[2019] UKFTT 566 (TC)

TC07360

VAT—compulsory deregistration (Sch 1 para 13 VATA)—whether Appellant intending to make taxable supplies (Sch 1 para 9 VATA)—EXCISE DUTY—revocation of appellant's approval under Warehousekeepers and Owners of Warehoused Goods Regulations 1999

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/03652
TC/2017/01259

BETWEEN

EURO BEER DISTRIBUTION LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER

Sitting in public at London on 25 and 26 February 2019

David Bedenham, counsel, for the Appellant

Joshua Carey, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. The Appellant appeals against:

   (1) a decision of HMRC to cancel the Appellant's VAT registration pursuant to paragraph 13(2) of Schedule 1 to the Value Added Tax Act 1994 ("**VATA**"); and

   (2) a decision of HMRC to revoke the Appellant's approval and registration as an owner of duty suspended goods under the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("**WOWGR**").

FACTUAL BACKGROUND

2. The Appellant company was incorporated on 1 June 2004 with the name Topaz Wines Ltd.

3. On 20 December 2004, the Appellant was granted approval and registration as an owner of duty suspended goods under WOWGR.

4. On 2 June 2004, the Appellant made an application, which was granted, to be registered for VAT with effect from 30 June 2004.

5. In June 2005, the Appellant's name was changed to Euro Beer Distribution Ltd.

6. In an e-mail dated 21 October 2016, HMRC Officer Hewitt requested the Appellant to provide answers by 4 November 2016 to five questions regarding its trading activities.

7. On 14 November 2016, Officer Hewitt chased a response to his 21 October 2016 e-mail. Mr Mandip Singh, director of the Appellant, responded by e-mail the same day that "There are no new deals since the last one at end of June 2016". Officer Hewitt replied the same day, stating that Mr Singh had responded to only one of his five questions, and asking Mr Singh to confirm, given that there had been no trade since June 2016, whether there was any intention to resume trading and if so when this would be.

8. In a letter to the Appellant dated 21 November 2016, HMRC Officer Dunckley advised the Appellant as follows. The Appellant's VAT number had been cancelled with effect from that date, on the ground that the Appellant had ceased to make or have the intention to make taxable supplies. The Appellant had the right within 30 days to request a review of the decision or to appeal to the Tribunal.

9. In a letter to Officer Dunckley dated 28 November 2016, the Appellant's tax advisers, M&R, requested a review of the 21 November 2016 decision, contending as follows. The decision was not reasonable or proportionate. The sale and purchase of alcohol under duty suspension was outside the scope of VAT. The Appellant had registered for VAT voluntarily. The Appellant wished to remain voluntarily registered for VAT in order to reclaim input tax on its purchases. The decision was placing the Appellant under considerable stress.

10. In a letter to the Appellant dated 2 December 2016, Officer Hewitt advised the Appellant as follows. The Appellant had not responded to his 14 November 2016 e-mail. The Appellant was required to provide documentary evidence of a resumption of trading or of a confirmed intention to resume trading by 7 December 2016. Failure to do so would lead HMRC to consider revocation of the Appellant's registration under WOWGR.

11. On 7 December 2016, Mr Singh, by way of response to the 2 December 2016 letter, forwarded to Officer Hewitt an e-mail chains of correspondence between the Appellant and

HK Ventures Limited ("**HK**"), an e-mail to the Appellant from KCM F&B ("**KCM**"), and an e-mail to the Appellant from Bevco Trading LLC ("**Bevco**").

12. In a review decision dated 3 January 2017, HMRC Officer Hanrahan upheld the 21 November 2016 decision cancelling the Appellant's VAT registration.

13. In a letter dated 10 January 2017, Officer Hewitt advised the Appellant that HMRC were minded to revoke the Appellant's registration as an owner of duty suspended goods under WOWGR, on the ground that the Appellant had not demonstrated that it had a continuing need to hold such registration. The letter noted that the Appellant had confirmed on 14 November 2016 that it had undertaken no trade since June 2016. The evidence provided on 7 December 2016 was considered to be unsatisfactory. The e-mails from Bevco and KCM were speculative introductions and contained no evidence of trade with those companies. The e-mail from HK was an enquiry for the provision of goods but not the placement of an order. No evidence was provided of any intention of the Appellant to purchase stock from a supplier. The Appellant was invited to make representations as to why its WOWGR registration should not be revoked.

14. In an e-mail to Officer Hewitt dated 23 January 2017, the Appellant's tax adviser stated as follows. The Appellant did indeed intend to recommence trading and was in the process of arranging a transaction which was anticipated to come to fruition shortly. Relevant documentation would be provided to HMRC in due course. Revocation of WOWGR approval would have a catastrophic effect upon the Appellant's business and would be unreasonable and disproportionate at that stage.

15. In a letter dated 26 January 2017, Officer Hewitt advised the Appellant that its registration under WOWGR had been revoked with immediate effect under s 100G(5) of the Customs and Excise Management Act 1979 ("**CEMA**"). The letter noted the history above, and stated that the e-mail from the Appellant's tax adviser had provided no evidence of an intention to recommence trading. Satisfactory evidence of such intention had therefore not been provided. The letter advised the Appellant that it could within 30 days send any further information for HMRC to consider, request a review of the decision, or appeal to the Tribunal.

16. In a letter to Officer Hewitt dated 24 February 2017, the Appellant's tax advisers requested a review of the 26 January 2017 decision, contending as follows. The decision was not reasonable or proportionate, and had a catastrophic effect on the Appellant's business. The sole ground for revocation was that the Appellant had ceased trading. However, it was confirmed that the Appellant did intend to recommence trading, and evidence of this had been provided on 7 December 2016, which HMRC had unfairly and unreasonably dismissed as insufficient. The Appellant could not now provide further evidence of any intention since the Appellant could not arrange a duty suspended alcohol transaction following revocation of its licence. The decision was placing the Appellant under considerable stress.

17. In a review decision dated 4 April 2017, HMRC Officer Loughridge upheld the 26 January 2017 decision. The decision stated amongst other matters as follows. The business had not traded for over 6 months. The Appellant had been given the opportunity to provide satisfactory evidence of trading or an intention to trade and had been unable to do so. The decision was in line with legislation, HMRC guidance and policy. The evidence provided was not considered satisfactory.

18. In two notices of appeal dated 31 January 2017 and 2 May 2017 respectively, the Appellant appealed to the Tribunal against the decision to deregister the Appellant from VAT and the decision to revoke its WOWGR registration.

APPLICABLE LEGISLATION

19. Section 3 VATA relevantly provides:

> (1) A person is a taxable person for the purposes of this Act while he is, or is required to be, registered under this Act.
>
> (2) Schedules 1 to 3A shall have effect with respect to registration.

20. Paragraph 1(1) of Schedule 1 to VATA ("**Schedule 1**") provided at material times as follows:

> Subject to sub-paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule—
>
> (a) at the end of any month, if the person is UK-established and the value of his taxable supplies in the period of one year then ending has exceeded £83,000; or
>
> (b) at any time, if the person is UK-established and there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days then beginning will exceed £83,000.

21. Paragraph 3 of Schedule 1 provided:

> A person who has become liable to be registered under this Schedule shall cease to be so liable at any time if the Commissioners are satisfied in relation to that time that he—
>
> (a) has ceased to make taxable supplies; or
>
> (b) is not at that time a person in relation to whom any of the conditions specified in paragraphs 1(1)(a) and (b) and (2)(a) and (b) above is satisfied; or
>
> (c) is not at that time UK-established (see paragraph 1(10)).

22. Paragraph 9 of Schedule 1 provided:

> Where a person who is not liable to be registered under this Act and is not already so registered satisfies the Commissioners that he—
>
> (a) makes taxable supplies; or
>
> (b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,
>
> they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him.

23. Paragraph 10(1) of Schedule 1 provided:

> Where a person who is not liable to be registered under this Act and is not already so registered satisfies the Commissioners that he—
>
> (a) makes supplies within sub-paragraph (2) below; or
>
> (b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,
>
> and (in either case) is within sub-paragraph (3) below, they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him.

24. Paragraph 13(2), (3) and (5) of Schedule 1 provided:

> (2) Subject to sub-paragraph (5) below, where the Commissioners are satisfied that a registered person has ceased to be registrable, they may cancel his registration with effect from the day on which he so ceased or from such later date as may be agreed between them and him.
>
> (3) Where the Commissioners are satisfied that on the day on which a registered person was registered he was not registrable, they may cancel his registration with effect from that day. …
>
> (5) The Commissioners shall not under sub-paragraph (2) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement, or entitled, to be registered under this Act.

25. Paragraph 18 of Schedule 1 provided:

> In this Schedule "registrable" means liable or entitled to be registered under this Schedule.

26. Section 83(1) VATA provided:

> (1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—
>
> (a) the registration or cancellation of registration of any person under this Act;

27. Section 100G CEMA relevantly provided:

> (1) For the purpose of administering, collecting or protecting the revenues derived from duties of excise, the Commissioners may by regulations under this section (in this Act referred to as "registered excise dealers and shippers regulations")—
>
> (a) confer or impose such powers, duties, privileges and liabilities as may be prescribed in the regulations upon any person who is or has been a registered excise dealer and shipper; and
>
> (b) impose on persons other than registered excise dealers and shippers, or in respect of any goods of a class or description specified in the regulations, such requirements or restrictions as may by or under the regulations be prescribed with respect to registered excise dealers and shippers or any activities carried on by them. …
>
> (5) The Commissioners may at any time for reasonable cause revoke or vary the terms of their approval or registration of any person under this section.

28. Section 100H(1) CEMA relevantly provided:

> (1) Without prejudice to the generality of section 100G above, registered excise dealers and shippers regulations may, in particular, make provision—
>
> (a) regulating the approval and registration of persons as registered excise dealers and shippers and the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject;

29. Regulation 5 of WOWGR (the regulations referred to in s 100G(1) CEMA) provided:

> (1) For the purposes of section 100G of the Act, the Commissioners may approve revenue traders who wish to deposit relevant goods that they own

in an excise warehouse and register them as registered excise dealers and shippers in accordance with section 100G(2) of the Act.

(2) A revenue trader who has been so approved and registered shall be known as a registered owner.

30. Regulation 18(1) of WOWGR provided:

(1) The approval and registration of every registered owner shall be subject to the conditions and restrictions prescribed in a notice published by the Commissioners and not withdrawn by a further notice.

31. By virtue of s 16(8) of the Finance Act 1994, and paragraph 2(p) of Schedule 5 to that Act, there is a right of appeal to the Tribunal against a decision to revoke an approval or registration under s 100G CEMA, and such decision is deemed to be in relation to an "ancillary matter". Section 16(4) of the Finance Act 1994 provides:

(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

HMRC GUIDANCE

32. HMRC Excise Notice 196, "Excise goods - registration and approval of warehousekeepers, warehouse premises, owners of goods and registered consignors", was published on 23 October 2014. It provisions include the following:

33. Section 2:

Only persons who can demonstrate that they are fit and proper to carry out an excise business will be authorised or registered.

34. Section 3.2:

During the visit we will examine all the business's activities and may enquire about your suppliers, customers, business plans, accounting systems, premises, financial viability, and other relevant matters.

Only applicants who can demonstrate that they are fit and proper to carry on an excise business will be granted approval. This means we must be satisfied that the business is a genuine enterprise which is commercially viable, with a genuine need for approval, and that all persons with an important role or interest in it are law abiding, responsible, and do not pose any significant threat in terms of potential revenue non-compliance or fraud.

> HMRC will assess all applicants (not just the legal entity of the business but all partners, directors and other key persons) against a number of 'fit and proper' criteria to establish:
>
> - …
> - the business has provided sufficient evidence of its commercial viability and/or credibility. We will not approve applicants where we find that they cannot substantiate that there is a genuine plan to legitimately trade from the proposed date of approval …
> - the business has in place satisfactory due diligence procedures covering its dealings with prospective customers and suppliers to protect it from trading in illicit supply-chains (see section 10 for more information about due diligence).

35. Section 5:

> We may cancel your registration at any time. If we do so, then we will inform you in writing and give our reasons for the cancellation. We will offer you a review of our decision or you can appeal direct to the independent tribunal (see section 11).

36. Section 10:

> Due diligence is the appropriate reasonable care a company exercises when entering into business relations or contracts with other companies, and how it responds in a deliberate reflexive manner to trading risks identified.
>
> Without effective safeguards in place, there are considerable risks to all businesses along alcohol supply chains of becoming implicated in illicit trading.
>
> This condition requires that all excise registered businesses operating in the alcohol sector consider the risk of excise duty evasion as well as any commercial and other risks when they are trading. Doing so will help to drive illicit trading out of alcohol supply chains, and reduce the risk to businesses of financial liabilities associated with goods on which duty has been evaded.

THE WITNESS EVIDENCE

The evidence of Rajinder Singh Sanghera

37. The witness statement of Mr Sanghera states amongst other matters as follows.

38. He has been a director of the Appellant company since its incorporation. The Appellant trades in the wholesale of wine, beer, spirits and other alcoholic beverages. The HMRC decision to cancel the Appellant's VAT registration is wholly unreasonable and disproportionate, and HMRC did not make any attempt to visit the Appellant or obtain information as to the intention to trade before taking this decision. That decision was based solely on the fact that the Appellant has not traded since June 2016 and not provided evidence of an intention to trade, but Mr Sanghera confirms that the Appellant does have an intention to trade.

39. The HMRC decision to cancel the WOWGR registration was taken despite the Appellant having provided the documentary evidence requested. At no point did HMRC visit the Appellant to obtain further information prior to revocation. The decision is unreasonable and not proportionate. The revocation of the WOWGR registration has had a catastrophic effect on the Appellant's business, and the Appellant is now unable to commence trade as it had intended to do. The Appellant is now unable to seek new business relationships.

40. Mr Sanghera did not attend the hearing to give oral evidence.

The evidence of Mandip Singh

41. The witness statement of Mr Singh confirms that the contents of the witness statement of Mr Sanghera are true and accurate, and that Mr Singh adopts the contents of that statement as his own.

42. In examination in chief Mr Singh said amongst other matters as follows. The Appellant exported alcoholic beverages. It used bonded warehouses at Seabrooks and Purland House. Its inputs included the costs of the bonded warehouses and transport. Approaches from customers typically began with a phone call followed up by an e-mail. The Appellant always intended to trade, as that was how the directors made their living. The trade regularly slowed down in December and reached nearly zero in February. The Appellant had traded for 7-9 years, and there had been periods in the past where things went quiet then started up again.

43. In cross-examination Mr Singh said amongst other matters as follows.

44. He was aware of HMRC Excise Notice 196 and considered that the Appellant complied with it.

45. At the time of the 21 October 2016 e-mail from Officer Hewitt, he did not know why HMRC was requesting the information, and the Appellant had been providing regular monthly reports to HMRC. The reason why he did not say in his 14 November 2016 e-mail that the Appellant still had an intention to trade was that that question had not been asked. He did not know why the other four questions asked by Officer Hewitt had not been answered. When it was put to him that Officer Hewitt expressly asked in a 14 November 2016 e-mail whether the Appellant intended to resume trading, he said that he was unsure if there was ever a response to that e-mail.

46. The Appellant would have engaged in trading only for commercial reasons, and would not have done so just to get HMRC off its back. He did not do due diligence on HK, KCM and Bevco because due diligence is time consuming and matters had not yet got to the point where it was necessary.

47. The Appellant was not warned that it would be deregistered from VAT if a response to HMRC was not provided, and the VAT deregistration decision came out of the blue.

48. The Appellant received many enquiries that never led anywhere. Sometimes there were weeks or months between enquiries. None of the enquiries from HK, KCM and Bevco led anywhere. He did not respond to KCM because he did not think it would lead anywhere.

49. When asked, he could not say where Wolf Blass wine or Barefoot wine came from, and it was put to him that he did not know the wine market.

50. He said that the Appellant had a particular supplier, who he named, and said that the prices he sent to HK were based on the prices he had been given by the supplier. When asked if he had a price list from the supplier, he said that he had been given the prices by the supplier over the phone. He said that he added a profit margin to the prices he was given by his supplier. He would confirm prices in writing with his supplier only when he had an order from a customer. He would only do due diligence once a deal was done, as he would rather engage in negotiations with a customer who then failed due diligence checks than undertake burdensome due diligence checks on a potential customer who might then not enter into any deal. The enquiries from HK, KCM and Bevco were the only enquiries received in November-December 2016, but he could not recall if there had been any earlier enquiries.

51. The business began in 2004. For the first year and a half it was just establishing itself, and thereafter it became the sole source of income for the two directors. It had 2 or 3 consignments per week, and up to 8 or 9 in busy periods. In 2016, business just went dry.

The evidence of HMRC Officer Dunckley

52. In his witness statement, Officer Dunkley states amongst other matters as follows.

53. Missing trader intra-Community fraud ("**MTIC**") is large scale fraud currently encompassing many different commodities including alcohol. HMRC sent the Appellant a standard letter warning it of the existence and size of MTIC fraud in a letter dated 4 August 2009. On 27 February 2014 HMRC notified the Appellant that due to continuing difficulties associated with the alcohol market, the Appellant had been chosen for inclusion in a closer working visit programme, and would be visited by HMRC in the near future. After this meeting it was intended that the Appellant would continue to be visited on a regular basis to provide details of its ongoing trading activity, including names and VAT registration numbers of all suppliers and customers, quantities and descriptions of goods transacted, and details of payments and receipts. The letter requested the Appellant with immediate effect to validate the VAT status of new potential customers and suppliers.

54. The Appellant's outputs and inputs in the periods 06/15 until its final return were as follows:

Period	Outputs	Inputs
06/15	£1,981,000	£2,361,695
09/15	£2,438,919	£1,950,020
12/15	£592,664	£443,405
03/16	£437,478	£415,167
06/16	£80,179	£44,547
09/16	Nil	£1,049
Final return	Nil	Nil

55. This confirms the absence of any trade after June 2016. The Appellant had been given at least three opportunities to show that it had traded or intended to trade, and given the response that there had been no trade since June 2016, it was appropriate to deregister the Appellant.

56. In cross-examination, Officer Dunckley said amongst other matters as follows.

57. He visited the Appellant three times. He spoke mainly about due diligence. He was aware that the Appellant was an established trader. He was not concerned at the time that the Appellant was about to become a missing trader. He knew at the time that the Appellant had been trading for over a decade, and had looked at its VAT returns and knew its past turnover. The closer working programme involved increased monitoring of a business. Officer Hewitt was responsible for getting the deal packs, and he reported to Officer Dunckley. Officer Hewitt had informed him that the Appellant had not traded since June 2016, so Officer Dunckley instructed him to ascertain whether there was any intention to trade. Officer Dunckely told Officer Hewitt that he would deregister the Appellant from VAT if evidence of an intention to trade was not provided by a certain date. Officer Dunckely did not tell Officer Hewitt to tell

the Appellant of that deadline. The decision to deregister from VAT was Officer Dunckley's alone. Even where there are no actual sales, he would expect full documentary evidence of an intention to supply.

The evidence of HMRC Officer Hanrahan

58. In her witness statement, Officer Hanrahan states that she could not find any reason why it would be appropriate to overturn Office Dunkley's decision given that the Appellant had not undertaken any trade and had not been able to demonstrate an intention to trade.

59. In cross-examination, Officer Hanrahan said amongst other matters as follows. It would have been relevant that the Appellant had had previous dealings with HK, but she believed that this had been a new enquiry. There were not many documents in the case, and she would have seen all the documents that had been seen by the deciding officer, even if not all were referred to in her decision. The paragraph in the review letter concerning lack of evidence of goods leaving the UK was included merely as general information, but was not a factor taken into account when reaching the decision. She considered it reasonable to conclude that there was no intention to trade if there had been no trade for three months, and in this case it had been longer than that since the last trading.

The evidence of HMRC Officer Hewitt

60. In his witness statement, Officer Hewitt states amongst other matters as follows.

61. The directors of the Appellant company are Mr Mandip Singh and Mr Rajinder Singh Sanghera. The Appellant company has three shareholders, who are the two directors and Mrs Navdeep Sanghera. The Appellant has been involved in the buying and selling of alcoholic beverages in duty suspense using tax warehouses located in both the UK and the Continent.

62. Officer Hewitt reached the following views in relation to the e-mails sent by the Appellant on 7 December 2016. The e-mail from Bevco was simply a speculative introductory e-mail dated 7 November 2016, which was a month before the e-mail was provided to HMRC. It was reasonable to assume that the Appellant would have supplied evidence of actual trading with that company if it had taken place during that month. The e-mail from KCM was simply a speculative introductory e-mail. It was dated 29 November 2019, a week before the e-mail was sent to HMRC, and there was no evidence of any intention to develop a trading relationship in that period. The e-mail from HK provided evidence of an enquiry for certain goods, but did not provide evidence of the placement of any order by them. No evidence was provided of any correspondence by the Appellant with potential suppliers of stock, which would have reasonably been expected to be part of any evidence to recommence trading. If there was any evidence of these e-mails leading to any firm business transaction, it is to be expected that this would have been provided to HMRC following their 10 January 2017 letter. Instead, the response from the Appellant's tax adviser merely asserted that a deal was being arranged, without presenting any documentary evidence. The Appellant had been given a number of opportunities to provide satisfactory evidence.

63. In cross-examination, Officer Hewitt said amongst other matters as follows. He knew that the Appellant had accounts at Seabrooks and Purland House, and as far as he was aware these had not been closed down. He did not advise the Appellant that it would be deregistered for VAT if it did not respond by a certain date as he dealt with excise matters and not VAT matters. He was not aware at the time what the proposed timescale was for cancellation of the VAT registration. At the time, Officer Hewitt was aware that the Appellant had traded previously with HK. However, the e-mail from HK was not indicative of a firm intention.

Furthermore, there was no evidence that the Appellant had a supplier, and the Appellant can have had no intention to supply if there was no one to supply the Appellant. Similarly, there was no discussion of transport arrangements. He would expect to see details of pricing from the supplier, and of the location of the goods, and of who is arranging transport from where to where. Given the problems of alcohol fraud, HMRC did not want there to be unused WOWGRs in existence. Therefore HMRC wanted to see evidence of an intention to trade, and not merely assertions by the Appellant. WOWGR approvals can be misused or hijacked, which is why they are cancelled if they are not being used. He did not accept that he was demanding evidence of actual trading, as opposed to an intention to trade.

The evidence of HMRC Officer Loughridge

64. In her witness statement, Officer Loughridge confirms that she was satisfied that HMRC had reasonable cause to revoke the Appellant's WOWGR registration, and that she considered the decision of Officer Hewitt to be legally and technically correct, and reasonable and proportionate.

65. In cross-examination, Officer Loughridge said amongst other matters as follows. Her role as reviewing officer is to decide whether the deciding officer's decision is technically correct, proportionate and reasonable. If she decided that the decision satisfied these conditions but she disagreed with it, she might cancel it and send the matter back to the deciding officer for a new decision. A new trader would have to show an intention to trade before being granted WOWGR approval, so the fact that the Appellant's WOWGR approval had been cancelled would not prevent it from evidencing an intention to trade. The Appellant did not make Officer Hewitt or her aware that it had previously traded with HK. Had the Appellant done so, that would have been taken into account. She did not look at the Appellant's previous VAT returns. She just knew that the Appellant had not traded for some 7 months. She did not know the level of trade prior to that.

THE APPELLANT'S SUBMISSIONS

The VAT deregistration appeal

66. The better view is that the Tribunal has full appellate jurisdiction in VAT de-registration appeals (relying on *David Love Marketing Ltd v Revenue & Customs* [2015] UKFTT 506 (TC) ("***David Love***") at [64] and *Gardner & Co v Revenue & Customs* [2011] UKFTT 470 (TC) ("***Gardner***") at [33], [41]-[42], [55]-[58] and contrasting *System Fabricators Ltd v Director of Border Revenue* [2011] UKFTT 436 (TC) at [4] and *Gillamoor Ltd v Revenue & Customs* [2008] UKVAT V20591 ("***Gillamoor***")). The Tribunal decides on the basis of the evidence before it at the time of the Tribunal's decision.

67. The question is whether the Appellant had an intention to trade on the date of the HMRC review decision, as that is the decision under challenge. While it is possible to require a declared subjective intention of a trader to be supported by objective evidence (*Rompelman v Minister van Financiën* [1985] 3 CMLR 202 ("***Rompelman***") at [24] and *Gardner* at [53]), a stated intention should be given weight together with other evidence which in this case includes an established trading history, the maintaining of accounts with bonded warehouses, e-mails from potential customers showing that the Appellant was still in the market, and the following up of leads by the Appellant. The fact that there were no concluded deals does not mean that there was no intention to trade. If the Tribunal has a full appellate jurisdiction, the evidence in this case establishes an intention to trade.

68. Alternatively, if the Tribunal's role is "supervisory", the decision that is the subject of the appeal is the decision of the reviewing officer.

69. If the Tribunal's role is "supervisory", the Tribunal assesses the reasonableness of the decision against the facts as they existed at the time of the decision whether or not the decision maker knew of those facts (that is, the Tribunal follows the approach in *Gora v Commissioners of Customs and Excise* [2003] EWCA Civ 525 ("***Gora***")), and the Tribunal is not limited to considering only that material that was before the officer making the decision under appeal.

70. Officer Hanrahan did not know that the Appellant had traded previously with HK and was not aware of the previous trading history and turnover levels of the Appellant. Furthermore, the decision of Officer Hanrahan refers to the enquiry from HK, but does not refer to the enquiries from KCM and Bevco. These are relevant considerations that she did not take into account in her decision, but which can be considered by the Tribunal.

71. Based on the facts known to the Tribunal, the decision of Officer Hanrahan is one which could not reasonably have been arrived at. It did not take into account relevant factors. It was also not reasonable. There was no proper basis to conclude that the Appellant did not intend to trade. The Appellant was not a "start up". It has an established trading history which was well known to HMRC. A hiatus in trade was not, against such a trade history, a proper basis for concluding that the Appellant no longer intended to trade. The Appellant confirmed to HMRC on 28 November 2017, 7 December 2017, and 23 January 2017 that it intended to trade. It provided documents in support of its intention and, on 23 January 2017, said further information/documentation would be forthcoming. Such representations should have been given significant weight in the context of the Appellant's trading history.

72. It is not inevitable that, if HMRC were to retake the decision, the same conclusion would be reached.

The WOWGR revocation appeal

73. The Tribunal's jurisdiction is set out in s 16(4) of the Finance Act 1994. The decision that is the subject of the appeal is the decision of the reviewing officer. The Tribunal is required to adopt the *Gora* approach.

74. A failure to properly apply the principle of proportionality will mean a decision is one that could not reasonably have been arrived at. Proportionality is a matter to be considered because: (1) HMRC as a public body acting reasonably must always act proportionately; and (2) in the context of approvals under WOWGR, HMRC have in EN 196 undertaken to act proportionately.

75. There was no proper basis to conclude that the Appellant did not intend to trade so as to mean it no longer needed its WOWGR approval. The arguments in paragraphs 70-71 above apply *mutatis mutandis*.

THE HMRC SUBMISSIONS

The VAT deregistration appeal

76. The Tribunal has only supervisory jurisdiction in VAT de-registration appeals (relying on *Gayle (t/a Photogen Promo Music Adverts Ltd and Photogen PMA Ltd) v Revenue and Customs* [2017] UKFTT 211 (TC) at [120]; the decisions to that effect cited in *David Love*; *Gillamoor*; *Gray (t/a William Gray & Son) v Customs and Excise Commissioners* [2000] STC 880 at [19] and [24]; and *Brookes v Revenue and Customs* [1995] VATTR 35 at [27]). In paragraph 13(3) of Schedule 1, the words "the Commissioners are satisfied" mean that the Tribunal in an appeal must determine whether the original deciding officer was entitled to be so satisfied on the basis of the material before that deciding officer, not whether the reviewing

officer was entitled to be so satisfied on the basis of the material before that reviewing officer. The *Gora* approach does not apply to such appeals.

77. However, it would make little practical difference if there was a full appellate jurisdiction, and the HMRC submissions would be the same regardless of the nature of the jurisdiction. While the Appellant may be able to identify minor anomalies in the challenged decision, nothing is identified that could render the decisions unreasonable or perverse. If VAT jurisdiction full appellate, the Appellant has not produced sufficient evidence to establish an intention to make taxable supplies.

78. While the Appellant historically had a significant turnover, there was a rapid decline over its last 12 months. It may be true that the Appellant was not a start up, but the best evidence of an established business's intention to trade is its day to day trade. The Appellant's lack of responsiveness to HMRC enquiries is also a factor to be considered. Apart from the bare assertion that the Appellant intended to trade, nothing by way of evidence had been provided.

79. A person does not have an intention to do something if he or she does no more than contemplate doing it; he or she must positively decide to bring about the state of affairs and have a reasonable prospect of being able to do so (relying on *Cunliffe v Goodman* [1950] 2 KB 237, 253-254; *Betty's Cafés Ltd v Phillips Furnishing Stores Ltd* [1957] 1 All ER 1, 12-13; *Fleet Electronics Ltd v Jacey Investments Ltd* [1956] 3 All ER 99). Mr Singh showed little knowledge of wine, provided an irrelevant price list in response to an enquiry from HK, and was non-responsive to HMRC. Mr Singh named as the Appellant's supplier one of the largest alcohol wholesalers in the UK, but provided no evidence of dealings with that supplier. There is no evidence that the Appellant could have supplied what those making enquiries of it were seeking, and thus these enquires are not of themselves proof of an intention to supply.

The WOWGR revocation appeal

80. In the appeal against the decision to deregister the Appellant from WOWGR, the Tribunal's jurisdiction is limited to considering whether the original decision as modified by the review decision was reasonable (relying on *Atom Supplies Ltd (t/a Masters of Malt) v Revenue & Customs* [2015] UKFTT 388 (TC) at [41]-[42], [51]-[53]). Even if the *Gora* approach applies, little new material has been provided that was not before the original decision makers. Mr Singh was not consistent or credible in his evidence.

81. Accordingly, the Tribunal must focus not on whether it agrees with the decisions under appeal or whether it would have come to a different decision, but whether the decision falls within the ambit of one that a reasonable body of Commissioners could have reached.

82. The burden of proof for both decisions lies with the Appellant to show that the decisions were so unreasonable that no other body of Commissioners acting reasonably could have arrived at the decision. However, even if there was some flaw in the decision-making process the Tribunal may uphold the decision if it would have inevitably been the same.

83. WOWGR is "a privilege which carried obligations" (relying on *Greenalls Management Ltd v Customs and Excise* [2005] UKHL 34 at [17]). The illicit alcohol market costs the taxpayer an estimated £1.2 billion each year and threatens law-abiding businesses who are unable to compete on a level playing field against goods in respect of which UK excise duty and UK VAT has been evaded. In order to combat excise duty evasion HMRC uses a system of limiting the approval of owners, duty representatives and warehousekeepers to those whom it considers to be "fit and proper", and registered owners are expected to use all due diligence to prevent their legitimate trade being exploited to facilitate fraudulent transactions (relying on *CC&C Ltd v Revenue & Customs* [2014] EWCA Civ 1653 at [1]).

84. The Appellant's general complaint in both appeals is that the decision was unreasonable, the Tribunal should not intervene on the general grounds of unreasonableness save in a strong case and the Appellant has a notoriously high threshold to overcome (relying on *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1074H-1075C; *In re W (An Infant)* [1971] AC 682, 700D; *Huang v Secretary of State for the Home Department* [2005] EWCA Civ 105 at [28]). The Courts have described unreasonable decisions in the following terms: perverse, outrageous in defiance of logic or of accepted moral standards, so absurd that the decision maker must have taken leave of his or her senses, so devoid of any plausible justification that no reasonable body of persons could have reached the decision and defying comprehension.

85. The Appellant's unparticularised complaint in both appeals that the decision was disproportionate should be dismissed. Given that the Appellant did not make a single sale in the 7 months after June 2016, it is difficult to see how it can be said that the decisions had a "catastrophic effect" on the Appellant's business. Furthermore, the mere existence of less intrusive measures, if there were any, is not an indicator that the decisions are disproportionate. The Appellant had failed to make any transactions over a significant period of time and therefore HMRC were entitled to take away both the VAT registration and WOWGR approval as they were unnecessary.

86. The Appellant failed to demonstrate that it was making taxable supplies from period 09/16 onwards or had any intention to do so. This was not a decision so unreasonable that no other reasonable body of Commissioners could have arrived at it. To the contrary, this is the legislative intent in circumstances where the Appellant has ceased to make taxable supplies, and cannot show an intention to make taxable supplies in the course or furtherance of its business.

87. EN 196 also makes clear the importance of due diligence, and there was no evidence that the Appellant was carrying out due diligence.

88. The Notice of Appeal suggests that the deciding officer made an error relating to the absence of evidence of removal which had been noted during the course of a prior visit to the Appellant. It is not said in what way this was wrong. Such evidence is relevant to whether the Appellant was making taxable supplies or intending to make taxable supplies.

THE TRIBUNAL'S FINDINGS

The VAT deregistration appeal

Jurisdiction of the Tribunal

89. Section 83 VATA provides that there is an appeal to the Tribunal against a decision of HMRC under paragraph 13(2) of Schedule 1 to cancel the Appellant's registration.

90. A decision of HMRC under paragraph 13(2) involves two different exercises of judgment on the part of HMRC:

(1) first, HMRC must be satisfied that the registered person has ceased to be registrable;

(2) secondly, if so satisfied, HMRC must decide whether or not to cancel the registration, since paragraph 13(2) states that HMRC "may" do so, indicating that the exercise of the power is discretionary.

91. In an appeal against a decision of HMRC under paragraph 13(2) of Schedule 1 to cancel the Appellant's registration:

(1) the Tribunal has a full appellate jurisdiction in relation to the question whether or not the appellant has ceased to be registrable (and if so, on what date) (see *David Love* at especially [64] and [72]); and

(2) once it is established that an appellant has ceased to be registrable, the Tribunal has supervisory jurisdiction in respect of the exercise by HMRC of the discretion under paragraph 13(2) of Schedule 1 to cancel the registration.

Although *David Love* is not an authority that is binding on this Tribunal, the Tribunal agrees with and adopts the reasoning in that case on the first of these points.

The registrability of the Appellant

92. In order to be "registrable" for purposes of Schedule 1, the Appellant must either be *liable* or *entitled* to be registered under Schedule 1: see paragraph 18 of Schedule 1.

93. The Appellant acknowledges that it is not *liable* to be registered for VAT, and that its VAT registration has always been voluntary.

94. The evidence is that the Appellant has not made supplies since July 2016, and the Appellant has not sought to suggest otherwise. It follows that has since then not been *entitled* to be registered in reliance on paragraph 9(a) or 10(1)(a) of Schedule 1.

95. To be *entitled* to be registered in reliance on paragraph 9(b) or 10(1)(b) of Schedule 1, the Appellant would need to establish that:

(1) it is carrying on a business; and

(2) it intends to make supplies in the course or furtherance of that business.

96. It is convenient to deal with the second of these requirements first, given that this was the focus of the parties' arguments.

97. The burden of proof is on the Appellant to establish by evidence that at the date of the HMRC decision, it intended to make supplies in the course or furtherance of a business. The standard of proof is the balance of probabilities.

98. In making findings of fact, the Tribunal is not confined to considering evidence bearing directly on the issue of the intention of the Appellant to make supplies, but may consider all of the circumstances as a whole. It will often be unlikely that a mere declaration by the trader of a subjective intention to trade will of itself be sufficient (compare *Rompelman* at [24] and *Gardner* at [53]). It is difficult to conceive of the possibility of any appeal against a decision under paragraph 13(2) of Schedule 1, in a case where the trader is not actively trading, in which the trader does not declare a subjective intention to trade. Such a declaration of intention is thus in practice virtually a prerequisite for the bringing of such an appeal. While such a declaration of intention must be considered together with all of the other evidence in the case, in and of itself it must be expected that it will often carry limited weight in the determination of the merits of the appeal.

99. The fact that a trader has not made supplies for a certain period in and of itself does not establish that the trader does not intend to make supplies. If a trader is actively making supplies, it will satisfy the requirement in paragraph 9(a) or 10(1)(a) of Schedule 1. The mere existence of paragraph 9(b) and 10(1)(b) of Schedule 1 indicates that there can be cases where a trader is not trading, but still intends to do so in the future.

100. However, for purposes of paragraph 9(b) or 10(1)(b) of Schedule 1, an intention to make supplies requires more than a mere hope to be in a position to make supplies at some unspecified time in the future, and more than a willingness to make supplies in the future should

an opportunity to do so ever present itself. An intention in this context implies the taking of some positive action to realise the intention in question, and the existence of a reasonable prospect of the intention being so realised (see the authorities referred to in paragraph 79 above).

101. The Appellant argues that its previous trading history should be taken into account. The Tribunal agrees. However, the fact that a trader has a significant history of making supplies in the past is not in and of itself necessarily more consistent with an intention to make supplies in the future than with an absence of such intention.

102. To give a hypothetical example, suppose that a trader has, over the course of many years, consistently made supplies during the months from May to October, and then not traded during the months from November to April. If the question arose in March whether the trader had any intention to make supplies, the trader might well point to its previous trading history as evidence in support of the claim that it intended to make supplies during the following May to October, even though at that particular point in time it would not have made any supplies for some four months.

103. On the other hand, suppose that a trader over several years has continuously made supplies at a relatively consistent level throughout the entire year. Suppose that the trader then abruptly makes no supplies at all for several months. In such a case, the sudden cessation of trade, when viewed in the light of the prior trading history, might be considered to be more consistent with a lack of intention to make supplies in the future than with a continuing intention to make supplies. It may be that the trader in such a case can provide an explanation of why, despite the prior trading history and a continuing intention to make supplies, there has been a period of some months in which no supplies have been made. However, in the absence of any such sufficient explanation, the inference might be drawn from the circumstances that the trader, despite its assertions to the contrary, in fact no longer has a subjective intention to make supplies, or that the trader no longer has any reasonable prospect of realising any such intention.

104. The evidence is that the Appellant's business began in 2004. Mr Singh said that in the first year and a half it was just establishing itself, which would mean that by 2016 the Appellant had been trading actively for quite some years.

105. The evidence is that in VAT period 06/15, the Appellant had outputs of some £1.9 million, and that in VAT period 09/15 it had outputs of some £2.4 million. The Appellant has not suggested that these levels of outputs were atypical of the level of the Appellant's trade over the preceding years, although Mr Singh did say that trade at some times of the year was much higher than at other times of the year. The evidence is then that from 12/15 to 06/16, the Appellant's outputs quite rapidly reduced to zero (see paragraph 54 above). The Appellant accepts that it has made no supplies since June 2016.

106. The Appellant's evidence is that the two directors of the company made their living from the business, which had been their sole source of income. If that is so, it is to be expected that the two directors would by November 2016 have been highly concerned about the sudden evaporation of their livelihoods, and keen to establish an explanation for how a business with outputs of millions per year could within the space of less than 12 months reduce to nothing at all. If the directors genuinely had an intention to carry on the business in the future, it is to be expected that they would have taken steps to ascertain the reasons for the total lack of orders after June 2016, and to formulate a plan for obtaining further orders in the future. For instance, if they had discovered that the loss of orders was due to a downturn in demand for the specific products that they traded in, they might have formulated a plan to expand their product range. Or, if they had realised that they had a very narrow customer base which they had just lost to

competitors, they might have formulated a plan to market themselves actively to new customers or to regain their former customers. Furthermore, when asked by HMRC whether they had an intention to make supplies in the future, it is to be expected that they would have been in a position to explain to HMRC what they considered to be the reason for the recent lack of trade, and what they intended to do in order to revivify their trade in the future. It is also to be expected that the Appellant would have been able to provide documentary evidence in support of these explanations. For instance, if it were the case that the Appellant was marketing itself actively to new customers, there would have been documentary evidence of such efforts.

107. Essentially, the only explanation provided by the Appellant has been as follows. The Appellant after June 2016 simply experienced a period in which trade just "dried up". Trade in any event regularly slowed down in December and reached nearly zero in February. The Appellant had had periods in the past where things went quiet then started up again.

108. There is no evidence of any efforts at all by the Appellant to establish more precise reasons for the sudden loss of trade, or to engage in marketing, or to seek actively new orders from new or existing customers, apart from the e-mail correspondence involving HK, Bevco and KCM that has been referred to.

109. Although Mr Singh said there had been periods in the past where things went quiet then started up again, he provided no details. He has not cited specific examples from the past, giving specific dates of periods in which the Appellant had made no supplies. He has not said that there has ever been a period in the past as long as several months in which the Appellant had received no orders at all, and he has not said that this has ever occurred in the past in the period between June and November.

110. Mr Singh said in evidence that the Appellant typically made 2 or 3 consignments per week, and up to 8 or 9 in busy periods. If that is so, the Tribunal does not find it plausible, in the absence of more detailed evidence, that a period of some 4 months in which there are no supplies at all can be explained away as a "slow period" or a "dry period" for business.

111. Mr Singh said in his evidence that the enquiries from HK, KCM and Bevco were the only enquiries received in November-December 2016, but he could not recall if there had been any earlier enquiries. The Tribunal finds that this evidence also lacks plausibility. If the business was the sole means of earning a livelihood for both directors, the Tribunal considers that it would be expected that the directors would have been so concerned by the cessation of all business from June 2016, that they would have been intently focused on all new business prospects that arose. If the Appellant had been contacted by a potential customer in say, September 2016, after the Appellant had made no supplies at all for over 2 months, the Tribunal considers it implausible that Mr Singh would not have remembered this very clearly, even if that contact never came to anything.

112. Apart from the fact that they have been a directors of the Appellant company which has been trading in alcoholic beverages since 2004, there is no evidence in relation to the business expertise or experience of the Appellant's directors, either in the alcoholic beverages sector or at all. When asked in cross-examination, Mr Singh could not say what countries Wolf Blass wine or Barefoot wine came from. Nothing else in the evidence suggests that he has any particular knowledge or expertise in the field in which the Appellant is trading.

113. Mr Singh said that Appellant purchased its supplies from a particular supplier, then added a markup and sold the goods to its customers. His evidence was furthermore that he only confirmed the prices with the Appellant's supplier in writing after the Appellant's customer had already placed an order. This appears to the Tribunal to be a very unsophisticated business model. An obvious question arises as to why any customer would purchase goods from the Appellant when it could presumably obtain the goods directly from the Appellant's supplier

without the markup. It is entirely unclear from the evidence why the Appellant's customers have in the past made purchases from the Appellant, rather than directly from the Appellant's supplier.

114. In the circumstances, the Tribunal is not required to presume, from the mere fact that they did so in the past, that the Appellant's past customers will purchase from the Appellant again in the future. Nor is the Tribunal required to presume, from the mere fact that the Appellant managed to build up a business from nothing in the past, that the Appellant will be capable of attracting new customers in the future to replace any former customers who may have been lost. There is no evidence before the Tribunal of any business strategy that the Appellant may have for attracting new business.

115. The evidence is that in an e-mail dated 6 December 2016, HK said to the Appellant that "I will follow up next week and try to place an order". The Appellant's case is that HK had purchased from the Appellant before. Mr Singh accepted that the Appellant did not contact HK again by e-mail, although there may have been some telephone contact, and that HK ultimately never placed an order.

116. There is no evidence that the Appellant ever responded in writing to the enquiries that it received from KCM and Bevco, and Mr Singh said that he did not respond to KCM because he did not think that the enquiry would lead anywhere.

117. On 23 January 2017, the Appellant's agent stated to HMRC that the Appellant was "in the process of arranging a transaction which it anticipates will come to fruition shortly" and that "We will send you copies of relevant documentation in this regard in due course". No documentation in respect of any such potential transaction was ever provided either to HMRC or this Tribunal. The Appellant's case is that ultimately this potential sale did not take place. However, even if that is so, presumably there is some documentation that the Appellant could have provided in relation to the potential transaction, such as exchanges of correspondence with the potential purchaser. At the very least, the Appellant could have provided witness evidence of further details of this proposed sale, such as the identity of the potential purchaser, and the quantities and types of goods to which the potential sale related.

118. At the hearing of this appeal, the Appellant's own case was that the Tribunal has a full appellate jurisdiction in relation to the VAT revocation appeal. This means that the Appellant was fully aware that a major factual issue in the case was whether the Appellant did indeed have an intention to make supplies, that the burden of proof was on the Appellant to establish this, and that the primary submission of HMRC was that the Appellant had provided insufficient evidence of this fact. The lack of detail and evidence from the Appellant goes directly to the question whether the Appellant has discharged its burden of proof. The Tribunal can also take into account the lack of detail and evidence when assessing plausibility and credibility. In a context where the Appellant knows that sufficiency of evidence of its intention to trade is a major issue, the failure of the Appellant to provide further details and evidence is particularly telling. The failure of the Appellant to provide further evidence than it has seems inexplicable.

119. The 23 January 2017 e-mail was sent by the Appellant's agent in response to a letter from HMRC stating that HMRC was minded to revoke the Appellant's WOWGR registration due to its failure to demonstrate its continuing need for registration. It was thus clear even at the time of the Appellant's agent's 23 January 2017 e-mail that the Appellant's failure to provide sufficient information and evidence was the primary concern of HMRC.

120. Indeed, as early as 21 October 2016, Officer Hewitt requested the Appellant to provide information including ARC numbers for each sale undertaken since 1 March 2016, confirmation of whether the Appellant held accounts in excise warehouses in other EU Member

States, and confirmation of when ownership of goods changes in the case of despatches made by the Appellant from the UK. There is no evidence that the Appellant responded to these questions, despite being chased by HMRC on several occasions.

121. The Tribunal takes into account the evidence that the Appellant continued to maintain accounts at Seabrooks and Purland House. However, the evidence suggests that the cost of doing so was minimal, given that the Appellant did not in fact have any goods in those warehouses after June 2016.

122. The Tribunal does not consider the Appellant's failure to undertake due diligence in relation to HK, KCM and Bevco of itself to be of any particular significance. The Tribunal accepts that at the time that the initial enquiries from these potential customers were received, the Appellant might have considered it premature to undertake due diligence.

123. On the evidence before it, the Tribunal finds that the Appellant has not established an intention to trade. The Tribunal is not satisfied on the evidence even that the Appellant subjectively would like to make supplies if the opportunity to do so ever arose. The Tribunal is certainly not satisfied that the Appellant is taking any positive action to realise such an intention. Nor is the Tribunal satisfied on the evidence that the Appellant has any reasonable prospect of realising any such intention.

124. The Tribunal finds that at the date of the 21 November 2016 HMRC decision cancelling the Appellant's VAT registration, the Appellant was not registrable for purposes of VATA.

Exercise of the discretion to deregister

125. Given that the Appellant was not registrable, HMRC had a discretion to cancel the registration. This Tribunal can entertain an appeal against the exercise of that discretion, and in relation to this the Tribunal's jurisdiction is supervisory (see paragraphs 89-91 above).

126. The Appellant argues that the 21 November 2016 HMRC decision cancelling its registration came out of the blue, that HMRC gave the Appellant no notice of its mindedness to issue the decision and no opportunity to make representations before the decision was taken, and that the Appellant was not informed in the 21 October 2016 e-mail from Officer Hewitt that the information being requested from him was in any way relevant to the Appellant's VAT registration.

127. However, the 21 November 2016 HMRC decision was not necessarily a final decision on the matter. That decision advised the Appellant that if he disagreed he could request a review or appeal to the Tribunal. He exercised the right to request a review on 28 November 2016. The Appellant was also subsequently made aware by the HMRC letter of 2 December 2016 that HMRC were considering cancelling its WOWGR registration if it did not provide documentary evidence of a resumption of trading or of a confirmed intention to resume trading by 7 December 2016. In response to this letter, the Appellant submitted on 7 December 2016 the three e-mails on which it relies as evidence of its continuing intention to make supplies. The Tribunal is satisfied that Officer Hanrahan in her 3 January 2017 review decision took all three of these e-mails into account. She said in her oral evidence that all of the e-mails would have been before her at the time of her decision. The Tribunal considers that there are understandable reasons why her decision would mention the e-mail chain involving HK only. This is because that was the only e-mail in which a potential customer actually expressed a concrete intention to place an order. The other two e-mails involving KCM and Bevco were merely enquiries to which the Appellant never even responded.

128. By the time of the review decision, the Appellant had had the opportunity to present evidence and make representations. The conclusion reached in the review decision indicates

that the conclusion in the original 21 November 2016 decision would have been the same, even if the Appellant had been afforded that opportunity before the 21 November 2016 decision was taken.

129. The Appellant has had yet a further opportunity to present further evidence in the appeal to this Tribunal. For the reasons given above, the Tribunal considers that despite having that opportunity, the Appellant has not submitted any further evidence of any real substance.

130. The Tribunal therefore rejects the ground of appeal based on the claimed lack of notice prior to the taking of the 21 November 2016 decision.

131. The Appellant then claims that the decision to cancel its VAT registration is wholly unreasonable and disproportionate and has had a catastrophic effect on the Appellant's business.

132. The Appellant does not particularise this claim. Given that the Appellant had not made any supplies since June 2016, it is difficult to see how the VAT deregistration caused any immediate financial consequences. Furthermore, the Appellant was not required to register for VAT and had done so voluntarily, so lack of VAT registration would not have been a legal impediment to the Appellant continuing to trade. More importantly, given that the Tribunal has found that the Appellant did not intend to make supplies in the future, it must logically follow that the decision to deregister in fact had no impact on future trade at all. In any event, even if that was not so, the Appellant does not explain why it could not have simply applied to reregister for VAT if and when it received a new order from a customer.

133. The Appellant does not suggest any other basis upon which it could be said that the decision to deregister is unreasonable or disproportionate. The reasons given in the review letter include the risk of fraud and tax loss. Given that the Appellant no longer had an intention to make supplies, cancellation of VAT registration due to risks of fraud and tax loss is in the Tribunal's view reasonable and proportionate.

134. The appeal against the exercise of HMRC's discretion to cancel the Appellant's VAT registration is therefore dismissed.

The WOWGR cancellation appeal

135. The jurisdiction of the Tribunal is confined to granting one of the remedies specified in s 16(4) of the Finance Act 1994 if, and only if, the Tribunal is satisfied that HMRC "could not reasonably have arrived at" the challenged decision.

136. The 26 January 2017 decision found that the Appellant had not demonstrated a continued need to hold a WOWGR approval. The 4 April 2017 review decision found that the Appellant had not provided satisfactory evidence of an intention to trade.

137. In that respect, both decisions were entirely reasonable. On the basis of all of the evidence before it, this Tribunal has reached the conclusion that as at November 2016 the Appellant did not have an intention to make supplies. It was entirely open to Officer Hewitt and Officer Loughridge to reach the same conclusion on the basis of the evidence before them.

138. The reasons given for the cancellation in the 26 January 2017 decision were that the Appellant had not demonstrated that it continued to need a WOWGR approval. The reasons given in the 4 April 2017 review decision were that the Appellant had not satisfied HMRC that it was a genuine business enterprise which is commercially viable with a genuine need for approval.

139. Section 100G(5) CEMA provides that WOWGR approval may be cancelled "for reasonable cause".

140. Excise Notice 196 provides that a requirement for WOWGR approval is that HMRC must be satisfied that "the business is a genuine enterprise which is commercially viable, with a genuine need for approval" (section 3.2).

141. It the Appellant was no longer making supplies of duty suspended alcohol, it followed that it no longer needed WOWGR approval. Furthermore, given that the Appellant had made no supplies for some months, and did not intend to make further supplies, it is difficult to see how the Appellant could at that stage have been "a genuine enterprise which is commercially viable".

142. HMRC therefore could reasonably arrive at the conclusion that the Appellant's WOWGR approval should be cancelled.

CONCLUSION

143. Both appeals are dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

144. 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.

DR CHRISTOPHER STAKER
TRIBUNAL JUDGE

RELEASE DATE: 05 SEPTEMBER 2019