

## ***Livewire High Court Judgement A Triumph For Common Sense***

Please contact us if you have any questions regarding this Newsletter



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### **Overleaf:**

Mobilx High Court  
Decision

No win no fees

### **The judgement in broad terms**

The judgment was a very sensible approach and will have a dramatic affect on traders who are in the appeal process, or those still awaiting a decision.

The main points of the judgement are:

1. If it was not possible for a trader to identify fraud in its supply chain, no matter what due diligence it did, it should be repaid, even if its due diligence was limited.
2. A contra trader (i.e. the importer in a 'clean' supply chain and the exporter in a 'dirty' supply chain) will be viewed as a fraudster if it can be shown that it deliberately created the clean supply chains to hide the fraud in the dirty supply chains.
3. If you are the exporter in a clean supply chain, Customs will need to have good evidence that you knew that the contra trader (the importer in your supply chain) was hiding the fraud in the dirty supply chain. This is extremely difficult to prove and in this case they must prove you are a co-conspirator.
4. If you are an exporter in a dirty supply chain, Customs will have to demonstrate what you could have done to identify that fraud existed in your supply chains. Again, if there was no way you could identify the fraud, no matter what you did, you should be repaid.
5. Factors such as having no insurance, back to back trading and the other standard indicators that Customs state are indicators of fraud, are now not sufficient indicators that fraud exists in a supply chain. Each factor needs to be looked at individually and judged on its own merits. Customs can no longer simply state they have lots of small indicators and turn them into one large indicator.

In essence it was a decision that related to all companies and not simply traders in electronics. It must apply to the real world and did not put an unreasonable obligation on traders to conduct unreasonable checks, as Customs would want.

### **What does it mean to you?**

As so many companies are pulling out of appeals, Customs will not repay any trader until it is sure that it has the ability to fund an appeal. From Customs point of view; why pay a trader back if they can't go through with the appeal. This means that every company will have to, at least, serve their evidence in order to show Customs they mean business. If the evidence is poorly prepared or rushed it may send the wrong signal and, so, detailed case preparation is essential.

Customs solicitors have very recently informed us that they are conducting a review of all cases after the Livewire decision. They added that the Policy

## Next Edition:

Tribunal decisions in reaction to the Livewire Judgement.

review will be concluded within a week or two and it will affect current appeals, or part of some appeals. The solicitor refused to elaborate, but again, we believe this will only affect cases that are well progressed, where evidence has been served by both parties.

### **Which traders will win?**

We are happy to talk about this on a case by case basis, but there is no rule of thumb governing all appeals. However, we can give you a good idea of your chances of success if you provide us with full details of the case against you. We are also happy to review Statements of Case, and the main Customs witness statement, and make observations.

Every case is different, but there has to come a time when a large number of traders are repaid because Customs cannot prove their case. This will not be next week, or even next month, but, without doubt, many traders will not need to go to Tribunal to fight their case.

The Livewire decision has not been appealed by Customs and stands unchallenged.

### **Mobilx High Court Decision**

Mobilx tried to overturn a Tribunal decision in the High Court and failed. This is a unique case where they were told that, since 2004, every single supply chain customs could trace (42 in total) involved tax losses. They continued to purchase from the same suppliers, purchased boxes with Customs stamps on and generally ignored Customs' advice. Based on what we read, we agree with the High Court decision and this has absolutely no bearing on the Livewire decision.

There will be many more companies that lose in Tribunal and appeal to the High Court and there will be many more losses for traders. Nothing will change the success of Livewire and its impact on innocent traders.

### **What should you do now?**

If all evidence has been served, you should challenge Customs on the legal issues regarding Livewire and seek repayment. It's a little more involved than it sounds, but in essence that's what you need to do, through your advisors.

If you have had a decision and are in limbo, you should push matters forward and ensure Customs have as little time as possible to prepare and serve their evidence.

If you have not had a decision yet, and there are many companies in this position, we do not think there is much you can do. Our advice is to sit tight, expect a decision and make sure you are prepared when it comes.

As confidence grows with investors, more funding has become available for 'no win no fee' arrangements, particularly in contra trading cases, but also where fraud exists in the supply chain.

We are happy to discuss these points or any other queries you may have.