



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Applicant: Awards Drinks Limited (in liquidation)	Tribunal Ref: UT/2019/0040
Respondents: The Commissioners for Her Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

Oral hearing: 30 May 2019

JUDGE JONATHAN RICHARDS

1. This was an oral hearing of the Applicant's application for permission to appeal against a decision (the "Decision") of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 23 October 2018 (reference number TC/2014/05870 and TC/2015/00425).
2. At the hearing, Mr Joseph Howard of counsel represented the Applicant (as he did before the FTT). Mr Howard Watkinson of counsel, who had not appeared before the FTT, represented HMRC. I am grateful to both counsel for their clear submissions and patient responses to my questions.

Decision

3. I grant permission to appeal on the following grounds:

(1) Ground 1 – The FTT erred in law in failing to conclude, in the light of the Applicant's unchallenged documentary evidence of transactions within bonded warehouses in France, that the Applicant could not have had sufficient possession and/or control of the goods to make taxable supplies of those goods in the UK. In particular the FTT should have concluded, having regard to the Applicant's unchallenged documentary evidence, that since the Applicant divested itself of possession and/or control of the goods while they were located outside the UK, to

the extent those goods came into the UK, taxable supplies of them were effected by persons other than the Applicant.

(2) Ground 2 – The FTT erred in law in failing to give sufficient reasons for its decision.

4. The Applicant had advanced three grounds of appeal in its application to this Tribunal. The third of those grounds was drafted in quite lengthy terms and, as Mr Howard accepted in his oral submissions, overlapped significantly with other grounds. In giving the Applicant permission to appeal on the two grounds I have identified, I am not seeking to preclude it from making any of the arguments it set out in its application for permission. Rather, I have simply concluded that all of the points that the Applicant wishes to make are covered by the two grounds that I have set out at [3] above.

5. Since I am granting the Applicant permission to appeal on the grounds that it requests, I will not give full reasons as the merits or otherwise of those grounds will now need to be considered by the Upper Tribunal. I will say only that, contrary to what I had thought when refusing permission to appeal on the papers, Mr Howard has satisfied me that it is arguable that there is a “missing step” in the FTT’s reasoning. If, as the Applicant alleges, it effected in-bond transactions that caused it to lose possession and control of the goods while they were located in France, then it is arguable that, even though it had rejected as untrue the Applicant’s account of who its customers were and how they paid, the FTT needed to go on explain how the Applicant came to make subsequent supplies of those goods in the UK. Moreover, if, as the Applicant alleges, it lost possession and/or control of the goods while they were outside the UK, it is arguable that, to the extent those goods were the subject of taxable supplies in the UK, those supplies must have been effected by persons other than the Applicant (so that the Applicant cannot have been liable for VAT on those supplies). Put another way, I am satisfied that, while the Decision establishes that the Applicant has given untrue evidence to the FTT (and no appeal has been made against that factual conclusion), it is arguable that it does not support a conclusion that the Applicant (as distinct from another person) is liable for VAT on supplies made in the UK.

Conclusion

6. I grant permission to appeal on the grounds set out at [3].

Signed: *J M Richards*

Date: 31 May 2019

Issued to the parties on: 4 June 2019