

Olympia Decision is Further Blow to Customs

Please contact us if you have any questions regarding this Newsletter



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Overleaf:

The Decision Cont..

No win no fee

Olympia case weaker, yet same outcome as Livewire

The full Tribunal decision for Olympia Technology Limited can be found at <http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j3753/20570.doc>

The facts of the case in brief:

- £1.6 million repayment claim.
- Purchases were of mobile phones from other UK wholesalers in periods 04/06 and 05/06.
- 15 tax loss chains involved 10 suppliers and 8 customers.
- Three contra trader chains involved one supplier, who was also the importer, and one customer.
- A number of suppliers and customers were either a newly formed company, had recently changed trade classification or had only just started trading with Olympia.
- 100% IMEI numbers were retained and all stock insured.
- One of the Olympia customers was found to be fraudulent in the case of Calltell.
- Credit reports were obtained for all suppliers and customers, but generally showed poor ratings or high risk.
- Redhill checks were undertaken, but sometimes verification was received after shipment (but before release).
- Mark-ups were between 2.96% and 6.97%, usually in £1 or 50p increases.

We don't propose to comment on individual allegations by Customs, as they are now standard in most cases, but will comment on the Tribunal Chairman's thoughts. Suffice to say that Customs made a number of allegations, and listed a number of general indicators they thought evidenced fraud, but failed to provide a shred of evidence to back them up.

The Tribunal Decision

- There is a legitimate grey market in mobile phones and you cannot assume that, because the EU specification phones were imported, this is an indicator of fraud. Adding "*we must start with the actual transaction and assume that it is a valid transaction unless there is evidence to the contrary*".
- Had Customs told traders that 95% of the industry was fraudulent before these periods, it would be a different matter, but Olympia did not possess this information at the time.



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Next Edition:

Further Decisions

Other Relevant Industry News

- The following indicators cannot be an indication that a company knew about fraud: Back to back same day deals, stock being held to order until payment is received, the same quantity of stock moving up the chain.
- The Tribunal failed to understand Customs argument regarding the importer/contra trader. Customs claimed that the importer only entered into these contra transactions to cover up the fraud in its other supply chains. The Tribunal failed to see how this could be, as Customs had no evidence that the importer even knew of the fraud in the other chains.
- Credit ratings were unimportant and, even when credit ratings were very good, fraud still existed.

The Tribunal Chairman's general opinion

"Weighing up all these factors, we consider that Mr Habib was, on account of his inexperience, naïve and gullible. Had we decided that the test of "ought to have known" should be based on an ordinarily competent director we might well have decided that such a person ought at least to have made further enquiries, but we have based the test on the experience of the particular director, Mr Habib. He was the ideal person for a "puppet master" to involve in fraud without his knowing. On balance, we believe that a person with his experience would not have known that there was fraud in the deal chains. Accordingly we conclude that it cannot be said that he ought to have known about the fraud in the deal chains".

What CTM has taken from this decision?

This is, indeed, a very important victory, especially as the Tribunal was suspicious, or doubted, certain evidence. For example, it doubted that some of the inspections could have been completed before the goods were shipped.

The Tribunal seemed adamant that there had to be real evidence linking Olympia to a fraudster and, yet again, Customs failed to provide any meaningful evidence.

We are still keen to see the Tribunals opinion where companies have failed to record IMEI numbers or traded in products other than mobile phones. We understand that 2 or 3 more decisions are likely to be released in March.

Currently, Calltell and Livewire are heading to the High Court and we expect Customs to appeal the Olympia decision.

Further negative decisions

Even after the Olympia decision, Customs have made numerous negative decisions, quoting the same old reasons, with one such trader having impeccable deal and due diligence procedures. It is clear that Customs will make negative decisions in almost every case; partly because they know companies cannot fund the appeals. It must also be noted that if you win in tribunal, and Customs appeal the decision, you will not get paid and will have to fund the High Court costs. Regarding our no win no fee option; if you are looking to a) secure funding before a decision or b) have current appeals funded, please contact us for further information. Investors wishing to assist traders are also welcome to contact us.