be determined under Article 29, and provides as follows:

"1. Where the customs value cannot be determined under Article 29, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraphs 2 to the first subparagraph under which it can be determined, subject to the proviso that the order of application of subparagraphs (c) and (d) shall be reversed if the declarant so requests: it is only when such value cannot be determined under a particular subparagraph that the provisions of the next subparagraph in a sequence established by virtue of this paragraph can be applied.

2. The customs value as determined under this Article shall be-

(a) the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued;

(b) the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued;

(c) the value based on the unit price at which the imported goods or identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the seller;

(d) the computed value consisting of the sum of

- the cost or value of materials and fabrication or other processing employed in producing the imported goods,

- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community,

- the cost or value of the items referred to in Article 32(1)(e).

3. Any further conditions and rules for the application of paragraph 2 above shall be determined in accordance with the committee procedure.

Article 31

1. Where the customs value of imported goods cannot be determined under Articles 29 or 30, it shall be determined, on the basis of data available in the Community, using reasonable means consistent with the principles and general provisions of-

- the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994,

- Article VII of the General Agreement on Tariffs and Trade of 1994,

- the provisions of this chapter.

2. No customs value shall be determined under paragraph 1 on the basis of-

(a) the selling price in the Community of goods produced in the Community;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with Article 30(2)(d);

(e) prices for export to a country not forming part of the customs territory of the Community;

(f) minimum customs values; or

(g) arbitrary or fictitious values.

Article 32

1. In determining the customs value under Article 29, there shall be added to the price actually paid or payable for the imported goods-

. . .

(e) (i) the cost of transport and insurance of the imported goods, and

(ii) loading and hauling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Community."

By Article 141 of IPC, the interpretative notes set out in Annex 23 of IPC are to be complied with in applying Articles 28 to 36 of CCC. Articles 150 to 155 inclusive of IPC contain further provisions as to the application of Article 30(2)(a) to (d).

The facts

(i) - Liability

9. The following facts are not in dispute. The Appellant is a freight forwarding agent and carries on business at Trelawny House, the Port of Felixstowe, Suffolk IP11 3EB. The Appellant acted as principal in connexion with transit movements of seven consignments of T-shirts and other garments, imported into the United Kingdom from China by Uniexpress Ltd on 4 September 1997. The goods were deposited in a bonded warehouse, where they remained, unsold, until some time

in or about April 2000, when they were sold to a purchaser in Germany. Each of the seven consignments was covered by a form T1, as follows:

T1 number	Date T1 authenticated
501610	4 April 2000
501735	11 April 2000
502226	11 May 2000
502291	15 May 2000
502341	17 May 2000
502397	20 May 2000
502551	30 May 2000

The consignments left the bonded warehouse, but the T1s were never discharged. It appears that there was no evidence that the goods ever reached the office of destination. There was also no evidence as to where the goods had gone astray.

10. The following factual matters are in dispute, and provide the principal issue in this appeal. The Commissioners' case is that the Central Community Transit Office ("CCTO") in Harwich, where copy 1 of the T1 is filed and to which copy 5 should be returned for the principal's liability to be discharged, notified the Appellant that proof had not been received that the seven consignments had arrived at the office of destination. These letters of notification, the Commissioners said, were dated 7 August 2000 (in respect of T1s numbered 501610 and 501735) and 18 September 2000 (in respect of T1s numbered 502226, 502291, 502341, 502397, and 502551). The Commissioners adduced evidence in the form of copies of the letters of notification, and a witness statement made by Mr John Nicholas Howard relating to the normal procedure for the despatch of letters. The duplicate letters shew that they were dated as mentioned above, and that they were addressed to the Appellant. The addresses on the letters dated 7 August 2000, which were handwritten, were to "Trelawny House, The Dock, Felixstowe, Suffolk," no postcode being included. On each of the letters dated 18 September 2000, the address, also handwritten, was "Trelawny House, Port of Felixstowe, Suffolk IP11 8SB", the postcode being incorrect.

11. It was the Appellant's case that none of those letters was ever received, and that the Appellant had no knowledge that the T1s had not been discharged until 28 March 2001, when demands for customs duty and VAT in respect of T1s 501610 and 501735 were received, and 21 May 2001 when similar demands in respect of the other five T1s were received.

12. The Appellant's shipping director, Mr Steven Parks, gave evidence both by way of a witness statement and orally. In his witness statement Mr Parks said that either he or his co-director, Mr John Williams, open, check, and distribute all incoming post every day, putting a date and time stamp on all post received. He said that T form inquiries were received regularly, and were passed on to a senior clerk, whose duty it was to contact the Appellant's client to obtain proof of discharge. Such proof is passed on to Customs, who then discharge the

Appellant's liability. But if the senior clerk cannot obtain proof of discharge he reports back to the directors. The witness statement continued,

"In this particular case neither myself, my fellow-director or any member of staff have any recollection of receiving any communication from Customs and Excise regarding the T Forms in question from the time they were authenticated until the demand letters were received as follows...."

And the dates of authentication and of receipt of the demands were set out.

13. In cross-examination, Mr Parks said that he understood that it was the Appellant's obligation to account for duty if the goods went astray. He said that under the contract between the Appellant and Uniexpress the Appellant was empowered to pass on the amount of duty if it had to account for that duty on the T1s not being returned. He said that the Appellant would not put itself in the position of being liable for the duty without being able to pass it on.

14. Asked specifically about the letters of 7 August and 18 September 2000, Mr Parks agreed that the dates fell well within the eleven-month time limit under Article 379 of IPC. A further letter, dated 5 December 2000 from CCTO, correctly addressed to the Appellant but with the wrong postcode, was headed "Community Transit Irregularity". Mr Parks agreed that the date of that letter was also within the eleven-month time limit, and that in accordance with Article 379 it gave the Appellant the required three months from the date of the letter in which to provide proof, to the Commissioners' satisfaction, either of the regularity of the transit movement or of the place where the irregularity occurred. Mr Parks said that that letter had not been received either. Nor, he said, had any of the similar letters regarding the other consignments been received. These letters were dated 19 December 2000 (501735), 1 February 2001 (502226), 6 January 2001 (502291, 502341, and 502397), and 13 February 2001 (502551).

15. Together with those letters, and bearing the same dates, the Commissioners' evidence included forms headed "Community Transit Guarantee Waivers: Notification of non-Discharge of a Transit Declaration". These were on forms "C1345 Page 2". Each of them was addressed to the Appellant at the same address including the incorrect postcode. The wording on each of the forms was,

"We have not yet received advice that the Community Transit (CT) operation detailed below, and carried out by yourselves as principal under the provisions of Regulations (EEC) Nos. 2913/92 and 2454/93, has been completed satisfactorily. I have therefore to inform you that the relevant Community transit declaration cannot at present be discharged and that you are or may be liable to pay amounts due in respect of this particular transit operation."

Below that, the details of the transit movement were set out in each case, including the T1 number and the fact that the copy 5 T1 had not been returned from the office of destination.

16. Mr Parks said that none of those forms C 1345 had been received. He acknowledged that he was saying that that meant that 21 letters from the Commissioners had not been received by the Appellant. Again, there was no evidence emanating from the Commissioners as to the actual despatch of any of those specific documents. Mr Parks agreed that the Appellant had received other letters, including the demands for payment of duty, from the Commissioners. He said also that the senior clerk who dealt with T1 inquiries, whose name is Michael Collins, had been asked to search for the documents, and had said that none of

those letters had been received. Mr Parks was particularly asked, in cross-examination, whether, having said in his witness statement that neither he nor his fellow director, nor any of the staff "have any recollection" of those letters having been received, they might have been received and that he had forgotten it. His answer was, that he did not admit that they had been received and that he was entirely sure that they had not been received, from his own knowledge and from inquiries made of his fellow director and staff.

(ii) - Customs value of the goods

17. The Commissioners produced a checklist confirming which Article of regulation 2913/92 should be used to calculate the customs value. This shews that the Commissioners considered that the goods could not be valued under either Article 29 or Article 30, but could be valued under Article 31. The Commissioners classified the goods, correctly, from the T1s under commodity code 610910000, and produced a report shewing values by number and weight of "knt or crd T-shirts singlets and vests of cotton" for the year to 28 April 2000 imported from sixty countries including China. This was accompanied by a charges calculation which referred to T-shirts under code 610910000, but did not identify them by the inclusion of the T1 number. The weight of the goods was given as 5,660 Kg, which is the weight recorded in T1 number 501610. The calculation was made by dividing the total weight of imports under this category by the total value of the imports and multiplying the quotient by 5,660:

£117,317,269 ÷ 12,841,424 = £9.1358 x 5,660 = £51,708.90

Duty was calculated at 12 per cent of that figure, in the sum of £6,205.07. A similar calculation was understood to have been made in respect of each T1.

18. There followed correspondence between the Appellant and the Commissioners and also with Uniexpress and IMM Bond Ltd (the warehousekeeper), as the Appellant endeavoured to establish the actual sale price of the goods. In a fax dated 8 May 2001 to the Commissioners, Mr Parks asked how the values of £51,708.90 for the goods covered by T1 number 501610 and £18,271.70 for the goods covered by T1 number 501735 were reached, the sale values having been DM 18,000 and DM 7,200 respectively. He produced invoices issued by Intertrade GmbH addressed to Bemex GmbH of Berlin in respect of 22,500 T-shirts (625 cartons) and 9,000 T-shirts (250 cartons) at that price. There is nothing in the invoices to identify the goods as being those covered by any of the T1s.

19. In a fax dated 24 May 2001 to the Appellant, Uniexpress stated that there had been no invoice for the goods when they were imported in 1997, because they were not sold at that time. Uniexpress had, however, been given a commercial value at that time by the supplier of the goods, as US$55.00 per carton, which value was confirmed by the original customs entry into bond. The fax sets out what Uniexpress considered to be the correct way to value the goods, as being $30,470 for the 554 cartons included under T1 number 502397, and $34,650 for the 630 cartons under T1 number 502341, giving customs duty of £2,574.93 and £2,928.17 respectively. The customs entry acceptance advice does confirm the valuation of $55.00 per carton. However, an approach was made to IMM, who searched their records but were able to say only that the goods covered by the T1s were certainly those which had left their warehouse, but that while they considered that for all intents and purposes they were the same goods as had been taken into bond on 4 September 1997 they could not guarantee that that was the case. In a letter to the Customs in Harwich, dated 24 May 2001, Mr Parks submitted the fax from Uniexpress and its accompanying

documents, and asked if that was sufficient proof of value to allow a recalculation. The CCTO replied, on 4 June 2001, that the evidence fell below the standard which would allow an immediate discharge, and did not appear to apply to the T1s in question.

20. On 11 June 2001 the Appellant wrote to Customs at Ipswich asking for confirmation that the T1s in question covered goods moved from IMM Bond against import entry number 071-005100j 04/09/97. The Commissioners replied on 19 June 2001 that they could offer no assistance and could not discuss the business affairs of one trader with another. The letter added, that the customs value of warehoused goods was established at the time of removal from the warehouse, and might therefore differ from the value at entry into the warehouse.

21. In a letter dated 28 June 2001 the Appellant stated that the goods had been sold by Intertrade GmbH to Bemex GmbH and had been delivered direct from bond, and that the invoices clearly stated the goods in question. A schedule was included, giving the T1 numbers and dates of authentication, the number of cartons under each T1, the number and date of each of Intertrade's sales invoices, the price in Deutschmarks, and the Customs reference number. A recalculation of the values, on the lines of the invoices, was requested. The CCTO replied on 2 July 2001, saying,

"Unfortunately, the copy invoices fall below the standard which would allow us to recalculate the charges due as they are from a German company to another German company and they have not been certified as genuine by the customs authorities there. Furthermore, you have provided no invoices or evidence regarding the acquisition of the goods by Intertrade GmbH.

On 05/06/01, John Williams of your office undertook to provide official confirmation that the goods on the T-forms formed part of the consignment covered by entry no. 071 5100J of 04/09/97 and that the values quoted by Uniexpress Ltd were correct. To date, we have not received this and, therefore, payment should be made in accordance with our letters....

Should appropriate evidence of value be received, a refund of the difference would then be considered."

22. A further fax dated 10 July 2001, from the Appellant to the Commissioners included the following:

"When the goods were originally entered into bond on the 4th September 1997 the value for 4235 cartons was £146,232.33 as shown on entry number 071-005100J - 04/09/1997. A buyer could not be found for nearly three years. During that time the value of the goods dropped considerably and eventually a buyer was found. They were sold at a considerably lower amount. We are still trying to obtain further documentary evidence to prove the actual purchase price."

And the Appellant suggested that the value should be based upon the import entry value, and set out a sample calculation. The Commissioners' reply, also by fax, dated 17 July 2001, curtly said, in answer to a question in the Appellant's fax, that the calculations were based on net weights of the goods as shewn in the T1s, and that it was not acceptable that the Appellant should pay a reduced amount of duty.

23. Shortly after this Mr Paul Ellis, of Mike Hodge Associates, international customs consultancy, who represented the Appellant at the hearing, was instructed by the Appellant. Mr Ellis wrote a long letter, dated 26 July 2001, in which he set out the Appellant's case in some detail, both as to liability and customs value and asked for a review of the Commissioners' decisions. Referring to customs value of the goods, he said,

"...it would appear that Customs do not accept the values shown on the invoices supplied regarding the consignments, and instead have assessed used 'statistical' values when calculating the charges. It is very unclear how these 'statistical' values were arrived at, and we would ask that we be provided with the necessary information. The only reply to our clients requests for verification of these values is contained in a letter dated 2 July, stating that the invoices supplied fall below a 'standard' (unexplained) and that they were from one German company to another.

I fail to see what the nationality of the seller and buyer have to do with the rejection of the invoices, especially as the sale took place before the goods were cleared for free circulation. They would appear to satisfy the requirements of Article 29 of Council Regulation (EEC) 2913/97 and Article 147 of Commission Regulation (EEC) 2454/93, which relate to the value of goods for customs purposes as being the price paid or payable for the goods when sold for export to the customs territory of the Community, including a sale taking place in the customs territory of the Community before entry for free circulation. I would further point out that Customs cannot reject a value on the presumption that it is too low, and under Article 31 of Regulation 2913/92 no customs value shall be determined on the basis of arbitrary or fictitious values. I notice that the letter mentions that the invoices have not been certified as genuine by the German authorities and I would be grateful for copies of the relevant correspondence relating to this verification request."

24. The review letters, one for each consignment, in answer to Mr Ellis's letter, were dated 14 September 2001. Dealing with customs value, that letter said,

"In the absence of any acceptable evidence of the value of the goods charges were based on statistical information. Our letter of 5 December detailed what was considered to be acceptable evidence. It also states: 'In the absence of any statistical value having been provided the Commissioners have taken the decision to use statistical information on goods imported around the same time in order to calculate the value of the goods under Articles 30 and 31 of Council Regulation (EEC) 2913/92.' The charges were calculated on the basis that the goods were classified to Customs Commodity Code 610910 00 00.

The evidence supplied by your client in support of a lower valuation was not considered satisfactory as explained in the letter from the CCTO of 2 July 2001. The invoice provided was not an original and was not certified as a true copy by the relevant authorities. Furthermore, your client had provided no further evidence to confirm that the goods on the T form formed part of the consignment covered by the original import entry submitted as evidence."

The decisions were upheld.

The contentions

25. As to liability, Mr Ellis submitted that the Tribunal should accept that the Appellant had not received any notification that the T1s had not been discharged until after the eleven-month time limit had expired. As to the effect of that, he referred to *PSL Freight v Customs and Excise Commissioners* [2001] EWHC Ch 6 as authority for the proposition that if the notification is not made within the time limited, the customs authorities are not entitled to recover the duty. It was accepted on behalf of the Commissioners that it was obligatory for the Commissioners to notify within the time limit.

26. Mr Ellis contended that the customs value of the consignments should be the sale value according to the sales invoices. He said that copy invoices are used for import purposes, and should therefore be sufficient evidence in this case. It was not clear what was meant by "not of sufficient standard". Alternatively, he contended, the value should be taken as at the time of import of the goods in September 1997. It was pleaded in the statement of case, paragraph 3, that the consignments had been imported on 4 September 1997 and stored until movement from Felixstowe to Berlin. The sales invoices should be used for valuation rather than a statistical basis. Mr Ellis construed Articles 29, 30 and 31 as providing six methods of valuation: first, the transaction value; second, if there were no sale, the value of identical goods; third, if there were no sale, similar goods; fourth, the value at which the goods were sold in the Community; fifth, a computed value; and sixth, a fall-back method. Instead of using nett weight of the goods, the quantity of T-shirts was the proper basis. The duty should be assessed on the basis of the time of arrival of the goods, not the time of removal.

27. Miss Whipple, for the Commissioners, stressed that the onus was upon the Appellant to prove its case. As to the notification, the normal method of notification had been used. There was no history of letters failing to arrive, and all had been correctly addressed. There was no reason why they should not have arrived. The evidence was that they were prepared and taken to the post-room. Mr Parks had used the expression that he did not recall the receipt of those letters: that suggested the chance that they had been received and that he had forgotten. The Appellant had not proved to the required standard that the letters had not been received. The probability that all 21 of those letters had not been received was not a high one.

28. An inquiry had been made as to the whereabouts of the goods. The forms T 20 each shewed that "Neither the consignment nor the relevant document were produced here [at the office of destination] and no information about these can be obtained." The form also recorded that the principal, the Appellant, was unable to give any information as to the whereabouts of the goods. A similar form emanating from the German customs authorities gave similar information.

29. The value of the goods, Miss Whipple contended, should be determined when they come out of bond. They are then in duty suspension under the T1, and would be released on arrival at the office of destination in Germany. But the T1 procedure was not completed, and so one has to go back to the time of their leaving bond. In the documents provided by the Appellant, the goods could not be identified from one to another. In the request from Uniexpress for removal of the goods no value was shewn, and there was nothing to connect the goods referred to in that request with those covered by the T1s. The invoice from

Intertrade to Bemex contained nothing to shew that the goods the subject of the invoice were those with which this appeal is concerned, and neither Intertrade nor Bemex was the owner of the goods at that time. Miss Whipple contended that it was not for the Commissioners to discover what the value of the goods should be, it was for the Appellant to prove the value. The valuation figures used by the Commissioners were extracted from the quarterly statistics from the Tariff Statistics Office.

Conclusions

30. The first issue that we have to consider is whether the Commissioners did, as a matter of fact, notify the Appellant of the irregularity of the movement within the eleven months allowed. The onus is upon the Appellant to prove that they did not receive notification within that time. We therefore ask ourselves, whether we accept the evidence of Mr Parks that none of those 21 letters was received. Looked at without more, it would appear very unlikely that 21 letters all addressed to the same person from the same sender should not arrive, especially when other letters from the same sender did arrive. There are so many letters involved, and all about the same subject, that it is difficult to imagine that the receipt of them could have been forgotten, particularly in view of the sharp reminder that the demands for duty and the later amended demands must have constituted.

31. We consider first the evidence given on behalf of the Commissioners relating to these letters. In the first place, contrary to what Miss Whipple said, the letters were not all correctly addressed. As we have pointed out above (paragraphs 10, 14, and 15) all of them bore an incorrect postcode, and the letters of 7 August 2000 had another error. Whether these errors were enough to cause misdelivery of the letters or any of them will, no doubt, never be known, though it should be noted that the demands, which were received, also included the wrong postcode in the addresses. Secondly, as we have also remarked, there was no evidence at all as to the normal posting procedure having been carried out in respect of any of the 21 letters. Nor was there any evidence that each of them was sent separately. It would have been practicable and economical, for instance, to send those of the same date, or even those very close in date, all at once in the same envelope. If they were so sent, one such envelope going astray would have a greater effect. It is also the case that neither the Appellant nor the Commissioners have made any inquiries of the Post Office as to the fate of the letters. So it appears to us that there was at least some chance that the letters may not have reached their intended destination.

32. The Appellant depends upon the evidence of Mr Parks. Was Mr Parks a witness of truth? If the Appellant did in fact receive the letters, it would appear probable that Mr Parks was not telling the truth upon his oath, and had come to this hearing with the intention of misleading the Tribunal. We do not consider that there is a great deal of significance in the use of the expression that he did not recall the receipt of the letters as an indication that they had been received and forgotten, for the reason given above. Having observed Mr Parks giving evidence, and bearing in mind while he did so exactly what was in issue, our impression was, and we have come to the conclusion, that Mr Parks was telling the truth. What he said was, although, without more, unlikely, not impossible and was capable of belief. As we have outlined above, there was more than the mere non-receipt of the letters. We therefore accept his evidence, that none of the 21 letters reached the Appellant. We are somewhat reinforced in that view by Mr Parks's unchallenged evidence that under the Appellant's contract with Uniexpress the Appellant was entitled to pass on any duty for which it might

become liable as a result of an irregularity in transit. That being so, the consequences of having to pay the duty would not be quite so serious as they might otherwise have been. It was also Mr Parks's unchallenged evidence that he and his fellow director were not unused to dealing with T1 inquiries, including cases in which the T1s were not discharged.

33. We therefore conclude that the Appellant received no notification of the irregularities in respect of any of the seven T1s until after the eleven-month time limit had expired. That is enough to dispose of this appeal. However, we go on to consider the position relating to the customs value of the goods.

34. The evidence which the Appellant produced as a basis for determining the customs value was, in our view, defective. There was no evidential connexion between those goods sold to Germany upon which a sales price had been put and the goods covered by the T1s. It was surprising to us that it had not been possible to obtain from Uniexpress any documentation which established a sale of the goods to the German company with the sale price, and connected the goods sold to the consignments in question. Save that the average value used was not a transaction value, the method was not dissimilar to those in Article 30(2)(b), as relating to similar goods exported at or about the same time as the goods being valued. The method used seems to us to be reasonable. But there seemed to be no reason why the evidence of the Appellant should not be accepted, that the goods had been imported in 1997 and had lain unsold for three years in storage. Whether there was deterioration or not we were not told. However, it seemed likely to us that such goods would hardly appreciate in price in those circumstances. It would, in our view, be unrealistic to value goods at the same level as brand new goods imported at the time when these goods were exported. However the onus was upon the Appellant produce evidence to establish the customs value of the goods, and in our view it failed to do so.

35. For the reasons given above, this appeal is allowed. No application was made at the hearing for costs. If either party should wish to be heard as to costs, or in the event of failure to agree as to costs, each party shall be at liberty to apply to the Tribunal on the matter of costs. Any such application should be made not later than 42 days after the date of release of this decision.

ANGUS NICOL

CHAIRMAN

RELEASED:

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