

Livewire Decision – A Significant Blow to Customs

Please contact us if you have any questions regarding this Newsletter



Liban Ahmed
Director

London Office
The 401 Centre
302 Regent Street
London
W1B 3HH
Tel: 0870 405 7695

liban.ahmed
@ctmltd.com

Liban worked for HM Revenue & Customs for 20 years, predominately in VAT investigations, before being recruited as an indirect tax advisor at **KPMG**. He formed CTM in 2005 and now manages all Tribunal appeals.

Overleaf:

The Decision
No win no fee

A long way to go, but hope at last

The Tribunal decision in the case of Livewire is testimony to a well prepared case. These types of cases are not very complicated and the legal argument will be similar for each appeal. However, case preparation is everything. It was particularly satisfying to see a firm employing ex Customs VAT investigators (like CTM) succeed where solicitors have failed. Two of CTM clients have since called the Barrister concerned and asked a very valid question. Do traders need solicitors in a ‘means of knowledge’ appeal? The answer was, of course, no. Vantis is simply a firm of accountants that, like CTM, employ only the best Customs VAT fraud investigators. There are elements in the Livewire case that show Ex Customs investigators go further than solicitors do in preparing their case and in gathering all available evidence.

The facts of the case in brief:

- £2.1 million repayment claim.
- All purchases were of mobile phones from other UK wholesalers, over a 3-day period.
- No fraud was detected in any supply chain, but the two importers had also exported in other supply chains where there was fraud.
- Livewire did not buy direct from importers.

Customs alleged the following were indications of fraud

1. Back to back deals, with all transactions done and dusted in one day and no stock held.
2. EU specification phones were purchased in the UK.
3. General knowledge of fraud in the industry should have alerted them to fraud in their own supply chain.
4. Poor due diligence was undertaken, as one supplier was not visited until after the transactions in question and credit reference checks on their supplier showed only a small credit rating.
5. Livewire must have known of the fraud in the other unconnected supply chains.
6. They used a First Curacao International Bank (“FCIB”) account and the owners have now been arrested for fraud.
7. Customers paid Livewire before the supplier was paid.
8. Phones were shipped to a freight forwarder in a different country to the customer.

We have summarised the Tribunal’s decision, point by point overleaf.



Matthew Blake LLB
Senior Consultant

Nottingham Office

15 Wheeler Gate
Lace Market
Nottingham
NG1 2NA
0870 405 7695

matthew.blake
@ctmltd.com

Matthew worked for HM Revenue & Customs for 6 years as a fraud and money laundering Investigator and has been employed as a due diligence and VAT specialist for CTM since 2005. He now focuses on advising companies on appeals to Tribunal.

Next Edition:

Further Decisions

Other Relevant Industry News

The Tribunal decision

1. Buying and selling on the same day and not holding stock is not unusual, or an indicator of fraud.
2. There is a market in the UK for EU specification phones and Customs have misunderstood the meaning of Central European Specification. The Tribunal thought it was odd that phones with 2-pin chargers had been imported into the UK, but did not think it meant that Livewire had knowledge of the fraud. The Tribunal added that it was clear that there was a significant grey market in mobile phones.
3. The fact that a company knows of fraud in the industry does not mean they should have known of fraud in their own supply chains.
4. The Tribunal believed that the due diligence was designed more for Customs benefit than to avoid fraud, and the director may have only relied on his hunch as a businessman. They found that this was not an indication that he knew about fraud and pointed out that even if he had performed perfect due diligence, it could not have identified the fraud.
5. Customs actually did not provide any evidence at all that showed Livewire knew about the fraud, or were connected in any way to the companies in the other supply chains.
6. The fact that owners of FCIB had been arrested for fraud is irrelevant as it occurred after the deals. Customs also showed that the EU customers were being investigated for fraud, but the Tribunal found this to be prejudicial and irrelevant as the trader couldn't possibly have known.
7. The Tribunal believed that it was normal business practice to obtain credit from the customer in order to pay the supplier.
8. Shipping to your customers desired freight forwarder in another country was seen by the Tribunal as a little odd, but not an indicator of fraud.

This is only a very brief outline and we advise you to read the full decision, via this link: <http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j3698/20533.doc>

In essence, Customs need to either prove a direct link to the defaulting trader (and, even then, they need to evidence that you had knowledge of the fraud), or they have to show indicators that should have alerted you to the fact that fraud existed. All of the standard indicators of fraud that Customs give for denying input tax have been dismissed by this Tribunal.

However, it must be remembered that this is one Tribunal Chairman's decision and subsequent Chairmen could disagree. We do not see widespread payment of traders' money. Customs will cling onto every penny until they are forced to repay and, since the Livewire decision, have continued to issue denial letters, even for contra traders. This may mean an appeal of the Livewire decision to the High Court, delaying their payment for up to another year.

No win no fee

CTM can now offer finance to fund appeals for those who are struggling with costs. Strong cases could have a full appeal paid for, including experienced MTIC barristers, without losing any of the VAT. You would simply give up penalties (repayment supplement) and interest.

Others who have yet to receive a decision could be given guarantees that their case will have a fully funded appeal and, again, their VAT left untouched if they receive a negative decision. We will also pay administrator/liquidator costs for those that require protection from creditors, such as HMRC. On top of this, for those who are sick of waiting for a decision, we can fund a Judicial Review and Tribunal appeal at no cost to you.