[2020] UKFTT 436 (TC)

TC07913

Customs Duty – Civil Evasion Penalty – misdeclaration of imported hoverboards – whether dishonest conduct – held yes – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/07348P

BETWEEN

BREEZEBOARD PRO LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE PHILIP GILLETT

The Tribunal determined the appeal on 26 October 2020 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held because of the ongoing coronavirus pandemic.

The documents to which I was referred are in the trial bundle, which consisted of 353 pages and contained, inter alia, the Respondents' Statement of Case, the Appellant's Notice of Appeal, and witness statements, together with supporting documentation from Officers Holder and Cheung of HMRC and Ms Catherine Willis of Breezeboard Pro Ltd.

DECISION

INTRODUCTION

1. This is an appeal by Breezeboard Pro Limited ("Breezeboard") against a decision of HM Revenue and Customs ("HMRC") to issue a Customs Civil Evasion Penalty (the "Penalty"), under s25 Finance Act 2003, alleging that by declaring an incorrect commodity code on the importation of hoverboards, Breezeboard had dishonestly engaged in conduct for the purpose of evading any relevant tax or duty.

2. Although originally set at £37,723 the Penalty was reduced on 19 October 2018, following a review, to £28,292.

3. The parties had attempted to resolve the matter through an alternative dispute resolution ("ADR") mechanism but were unable to do so. The ADR Exit Document, dated 14 May 2019, notes:

> "The parties have attempted ADR but were not able to reach resolution on all matters. The parties have agreed certain matters in dispute as follows:
>
> 1. Clarity has been provided to both parties following a further exchange of information on each party's position. Although both parties have a further understanding of the opposing position no resolution to finalise the matter could be reached today.
> 2. As a part of the ADR exit document, representing agent Brian White has requested that HMRC disclose the evasion referral process that was undertaken prior to [the Penalty] being issued.
> 3. HMRC have agreed to consider this request but want to seek further guidance. A formal response will be provided within 30 days, which will be 14th June 2019."

4. The issue of the disclosure of this information was considered by Judge Brooks at a hearing on 30 June 2020 and he decided that this request should be refused.

5. The only matter before me today therefore is the question of whether or not the Penalty has been correctly charged by HMRC.

THE FACTS

6. I received witness statements from Officers Holder and Cheung of HMRC and Ms Catherine Willis of Breezeboard. I also received copies of various correspondence between the parties and between Breezeboard and their import agent, Chris Veale, of Shippo. The essential facts are not however in dispute between the parties. I make the following findings of fact.

7. The goods in question, hoverboards, were originally imported as part of a joint business venture involving representatives of Cachet D'Or Fragrances Ltd and Breezeboard Pro Limited.

8. The tax and duty issues relating to the imports by Cachet D'Or Fragrancies Ltd have been dealt with separately.

9. Lee Thompson, the sole director of Breezeboard founded the company in 2015 and initially worked with John Barry Hargreaves and Matthew Hargreaves as his main advisors. Mr Thompson relied on these individuals to help him start up the business. They assured him that they had imported a number of goods previously and that they knew the industry. Mr Thompson was inexperienced in the role of director.

10. The business developed quickly and Mr Thompson looked for outside investors as a result of which he met Adrian Francis and his employee, Catherine Willis. For a few months Mr Hargreaves carried on overseeing the imports as Mr Hargreaves and Mr Thompson had an agreement between themselves regarding the stock that Mr Hargreaves would import on their joint behalf. However, an internal disagreement arose between Mr Francis and Mr Hargreaves concerning Mr Hargreaves' conduct and Mr Francis' impression of his business activities, which led to Breezeboard parting company with both John and Matthew Hargreaves.

11. When Breezeboard parted company with the Hargreaves all import responsibility was passed over to Catherine Willis. Ms Willis was Mr Francis' secretary and had no previous experience of importing goods into the UK.

12. Mr Thompson realised at this point that the company had no proper import records and was not sure of how Mr Hargreaves had worked. No papers relating to previous imports were passed over by Mr Hargreaves and there were at the time at least 3 shipments that had left China already, but the company did not know where the shipments were.

13. At this time neither Mr Thompson nor Ms Willis had any previous experience of importing goods into the UK.

14. Eventually Ms Willis located Chris Veale of Shippo, who had acted as the import agent for Mr Hargreaves, and he was able to locate the shipments which were on their way to the UK. There then followed an important email exchange between Ms Willis and Mr Beale, concerning which tariff code should be used for the importation of hoverboards.

15. On 3 November 2015 Mr Veale wrote:

> "In the past I have spoken with Dave Boucher (who I think asked John) about the tariff code that you use to import your products. **The products should probably be classified differently** to how they have been previously but as discussed in the past with Dave, that's your (or was John 's) decision. I'll drop you some more details later when I'm back in the office so you can make an informed decision moving forward."

16. Mr Veale sent a further email, later on 3 November 2015, at 18:02, which included the following:

> "Ok, here are the details. There is a chance that either everyone importing these products is getting the paperwork that you were sent or John may have requested it.
>
> In the past you have used 9503 00 10 00 as the tariff code. This is totally your decision and I just have to declare the goods as you advise me.
>
> Each time we've cleared containers for you I've offered you the choice of either the above or using 8711 90 10 00 as the tariff code. The implication of using the chapter 87 code is that they'll have to pay 6% in UK Duty (which is not an insignificant amount on such a large commercial value). However, the implication of mis-declaring the products is that HMRC can retrospectively chase for any unpaid UK Duties owed.
>
> This is how it's generally viewed.
>
> - electric scooters and bikes with auxiliary electric motor with a continuous rated power not exceeding 250 watts are classified under 8711901000.
> - non-powered scooters - i.e. foot-propelled scooters - are classified in chapter 95.
>
> We will declare the goods as you see fit but I hope that helps give you a bit more information with your decision moving forward and perhaps John requested the eBTI paperwork to get clarification"

17. Email correspondence on 8 and 9 December 2015 makes further reference to the tariff code. Ms Willis's message of 8 December 2015 (time 11:58) sent with regard to a container and BIL is replied to on 8 December 2015 (time 12: 17) by Mr Veale who includes a line which state:

> "With these and any future containers we will charge Breezeboard 2% of the VAT (+ UK Duty if you change the tariff code) for the clearance."

18. Ms Willis's response, also on 8 December 2015 (time 12:51), includes the question:

> "Regards changing the tariff code you mean change from the one we clear on now?"

19. Mr Veale's next email response, also on 8 December 2015 (time 13:05), includes the following:

> "With regard to the Tariff Code, yes, I only mean if you changed from the one you use now. I know that you've asked me to clear the goods under the code that's Duty free for now but that you'd have a discussion about the below and let me know if you wanted to change that. In the past you have used 9503 00 10 00 as the tariff code. This is totally your decision and I just have to declare the goods as you advise me.
>
> Each time we've cleared containers for you I've offered you the choice of either the above or using 8711 90 10 00 as the tariff code. The implication of using the chapter 87 code is that they'll have to pay 6% in UK Duty (which is not an insignificant amount on such a large commercial value) . However, the implication of mis-declaring the products is that HMRC can retrospectively chase for any unpaid UK Duties owed.
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> - non-powered scooters - i.e. foot-propelled scooters - are classified in chapter 95
>
> We will declare the goods as you see fit but I hope that helps give you a bit more information with your decision moving forward and perhaps John requested the BT/ paperwork to get clarification"

20. Ms Willis's further email response of 8 December 2015 (time 14:08) includes the comment:

> "Okay Chris thank you, I have spoken to the director about this before so I will speak again in the morning and then respond."

21. Ms Willis then sent an email to Mr Veale on 9 December 2015 (time 10:39) in which she states:

> "I have had the meeting this morning and yes we want to continue and understand that we need to work with you regards the risk element for the port (past?). We are happy to change the tariff code and adhere to the 2% of the VAT and duty tax.
>
> Would you be able to give me an idea of what I am looking at cash flow wise, I know you can only guess but I'd like to arrange payment prior to clearance now.
>
> I understand as follows:
>
> I have 2 containers due today that will be cleared as usual (the BIL is discuss further down) .

Then moving forwards I have 2 containers next week arriving (should have the BIL Monday for this) - Can you give an idea of amount to you I will need to pay, when I need to pay it? (tariff code change).

Then I have 2 more containers arriving around the 23/12/2015 - these again [do] you have any idea regards amount pay to you before clearance and after and dates you need it by? (tariff code change)"

22. Mr Veale responds via email on 9 December 2015 (time 11 :23) and asks:

"So just to confirm, you'd like to change all future customs declarations to using the following code?: 87119010 00."

23. Mr Veale sent a further email on 9 December 2015 (time 12: 11) in which he states:

"Sorry, I may have read the below incorrectly, would you like the 2 containers that arrived last week and the 2 arriving today to be cleared against the old code and then everything moving forward to be cleared against the new 8711 code? Or all cleared under the new code including those that have arrived."

24. Ms Willis's email reply of 9 December 2015 (time 12:23) states:

"**Old code for last week and today. New code for any moving forwards**"

25. Mr Veale acknowledges this at 12:23 on 9 December 2015.

26. The resulting inconsistency was discovered by UK Border Force and, following this discovery, there was a compliance intervention visit to Breezeboard on 11 May 2016 which found that Breezeboard had declared the hoverboards as being:

"'tricycles, scooters, pedal cars and similar wheeled toys: dolls' carriages" under Commodity-Code 95030010 00, and as

"other toys and models incorporating a motor of other materials" under Commodity Code 95030079 00,

both codes having a duty rate of 0%.

27. The failure to declare these entries using the correct Commodity Code of 87119010 00 at a duty rate of 6% resulted in an underpayment of £78590.23 Customs Duty and £15718.05 Import VAT.

28. During the visit of 11 May 2016, HMRC's officers were provided with the email correspondence between the shipping agent and Ms Willis which is set out above. HMRC's officers considered that the content of these messages suggested deliberate misclassification and therefore underpayment of customs duties had taken place.

29. On 15 June 2016 Officer Cheung wrote to Breezeboard in relation to the visit of 11 May 2016. The company was informed that a number of Customs declarations had been declared to incorrect commodity codes, which had resulted in an underpayment of duty and import VAT. Officer Cheung officer informed the company that they intended to raise a post clearance demand note (C18) for £94,308.28 (£78,590.23 duty and £15,718.05 VAT). The company was invited to provide further evidence or arguments which could change the decision within 30 days.

30. In the absence of a response from the company, on 11 July 2016, HMRC informed the company that a C18 payment demand would be issued for incorrect declarations where it was found wrong commodity codes were declared. The debt was paid by the company on 2 August 2016. The company was also informed that HMRC may consider further action

under the Customs Penalty procedures and would notify them in writing if further action were to be taken.

31. On 17 February 2017, HMRC wrote to the company to inform them of HMRC's enquiry into their Customs Duty and Import VAT affairs. Public Notice 300 was included with the letter, which details the procedure for this type of enquiry. The letter invited the company and Ms Willis to meetings on 13 March 2017 to discuss these matters. However these meetings did not take place as Ms Willis was unwell and unable to attend.

32. On 19 April 2017 Officer Holder of HMRC issued a letter to the company, providing an overview of HMRC's actions and enquiries. The company was asked to provide a response by 19 May 2017 if they wished to assist HMRC with their enquiries.

33. On 12 May 2017, Mr Thompson responded to HMRC as follows :

(1) He fully agreed that the commodity codes used in 2015 were incorrect. He also emphasised that the company had been honest in its approach to Officer Cheung, who, he notes, had helped them resolve the issues.

(2) He stated that he had trusted his advisers, John and Matthew Hargreaves, to deal with the imports made by the business and realises, in hindsight, that that was not a good decision.

(3) He explained the concerns with the conduct and business practices of Messrs Hargreaves and the fact that their departure had left the company with no paper records regarding what had been done in the past.

(4) Mr Thompson acknowledged that advice from Mr Veale concerning the correct commodity code to be used had been ignored.

(5) In mitigation Mr Thompson explained that he and Ms Willis had no previous experience of importing goods into the UK, and that these events took place in the run up to Christmas, a period of significant pressure for the company, especially as he was also involved in discussions with Trading Standards regarding the safety approval of the hoverboards.

34. Based on the information he held, Officer Holder decided that there were sufficient grounds to issue a Customs Civil Evasion Penalty. It was his view that Breezeboard Pro Limited had been made aware by the shipping agent that the correct commodity code for the product was 87119010 00 with a duty rate of 6% as opposed to the 0% rate that was being applied by use of the incorrect commodity code 95030010 00.

35. The shipping agent had also made the company aware that the misdeclaration of products could lead to HMRC taking retrospective action to recover any underpayments of duty.

36. Officer Holder recommended that the penalty be mitigated by 60% for the following reasons:

(1) A 20% reduction due to the relatively short period of time, i.e. three months, during which the incorrect classification of the imports was made.

(2) A 40% reduction to take account of the attendance of Mr Thompson at the compliance visit and also the willingness to attend meetings other than for health concerns. In addition, information requested both during the visit of 11 May 2016 and subsequent to it was provided promptly. The letter sent to Mr Thompson on 19 April 2017 was also replied to within the 30 day period given.

37. The amount of Duty and Tax evaded was £94,308.28 (£78,950.23 Customs Duty + £15,718.05 Import VAT). Therefore, in recommending a penalty of 40%, Officer Holder proposed a Customs Civil Evasion Penalty in the amount of £37,723.00, and a formal penalty notice in this amount was issued on 25 May 2018.

38. HMRC received a letter from Freedman Frankl & Taylor, dated 15 June 2018, on behalf of the company, which referred to various points and requested that Officer Holder reconsider his decision to issue a Customs Civil Evasion Penalty and also requested a review by another HMRC officer in the event that there was no change to his original decision.

39. This letter also referred to possible confusion within HMRC about the correct code classification to be used but I was shown no other evidence which might point to any confusion and I cannot find that there was any confusion within HMRC.

40. Officer Holder considered that the points raised within Freedman Frankl & Taylor's letter did not affect his original decision, and he therefore explained that the case would be forwarded to the Review and Appeals Team.

41. The case was subsequently reviewed and the decision to impose a Customs Civil Evasion Penalty was upheld, but the penalty was reduced by a further 10%, resulting in a revised penalty of £28,292.00. This decision was conveyed to Breezeboard Pro Limited by the Review Officer's letter dated 19 October 2018 and a revised Customs Civil Evasion Penalty letter and accompanying letter, both dated 26 October 2018.

THE LAW

42. Section 25 Finance Act 2003 provides as follows:

"**Section 25 - Penalty for evasion**

(1) In any case where-

(a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and

(b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded.

(2) Subsection (1) is subject to the following provisions of this Part.

(3) Nothing in this section applies in relation to any customs duty of a preferential tariff country.

(4) Any reference in this section to a person's "evading" any relevant tax or duty includes a reference to his obtaining or securing, without his being entitled to it,

(a) any repayment, rebate or drawback of any relevant tax or duty,

(b) any relief or exemption from, or any allowance against, any relevant tax or duty, or

(c) any deferral or other postponement of his liability to pay any relevant tax or duty or of the discharge by payment of any such liability,

and also includes a reference to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.

(5) In relation to any such evasion of any relevant tax or duty as is mentioned in subsection (4), the reference in subsection (1) to the amount of the tax or duty evaded or sought to be evaded is a reference to the amount of-

(a) the repayment, rebate or drawback,

(b) the relief, exemption or allowance, or

(c) the payment which, or the liability to make which, is deferred or otherwise postponed,

as the case may be."

43. Section 29 Finance Act 2003 then provides for a reduction in this penalty in certain circumstances as follows:

"**Section 29 - Reduction of penalty under section 25 or 26**

(1) Where a person is liable to a penalty under section 25 or 26-

(a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and

(b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners .

(2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).

(3) Those matters are-

(a) the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty,

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of any relevant tax or duty,

(c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith."

DISCUSSION

44. In accordance with s25 therefore, HMRC may only impose a Civil Evasion Penalty if:

(1) A person has engaged in any conduct for the purpose of evading any relevant tax or duty, and

(2) His conduct involves dishonesty.

45. I am sure that neither Mr Thompson nor Ms Willis would consider that they had engaged in any conduct for the purpose or evading tax or duty. Nor would they consider that they had acted dishonestly. They would perhaps describe themselves as inexperienced and possibly naïve, and that they had acted in the heat of the moment, being under significant pressure within the business because it was during the run up to Christmas, a key trading time for goods such as hoverboards, and because they were involved in discussions with Trading Standards about the safety aspects of the hoverboards. They can also argue, quite validly, that they had simply followed the actions of Mr Hargreaves, who had previously handled the importation of the hoverboards.

46. If s25 provided for an exemption from the Penalty in the case of "reasonable excuse" then Breezeboard might have grounds for an argument under this heading. However, s25 does not provide relief for "reasonable excuse" and I must therefore simply consider whether or not their actions fall within s25(1).

47. There is little doubt that the decision of Mr Thompson and Ms Willis as regards which code should be used for the importation of the hoverboards led directly to the evasion of tax and duty.

48. There may however be a question as to whether or not their actions were "for the purpose of" evading duty. I have seen nothing in the evidence before me which suggests that they had given any thought personally as to whether what they were doing might be seen as evading duty. However, in the email correspondence set out above, it is clear that Mr Veale did explain to them that their actions might amount to mis-declaration and that HMRC might pursue them for underpaid tax and duty. They may not have thought things through to the logical consequences of this but I must conclude that they knowingly took a course of action which might amount to a mis-declaration, and therefore the evasion of duty and tax.

49. Had they revisited their decision, in possibly calmer times after Christmas, as was indicated in Ms Willis's email of 9 December 2015, where she says "we need to work with you regards the risk element for the past," then I suspect HMRC may have taken a different view of their actions but, they did not revisit the issue. They clearly realised that what they were doing was open to challenge but went ahead anyway.

50. I must therefore conclude that they did indeed engage in conduct for the purpose of evading tax and duty.

51. I then turn to the question of dishonesty. As I have said above, I think it very unlikely that either Mr Thompson or Ms Willis would consider themselves to have behaved dishonestly. Nevertheless I must consider the question of whether or not they acted dishonestly as it has been discussed in a number of previous cases, which approach the question in a slightly different way.

52. The question as to what constitutes dishonesty has been considered in a number of cases and has been clarified in recent years. I was not referred to any specific cases by either party and must therefore consider the cases which I believe to be most relevant when addressing the question of dishonesty.

53. In *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378, Lord Nicholls, at page 10, describes dishonesty as follows:

> "Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is descriptive of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour."

54. In *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)* [2017] UKSC 67, Lord Hughes said, at [62]:

> "The test now clearly established was explained thus in *Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37 by Lord Hoffmann, at pp 1479-1480, who had been a party also to *Twinsectra*:
>
> > "Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.""

55. Lord Hughes further explains in *Ivey*, at [74]:

> "The test of dishonesty is as set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* and by Lord Hoffmann in *Barlow Clowes*: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

56. I am therefore instructed by Lord Hughes that first I must ascertain the actual state of the individuals' knowledge or belief as to the facts.

57. As I have said above, I believe that Mr Thompson and Ms Willis would have regarded themselves as being inexperienced and naïve, and were simply following what Mr Hargreaves had done before them. In their view they made an honest mistake. Had they tried to correct this mistake at a later stage, after the Christmas rush, then I think I could consider it in that light. However they did not.

58. The fact remains that Mr Veale had set out very clearly that in his view the correct code to use was the code under Chapter 87, which would result in a duty charge of 6%, and not the previously used code under Chapter 95, which would involve no duty being paid. It is right to say that Mr Veale's earlier email, on 3 November, had said that the code was "probably" incorrect, but his later email, on 8 December, was quite clear. Mr Thompson and Ms Willis

considered Mr Veale's advice on 8/9 December and decided to go ahead using the Chapter 95 code. Mr Veale questioned them specifically on this and asked for clarification as to whether or not he should apply the new code to the containers which had been received the previous week and those which had just been received, and he was told very specifically, in an email from Ms Willis dated 9 December, "**Old code for last week and today. New code for any moving forwards**".

59. This was a deliberate act on their part and they knew that what they were doing was wrong, as effectively acknowledged by their decision that the new, correct code, should be used for future shipments,. I do know the thinking behind this decision. It may be that Breezeboard had already agreed a price for the onward sale of the hoverboards, excluding any duty charge, and that any additional duty would therefore have to be borne by Breezeboard, whereas in future they would have the opportunity to negotiate a price based on the correct duty regime. This is however pure speculation and cannot be part of my decision making process.

60. I simply have to ask the question did Mr Thompson and Ms Willis know that they were doing something wrong, to which the answer must be yes.

61. This resolves the first question posed by Lord Hughes, the subjective test as to what was in the minds of Mr Thompson and Ms Willis. They would not perhaps regard their actions as dishonest, in the more general use of that word, but they knew they were doing something wrong.

62. The second part of that test, which is an objective test, is whether or not the reasonable man would have regarded what they did as wrong. Again I must conclude that the reasonable man would indeed consider that Breezeboard had done something wrong.

63. In summary therefore, following the approach taken in *Ivey*, I must conclude that the actions of Mr Thompson and Ms Willis were dishonest.

64. I therefore find that the Penalty was correctly raised by HMRC.

Mitigation

65. Officer Holder initially proposed a 60% reduction in the Penalty, to 40% of the total amount of tax and duty evaded, but on review this reduction was increased to 70%, leading to a Penalty of 30% of the tax and duty evaded.

66. Breezeboard was undoubtedly totally open and honest in their dealings with HMRC once the original mis-declaration had been discovered. They responded quickly and openly to all HMRC enquiries. But they did not bring the mis-declaration to the attention of HMRC. It was a prompted disclosure not a voluntary one. The company has been given a generous reduction in the Penalty to reflect their openness and cooperation with HMRC and I see no reason to vary the amount of the mitigation.

DECISION

67. For the reasons set out above therefore I have decided that this appeal should be DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

68. 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.

PHILIP GILLETT

TRIBUNAL JUDGE

RELEASE DATE: 30 OCTOBER 2020