Neutral Citation: [2022] UKFTT 00443 (TC)

Case Number: TC08653

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video hearing]

Appeal reference: TC/2017/06182

CUSTOMS DUTY – inward processing relief – requirements of a bill of discharge ('BOD') – data mismatches without clearly referenced corrections held to incur a customs debt under Article 204 Community Customs Code – a single error within a BOD held to invalidate the entire BOD – appeal dismissed

Heard on: 23 November 2021
Judgment date: 30 November 2022

Before

TRIBUNAL JUDGE KIM SUKUL
ELIZABETH BRIDGE

Between

THYSSENKRUPP MATERIALS (UK) LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Jeremy White, counsel, instructed by KPMG

For the Respondents: Edward Waldegrave, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

THE HEARING

1. The hearing lasted 6 days. With the consent of the parties, the form of the hearing was video using the Tribunal's Video Hearing Service platform. The documents to which we were referred were contained within the 1,974-page hearing bundle (separated into parts A-G), a 3,551-page authorities bundle and skeleton arguments from both parties.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

INTRODUCTION

3. Thyssenkrupp Materials UK Limited ('TK') appeals against the decision by the Respondents ('HMRC') to issue a C18 Post Clearance Demand Note ('the Demand') dated 26 April 2017 in the amount of £8,889,275.43, comprising of £2,409,009.91 customs duty and £6,480,265.52 Value Added Tax ('VAT') for the period March 2014 to December 2014.

4. The reason given by HMRC for the Demand was because they considered TK to have breached inward processing relief ('IPR') conditions by failing to comply with their bill of discharge ('BOD') requirements. The letter accompanying the Demand makes reference to "failure to comply with an obligation arising in respect of goods liable to import duties, from the use of the customs procedure under which they were placed". It is HMRC's case that TK breached the conditions of its IPR authorisation by failing to lodge accurate BODs which satisfactorily demonstrated the disposal of goods and are therefore liable to pay the customs charges and related VAT in respect of the goods to which the BODs relate. TK contends that a non-fulfilment of an obligation did not arise.

5. Further, HMRC's position is that the defects in the relevant BODs mean that a customs debt arises in respect of all of the imports covered by the BOD and not just those specific imports to which the defects relate. HMRC therefore claim that a single error on a single row of a BOD schedule incurs a customs debt not just in respect of the import duties related to that row but in respect of the import duties related to all of the rows in the relevant BOD. TK contends that any such claim is wrong in law.

6. In accordance with the Tribunal Directions released on 5 December 2018, the Tribunal in the first instance will only be called to decide the issues of principle which are in dispute between the parties. The Tribunal will not be asked to determine quantum: it will not be asked to consider each and every line in each BOD in dispute to determine whether or not that line contained an error. If the decision of the Tribunal in principle means that it becomes necessary in order to determine the appeal for the exact extent and value of the errors to be identified, then the expectation is that the parties would agree the quantum between themselves and only revert to the Tribunal to determine quantum if they are unable to do so.

LEGAL FRAMEWORK

7. We were referred to the following legislation:

EU legislation

1. Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down the provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements

2. Commission Regulation (EEC) No 2228/91 of 26 June 1991 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements

3. Commission Regulation (EEC) No 3709/92 of 21 December 1992 Commission Regulation (EEC) No 2228/91 laying down provisions for the implementation of Council Regulation (EEC) No 1999/85 on inward processing relief arrangements

4. Commission Implementing Regulation No 1001/2013 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff – subheading 7606 12

5. Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ('CCC') including:

- Article 20

- Articles 62 to 66

- Article 78

- Articles 84 to 90

- Articles 114 to 129

- Articles 201 to 214

- Article 221

6. Commission Regulation (EEC) No 2454/93 of 02 July 1993 laying down provisions for the implementation of Council Regulation (EE) No 2913/92 establishing the Community Customs Code ('CCCIP') including:

- Article 199

- Articles 496 to 521

- Articles 541 to 544

- Article 859

7. Commission Implementing Regulation No 1223/2014 of 14 November 2014 amending Regulation (EEC) No 2453/93 as regards the simplified discharge of the inward processing procedure

8. Commission Delegated Regulation (EU) No 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code including:

- Article 174

9. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) including:

- Articles 215 to Article 217

10. Commission Implementing Regulation (EU) 2015/2447 of 24 Nov 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code including:

- Articles 324 to 325

UK legislation

11. Sections 13A, 15A and 16 of Finance Act 1994

12. Sections 1 and 16 of Value Added Tax Act 1994

8. CCCIP Article 521, regarding the requirements of a BOD, states as follows:

> "Article 521
>
> 1. At the latest upon expiry of the period for discharge, irrespective of whether aggregation in accordance with Article 118(2), second subparagraph, of the Code is used or not:
>
> — in the case of inward processing (suspension system) or processing under customs control, the bill of discharge shall be supplied to the supervising office within 30 days;
>
> — in the case of inward processing (drawback system), the claim for repayment or remission of import duties must be lodged with the supervising office within six months.
>
> Where special circumstances so warrant, the customs authorities may extend the period even if it has expired.
>
> 2. The bill or the claim shall contain the following particulars, unless otherwise determined by the supervising office:
>
> (a) reference particulars of the authorisation;
>
> (b) the quantity of each type of import goods in respect of which discharge, repayment or remission is claimed or the import goods entered for the arrangements under the triangular traffic system;
>
> (c) the CN code of the import goods;
>
> (d) the rate of import duties to which the import goods are liable and, where applicable, their customs value;
>
> (e) the particulars of the declarations entering the import goods under the arrangements;
>
> (f) the type and quantity of the compensating or processed products or the goods in unaltered state and the customs-approved treatment or use to which they have been assigned, including particulars of the corresponding declarations, other customs documents or any other document relating to discharge and periods for discharge;
>
> (g) the value of the compensating or processed products if the value scale method is used for the purpose of discharge;
>
> (h) the rate of yield;
>
> (i) the amount of import duties to be paid or to be repaid or remitted and where applicable any compensatory interest to be paid. Where this amount refers to the application of Article 546, it shall be specified;
>
> (j) in the case of processing under customs control, the CN code of the processed products and elements necessary to determine the customs value.
>
> 3. The supervising office may make out the bill of discharge."

9. CCC Article 204, regarding non-fulfillment of an obligation arising from the use of inward processing, states:

> "Article 204
>
> 1. A customs debt on importation shall be incurred through:
>
> (a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods, in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure."

BASIS FOR THE APPEAL

10. TK appealed to the First-tier Tribunal ('FTT') in accordance with section 16 of the Finance Act 1994. Section 16(5) of the 1994 Act provides that the FTT has a full appellate jurisdiction (rather than a supervisory jurisdiction) in relation to such an appeal and section 16(6) states that it is for the appellant to show that the grounds on which any such appeal is brought have been established.

11. TK argues that Article 521 sets out a limited set of required particulars of a BOD and that whilst the customs authority has power to waive certain particulars, they do not have the power to add to the set of required particulars. The set of required particulars prescribes the scope of the obligations of the inward processing procedure that can be non-fulfilled and only the set of required particulars are relevant obligations. TK contends that any error on a BOD outside of the required particulars cannot be a breach of a relevant obligation and an error on a BOD outside of the required particulars cannot be a relevant non-fulfilment.

12. With regard to the expression "in respect of goods liable to import duties" in Article 204(1), TK argues that this indicates that a customs debt is incurred in respect of certain goods charged with certain import duties, payment of which is suspended. Not all incidents of non-fulfilment may incur a customs debt. Only incidents of non-fulfilment material to liability to import duties can incur a customs debt. A BOD report is made for all of the goods imported in a certain period that must be discharged within a certain period for discharge; but a non-fulfilment can only be a relevant non-fulfilment if it is in respect of goods liable to import duties.

13. In addition, TK suggest that the obligations within Article 204(1)(a) must be capable of being met at a particular time, e.g. failure to serve a BOD or serving a BOD schedule with missing lines and that the BOD obligation is to report on the discharge of the procedure in respect of the import goods concerned. The BOD reports on what happened to the goods imported in the relevant accounting period. De minimis errors that do not hide what happened to the import goods should not be characterised as non-fulfilment of obligations. TK contends that is not what Article 204 and Article 521 were designed to catch. Only an error in a BOD schedule cell that is a required particular and also material to the import duties is a non-fulfilment of the traders obligations. Such a non-fulfilment results in the claimed discharge of that line being disallowed supporting a C18 demand for that claimed yet disallowed discharge. Such a non-fulfilment cannot support a demand related to any other properly claimed discharge and certainly such a non-fulfilment cannot support a demand related to other import entries.

14. TK further argues that the individual BODs for each import entry are only aggregated for the purposes of administration and that that an irregularity in the BOD for one import entry does not have liability consequences for the BOD of another separate import entry within the same BOD schedule, as is claimed by HMRC. TK contends that this is clearly illustrated in the application of the drawback system, because that would mean failure to make a repayment claim in respect of one consignment would result in a repayment claim being rejected in respect of all consignments that were potentially subject of that claim and a failure to provide sufficient evidence of disposal in respect of one consignment would result in a repayment claim being rejected in respect of all other consignments subject of the claim, which is nonsensical and not the way that HMRC manage the drawback system. TK further argues that it would be absurd to allege that an error on one Simplified Authorisation BOD or failure to supply a BOD with respect to an import entry is a breach of an obligation in respect of another import entry and that it is equally absurd to allege that the situation is different for a BOD schedule related to an ordinary authorisation.

THE FACTS

15. We heard testimony from Ian Cusack and Jonathan Emmet (who adopted the witness statement of Steven Hampson) for TK and we heard from Kevin Snow, Neil Inker, Mark Attridge and Helen Roberts for HMRC. The witnesses gave evidence regarding the background to the dispute and the approach taken by each party with regard to the operation of the IPR regime.

16. Based on the witness evidence and the documents before us, we find the following facts which we consider to be relevant in this case.

17. TK imports materials such as aluminium to the UK, required for the process and supply of aircraft components to its customers.

18. TK was approved for IPR during the period in question, which allows suspension of customs duty and import VAT pending discharge. If the goods are exported outside the EU, the liabilities are discharged altogether. Where goods are imported without IPR, liabilities are incurred on import in the usual way but are recoverable if the goods are re-exported outside the EU under the drawback system.

19. TK operated using the IPR suspension system for a number of years. The parties agree that TK's authorisation for IPR was subject to conditions, which included that TK must ensure that goods imported under this authorisation are declared using the full (SAD) declaration procedure, they had to submit quarterly BODs (in an Excel spreadsheet format) showing that the goods were entered and that they had been discharged from the relief and that TK was required to maintain records of all IPR transactions and retain associated documents in support of the BODs, to be produced to HMRC on request.

20. In 2014, HMRC raised concerns regarding information on the BODs not matching the information contained in HMRC's Management Support System (‘MSS’), which is based on the input of data by freight agents to the customs entry processing computer (CHIEF). TK accepted that the BODs could be improved to provide better clarity to HMRC.

21. Following lengthy interactions between the parties with regard to supporting information and the development of a new BOD report format, HMRC took the view that the BODs for the period March 2014 to December 2014 were non-compliant and issued their decision letter on 21 April 2017 and C18 Demand on 26 April 2017.

22. Following an internal review conducted by HMRC, TK appealed to the FTT against HMRC’s decision and C18 Demand on 4 August 2017.

23. On 5 December 2018, the Tribunal directed HMRC to provide a document "setting out in sufficient detail for the appellant to be able to respond with witness evidence, all the categories of errors which they consider have been made in the BODs in dispute". The parties jointed produced a 'Scott Schedule' which identifies the categories that remain in dispute.

The authorisation and BOD process

24. We accept the summary provided by HMRC which sets out the basis of TK's IPR authorisation as follows:

> TK has made use of the IPR suspension system for a number of years and has received various authorisations for this purpose from HMRC. The following authorisations are relevant in relation to this litigation:
>
> (1) November 2010 Authorisation: On 26 November 2010 TK was authorised to operate IPR for the period from 1 January 2011 to 24 June 2013.
>
> (2) February 2013 Authorisation: On 4 February 2013 the November 2010 Authorisation was amended so that TK was authorised to operate IPR until 31 December 2013. The authorisation number and all other relevant details remained unchanged.
>
> (3) December 2013 Authorisation: On 20 December 2013 TK was authorised to operate IPR for the period from 1 January 2014 to 31 March 2014. A new authorisation number was issued but all other relevant details remained unchanged.
>
> (4) May 2014 Authorisation: On 21 May 2014 TK was authorised to operate IPR for the period from 1 April 2014 to 31 March 2016. The authorisation number and full "terms and conditions" were set out in the relevant letter.
>
> 18. The conditions to which TK's use of IPR was subject during the first part of the Assessment Period (from 1 March 2014 to 31 March 2014) are to be found in the November 2010 Authorisation. This is because the February 2013 Authorisation and the December 2013 Authorisation (the latter of which covered March 2014) stated that the relevant conditions were unchanged. The conditions to which TK's use of IPR during the later part of the Assessment Period (from 1 April 2014 to 6 December 2014) are to be found in the May 2014 Authorisation.
>
> 19. In relation to the November 2010 Authorisation, the key points to note are as follows:
>
> (1) The "throughput period" was identified as 18 months: see paragraph [11].
>
> (2) TK was obliged to make its records available to the "supervising office" on request: see paragraph [15].
>
> The November 2010 Authorisation stated that the records were required to contain the following details:
>
> [T]he declaration made to enter the [relevant goods] to IPR, transfer declarations and IPR re-export/export entries together with commercial documents such as consignment notes, invoices and bills of lading, to provide supporting evidence of all receipts and disposals made;
>
> the rate of import duties, quantity and customs value of goods when they are entered under this authorisation;
>
> when and where processing… takes place;
>
> CN code and description of each type of [compensating products];
>
> and

(rate of yield), the quantity of goods… used during processing to produce [compensating products].

(3) BODs (referred to as "suspension returns") were required to be provided within 30 days of the end of each relevant throughput period, with goods being aggregated on a quarterly basis: see paragraph [16].

(4) TK was authorised to use "equivalence" so that, in summary, the export of goods in free circulation (or products made from them) could be treated as the re-export of identical goods (or products) imported under IPR: see paragraph [18]. The relevant part of the November 2010 Authorisation stated that TK was required to maintain records "sufficient to determine that the conditions of equivalence are met".

(5) TK was also authorised to use certain simplified procedures, namely (i) "first in first out" (by which goods/compensating products could on export be assumed to be (or to be made from) the goods which had been imported earliest); and (ii) the "inventory system" (by which automatic extensions to the throughput period could be claimed, as long as the intention remained to process and export the goods in question): see paragraph [19].

20. The terms of the May 2014 Authorisation were substantially identical to those of the November 2010 Authorisation, save that the "throughput period" was reduced to six months.

25. We also accept the summary provided by TK which sets out the agreed BOD process as follows:

6. TK has operated IPR for a number of years. In October 2008, TK and HMRC jointly developed (and HMRC approved) a method for TK to produce and submit BODs.

7. The agreed BOD process required TK to:

7.1 Complete simplified IPR return schedules in an agreed Excel format;

7.2 Complete a separate set of schedules for each type of product imported under the IPR procedure;

7.3 Maintain a complete report of all IPR transactions and retain associated documents in support of the simplified returns to be produced to HMRC on request;

7.4 Amend its detailed periodic IPR report to include reference numbers for "certificates of conformity"; and

7.5 Where TK was unable to confirm the end use of IPR exports as Civil Aircraft manufacture or transfer of the liability to another IP trader, it must record details of the export declaration reference and date in its IPR records, so that there is a clear audit trail to the evidence of discharge from the procedure.

8. Between 1 January 2011 and 31 March 2014, TK was authorised to operate IPR, which allowed for a throughput period of 18 months. On 21 May 2014, a new IPR authorisation was issued by HMRC and backdated to 1 April 2014. The new IPR authorisation expired on 31 March 2016 and reduced the throughput period to 6 months. Between 1 April 2014 and 21 May 2014, TK had paid customs duty and VAT on its imported goods, which it subsequently reclaimed from HMRC once its retroactive IPR authorisation had been granted. This was paid to TK on 17 September 2014.

9. As part of the reclaim process, HMRC raised concerns with the adequacy of the information contained in the April 2014 BOD spreadsheet. This was the

> first time since the approval was granted in 2008 that HMRC had suggested that there was any issue with TK's BODs. HMRC's concern appears to have been that the information contained in the BODs did not match the information contained in HMRC's Management Support System ("MSS"), which contained historical data based on information submitted in import and export declarations.
>
> 10. Following an audit by HMRC in November 2015, TK requested support from its new advisors, KPMG LLP ("KPMG"), who undertook an IPR specific compliance audit following which TK agreed to design and implement a new IPR management system within SAP to clarify and improve the IPR tracking, compliance and audit trail. This also involved developing a revised and detailed 'line level' BOD format to support TK's quarterly reporting.
>
> 11. Following various interactions between HMRC, TK and KPMG, on 11 March 2016, HMRC renewed TK's IPR authorisation until March 2019. At various meetings between April 2016 and October 2016, TK presented to HMRC the new SAP IPR solution and associated controls, the new BOD report format and an audit trail to validate the system.

26. It is our finding, based on the evidence before us and the facts in this case, that TK's bill or claim for the relevant period was required, as determined by the supervising office under CCCIP Article 521(2), to contain the particulars, detailed in the 'line level' BOD format, sufficient to reconcile MSS and BOD entries without further investigation, to address HMRC's concern that the information contained in the BODs did not match the information contained in the MSS data.

LEGAL PRINCIPLES - DISCUSSION

Disaggregation

27. Both parties referred to the Court of Justice of the European Union (the 'CJEU') decision in *Döhler Neuenkirchen GmbH v. Hauptzollamt Oldenburg* (Case C-262/10) ('*Döhler*') regarding whether a single error within a BOD invalidates the entire BOD such that all the customs duty and import VAT suspended under the IPR system becomes due. TK contends that such a finding would extend the decision's application well beyond the terms of the judgment and would mean that a single error within their 487,000 to 667,000 data points in question would invalidate the entire BOD. TK made reference to The Federal Finance Court referral of the following question to the CJEU for a preliminary ruling:

> "Is [CCC] Article 204(1)(a) to be interpreted as meaning that it also applies to non-fulfilment of those obligations which are to be fulfilled only after discharge of the relevant customs procedure which has been used, so that where goods imported under an inward processing procedure in the form of a system of suspension have been partly re-exported within the time-limit the failure to fulfil the obligation to supply the BOD to the supervising office within 30 days of the expiry of the time-limit for discharging the procedure gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the BOD if the requirements of Article 859(9) of [the Implementing Regulation] are not fulfilled?"

28. TK contends that *Döhler* is only directly applicable to the facts of the case referred i.e. where there was an absolute failure to supply a BOD (contrary to CCCIP Article 521(1)). TK further contends that failure to include a row for a discharge of import goods on a schedule BOD (missing rows) is probably a relevant non-fulfilment, because a schedule BOD is simply an aggregated form of BODs for various import goods, but there is no authority for the claim that an incorrect row of any kind is a relevant non-fulfilment.

29. We do not agree with TK's contentions. The CJEU in *Döhler*, at [45] states:

> "Therefore, it must be held that the non-fulfilment of an obligation, linked to the benefit of an inward processing procedure in the form of a system of suspension, which must be carried out after the discharge of that customs procedure – in the present case the obligation to submit the bill of discharge within the period of 30 days prescribed in the first indent of the first subparagraph of Article 521(1) of the Implementing Regulation – gives rise, in respect of the entire quantity of the goods covered by the bill of discharge, to a customs debt pursuant to Article 204(1)(a) of the Customs Code, where the conditions set out in Article 859(9) of the Implementing Regulation are not met."

30. The CJEU's conclusion clearly refers to the principle that the non-fulfilment of an obligation gives rise to a customs debt and separately sets out that in the present case the obligation was to submit the BOD within 30 days under Article 521(1). The Court also refers (at [39]) specifically to Article 204 of the Customs Code stating, in paragraph 1, that a customs debt is incurred through 'non-fulfilment of one of the obligations arising … from the use of the customs procedure', therefore applying to all obligations arising from the relevant customs procedure. We therefore do not accept TK's contention that *Döhler* is only applicable where there was an absolute failure to supply a BOD.

31. We also do not accept that a schedule BOD is simply an aggregated form of BODs for various import goods as the CJEU's decision again clearly refers to the non-fulfilment of an obligation giving rise, in respect of the entire quantity of the goods covered by the bill of discharge, to a customs debt. The referral question to the CJEU, set out above, is also framed in terms of "a customs debt in respect of the entire quantity of the imported goods covered by the BOD".

32. With regard to TK's submission that there is no authority for the claim that an incorrect row of any kind is a relevant non-fulfilment, we accept HMRC's submission on the importance of adopting a strict approach and that, since that procedure involves obvious risks to the correct application of the customs legislation, the beneficiaries of that procedure are required to comply strictly with the obligations and the consequences of non-compliance with their obligations must be strictly interpreted (see *Döhler* at [41]).

33. We have considered TK's interpretation of the legislation and their submissions that the disaggregation interpretation is consistent with *Döhler* and is the only interpretation that is consistent with suspension, drawback and simplified authorisation. We do not agree with that interpretation and find that the clear ruling in *Döhler*, that the non-fulfilment of an obligation gives rise, in respect of the entire quantity of the goods covered by the bill of discharge, to a customs debt, applies in this case.

34. TK made observations regarding HMRC's previous treatment of a single error on a single row of a BOD and HMRC's delay in considering evidence of supporting records offered by TK. We do not consider these matters to be relevant to the application of the legal principles in this case.

Effect of error or omission

35. TK contends that, in assessment of an error or omission, there is a moderation stage for consideration of the purpose of the BOD, relevance, proportionality, the statutory de minimis and the Opinion of Advocate General (at [50]) in *Döhler* regarding the final fate of the goods:

> "50. In my view, there is no doubt whatsoever that the failure to submit the bill of discharge within the time-limit leads to the application of Article 204 of the Customs Code. It is through the discharge of the inward processing procedure based on the corresponding bill of discharge that the final fate of the imported goods is established, by way of derogation from the general

> arrangement. By means of the bill of discharge, the importer declares to the customs authorities the destination of the goods imported subject to conditions. The bill of discharge is therefore a central document, as shown also by the detailed wording which must appear on it in accordance with Article 521(2) of the implementing regulation."

36. We do not agree that this explanation, that it is through the discharge of the inward processing procedure based on the corresponding bill of discharge that the final fate of the imported goods is established, provides a moderation stage to the strict application and interpretation required.

37. TK refers to the CJEU remarks that "the Court has laid down the principle that Member States are empowered to adopt appropriate measures to ensure respect for the Community customs legislation and that, in this situation, the measures to be adopted must comply with the principle of proportionality" (Döhler at [55]). We do not find this reference to proportionality to amount to a moderation stage to the strict application and interpretation required, as suggested by TK. These remarks are made in connection with the CJEU's finding that the incurrence of a customs debt is not a penalty. The Court goes on to say:

> "58. The suspensive inward processing procedure implies the granting of a conditional advantage. The lawful imposition of customs duties is suspended for the duration of the processing operation, on condition that the operation is completed lawfully. If, and only if, the operation is completed in due and proper form, no customs duty is payable.
>
> 59. On the other hand, if the conditions are not fulfilled, that conditional advantage cannot be granted. The obligation to pay customs duties in such circumstances is not a penalty, therefore, but is simply the consequence of finding that the conditions required to obtain the advantage derived from the application of the inward processing procedure have not been fulfilled, thereby making the suspension inapplicable and consequently justifying the imposition of customs duties."

38. TK contends that only errors or omissions on a BOD that are material errors or omissions incur a customs debt and that there is no strict liability. TK further contends that a customs debt is not incurred for all errors and omissions on a BOD and that errors must be considered in context and consideration should be given to whether supervision has been prevented, referring to the decision in *Terex Equipment Ltd and others v HMRC* (Joined Cases C-430/08 and C-431/08) at [44 to 47]:

> "44. The objective of the use of the customs code indicating the re-export of goods under the inward processing procedure is to ensure effective monitoring by the customs authorities and to give them the power to identify, solely on the basis of the customs declaration, the status of the goods concerned without the need for subsequent assessments and findings. That objective is particularly important since the goods which are introduced into the customs territory of the Community remain under customs supervision, pursuant to art 37(2) of the Customs Code, only until such time as they are re-exported.
>
> 45. Therefore, the objective of the use of the customs code indicating the re-export of Community goods under the inward processing procedure is to permit the customs authorities to decide at the last minute to carry out a customs check pursuant to art 37(1) of the Customs Code, namely to check whether the re-exported goods in fact correspond to the goods placed under the inward processing procedure.
>
> 46. Consequently, the use of customs code 10 00 in the export declarations at issue in the main proceedings erroneously conferred the status of Community

> goods on the goods concerned and therefore directly affected the ability of the customs authorities to carry out controls pursuant to art 37(1) of the Customs Code.
>
> 47. In these circumstances, the use in the export declarations of customs code 10 00 indicating the export of Community goods instead of code 31 51 used for the re-export of goods under the inward processing procedure must be classified as 'removal' of those goods from customs supervision…"

39. We do not consider these remarks to amount to a moderation stage to the strict application and interpretation required, as suggested by TK. They quite clearly concern the objective of the use of the customs code and, in our view, highlight the need for the strict approach "to ensure effective monitoring by the customs authorities and to give them the power to identify, solely on the basis of the customs declaration, the status of the goods concerned without the need for subsequent assessments and findings". We consider this finding to be in accordance with Article 86 CCC which states that authorisation shall be granted only where the customs authorities can supervise and monitor the procedure without having to introduce administrative arrangements disproportionate to the economic needs involved.

40. Whilst we accept that supervision is relevant, with regard to the objective to ensure effective monitoring by the customs authorities, we do not agree that only errors or omissions that prevent supervision incur a customs debt.

41. We also disagree with TK's contention that only errors or omissions on a BOD that are material incur a customs debt. We take a similar view to that taken in *Rolls Royce Plc v. HMRC* [2019] UKFTT 420 (TC) ('*Rolls Royce*") as set out at [48] below, that even a minor error, such as the use of an incorrect code number, that might sound like a rather trivial offence, can still incur a customs debt.

42. Further, we are not persuaded by TK's argument that the expression "in respect of goods liable to import duties" in Article 204(1), indicates only incidents of non-fulfilment material to liability to import duties can incur a customs debt, when seen in the context of the provision: "A customs debt on importation shall be incurred through (a) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed".

43. We also do not consider the statutory de minimis limit to indicate a moderation stage. It simply sets out, in Article 868 CCCIP that "Member States need not enter in the accounts amounts of duty of less than ECU 10. There shall be no post-clearance recovery of import duties or export duties where the amount per recovery action is less than ECU 10".

Nature of error or omission

44. TK contends that only errors in required particulars can incur a customs debt by virtue of CCCIP 521(2), which states that: "The bill or the claim shall contain the following particulars, unless otherwise determined by the supervising office…". TK argues that this means that the supervising office can simplify the BOD and require a reduced set of particulars but it does not give the power to ask for something not listed within the provision. Therefore, errors or omissions in the conduct of the Inward Processing procedure that are not on a BOD cannot be demanded as errors or omissions on a BOD. Other errors not on a BOD are therefore not material.

45. We are not persuaded by TK's argument on this point. We consider the wording "unless otherwise determined by the supervising office" to confer a wide authority to determine what the bill or claim shall contain to ensure effective monitoring.

Corrections

46. We accept TK's contentions that failure to make a post clearance amendment ('PCA') for all corrections is not an omission on a BOD and that making a PCA is not a requirement in law, in the authorisation or in the agreed BOD format.

47. However, the point made by HMRC regarding corrections is that where an entry on the CHIEF system (which determined the information on MSS) was incorrect, and that entry on the BOD is correct, TK should have made a PCA to correct the incorrect entry on the CHIEF system, and should have referred to the PCA in the relevant 2014 BOD, so that the MSS data (which would not have been updated by the PCA) could be reconciled to the BOD. Although we accept that PCAs are not a requirement, we agree with HMRC that, without these steps having been taken, the MSS and BOD data could not be reconciled, and therefore falls to be regarded as inaccurate and/or incomplete.

48. We consider this view to be consistent with the decision in *Rolls Royce* which made clear the requirement for BODs to be accurate and complete. The decision also makes reference, at [96], to the importance of the customs authorities being able to track goods under the IPR regime:

> "96. In the case of generators 604 and 687 they had both been exported under the CPC Code 1000, which is the code for a normal export from free circulation. This might sound like a rather trivial offence but it was clearly not an error and was done deliberately by the freight forwarding agent. Importantly, the use of this code means that the customs authorities are unable to track goods which have been imported under the IPR regime. They are simply unable to reconcile what has been imported under IPR with what has been exported following an IPR procedure.
>
> 97. In the case of Generator 510 HMRC records did not show that it had left the UK in the first place, even though when it had been exported from France it had done so under the correct CPC Code. Again therefore HMRC were unable to track its movements.
>
> 98. I therefore find that the BODs were indeed inaccurate and incomplete in respect of all three generators."

49. We therefore find that, in the absence of a PCA, the mismatch MSS and BOD data amounts to a submission that is inaccurate and incomplete, which fails to meet the tracking and audit trail requirements of the process and fails to give customs authorities the power to identify, solely on the basis of the customs declaration, the status of the goods concerned without the need for subsequent assessments and findings (see *Terex* at [44]).

Disputed Scott Schedule categories

50. We considered the following Scott Schedule ('SS') entries - 1.3, 1.4, 1.8, 1.9, 1.11, 1.12, 1.13, 1.14, 2.6, 2.7, 2.8, 2.9, 3.3, 3.5, 3.6, 4.3, 5.3, 5.4, 5.8, 5.9, 5.10, 5.12, 5.13, 6.2, 8.1, 8.2, 9.1, 10.1, 11.2 11.3, where the parties set out the various categories in dispute. On the basis of the conclusions we have reached above, we find as follows in respect of each category:

Data discrepancies

51. Where a commodity code entered on the CHIEF system (which determined the information on MSS) was incorrect, and the commodity code on the BOD is correct, in the absence of a PCA, the MSS and BOD data could not be reconciled, we find the BOD falls to be regarded as inaccurate and/or incomplete. [SS/1.3, 3.3, 3.5, and 3.6].

52. Where TK did make a PCA by which it informed HMRC that the incorrect commodity code had been entered on CHIEF but the PCA did not itself update the MSS data, in the absence

of a reference on the BOD to the PCA, so that reconciliation with the MSS data was possible, we find that the BOD falls to be regarded as inaccurate and/or incomplete. [SS/1.4].

53. Where there is a mismatch between the weight or customs values recorded on MSS and the weight shown on the BOD, and the data which appears on the BOD is correct but an error was made when the relevant information was entered on CHIEF, and no PCA was made so that reconciliation with the MSS data was possible, we find that the BOD falls to be regarded as inaccurate and/or incomplete, except for any amounts that fall below the de minimis limit. [SS/1.8, 3.3, 3.5, 3.6, 5.3, 5.8, 5.9, 5.10, 5.12, 5.13, 7.7, 7.8, 7.10, 7.11 and 7.12].

54. Where an entry on MSS was cancelled and a PCA made but the cancellation was not made clear on the BOD so that reconciliation with the MSS data was possible, we find that the BOD falls to be regarded as inaccurate and/or incomplete. [SS/1.9].

55. Where there are mismatches between the commodity codes on MSS and in the BOD and the data which appears on the BOD is correct but no PCAs were made so that reconciliation with the MSS data was possible, we find that the BOD falls to be regarded as inaccurate and/or incomplete. [SS/1.11, 1.12,1.14, 2.6, 2.8, and 2.9].

56. Where there is a mismatch between the commodity code on MSS and in the BOD and the data which appears on the BOD is correct, and a PCA was made but no reference to it was included with the BOD so that reconciliation with the MSS data was possible, we find that the BOD falls to be regarded as inaccurate and/or incomplete. [SS/1.13, 2.7].

57. Where there are mismatches between the EPU number (being a number identifying the relevant port of entry) recorded on MSS for particular consignments and the corresponding EPU information on the BOD, and the EPU information on the BOD was incorrect, and in the absence of a PCA the MSS and BOD data could not be reconciled, we find the BOD falls to be regarded as inaccurate and/or incomplete. We do not accept TK's argument that the EPU was not expressly stated to be a required particular in the law based on our finding at [27] above that reconciliation of MSS and BOD data, without further investigation, was a BOD requirement. We also do not accept, on the basis of our findings on the requirement for a strict interpretation of the law, that the inaccuracy should be disregarded because an incorrect EPU is not material to liability to duty, that without an EPU number there are sufficient links to the supporting import records, that entry numbers unique within TK's BODs, that EPU numbers are only necessary for uniqueness of entry number across all traders over all time, that supervision was not prevented, that the error does not relate to any relevant amount of suspended duty, that the error did not prevent the final destination of any quantity of import goods being reported, that the error did not prevent the supervision of any relevant quantity of import goods, that the error was simply identified by IDEA software, that the error was not a material error or that there was no incurrence of a customs debt. [SS/1.15-1.17, 4.3].

Inaccurate entries

58. Where an incorrect additional import weight was entered onto SAP through to BOD because of inadvertent manual override, we find that the BOD falls to be regarded as inaccurate and/or incomplete. We do not accept, on the basis of our findings on the requirement for a strict interpretation of the law, that the inaccuracy should be disregarded because overstating the quantity of import goods that need to be disposed of has no effect on reporting on the destination of the actual quantity of import goods, that reporting the destination of the actual quantity of import goods was not affected, that no suspended duty was involved, that there is no duty charged on a fictitious quantity, that the error does not relate to any relevant amount of suspended duty, that the error did not prevent the final destination of any quantity of import goods being reported, that the error did not prevent the supervision of any relevant quantity of

import goods, that the error was simply identified by IDEA software, that the error was not a material error or that there was no incurrence of a customs debt. [SS/5.4].

59. Where there are discrepancies relating to stock imported in a previous quarter having contributed to the export quantities recorded, and the BOD does not clearly indicate that earlier imports contributed to the relevant disposals, we find that the BOD falls to be regarded as inaccurate and/or incomplete. [SS/6.2].

60. Where there is an incorrect statutory reference, labels or export entry dates within the BOD, or the BOD does not make clear which specific entries an extension is claimed against, we find that the BOD falls to be regarded as inaccurate and/or incomplete. [SS/8.1, 8.2, 9.1, 10.1, 11.2 11.3].

Failure to report the disposal of a quantity of import goods

61. Referred to as Scott Schedule entry 5.8, described by TK as an inadvertent but material error that incurs a customs duty of £578.63. On the basis of our finding at [37] above, we consider this gives rise to a customs debt in respect of the entire quantity of the goods covered by the BOD.

CONCLUSION

62. We are not satisfied that TK has discharged its burden to show that the grounds on which their appeal is brought have been established.

63. It is our finding on the basis of the evidence before us that TK's BODs were required, as determined by the supervising office, to contain accurate particulars that reconciled MSS and BOD data without the need for further investigation and it is our conclusion, on the basis of the strict approach required as clearly set out in *Döhler*, that an error in the import or disposal lines of one import entry gives rise, in respect of the entire quantity of the goods covered by the BOD, to a customs debt.

64. For the reasons set out above, we dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

KIM SUKUL
TRIBUNAL JUDGE

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