

Case Study

Export Control

Mr X has been employed by Global (Spare Parts) Trading Ltd for the past four years. The company sources electrical components from the USA and exports them to customers in a number of Middle Eastern and North African countries. Mr X is responsible for liaising with suppliers and customers by telephone and email, and for ensuring that the goods meet customer requirements. Mr X has some technical understanding of the goods but generally acts under the instructions of his boss, Mr Y, who is the sole director of the company and who is responsible for generating demand for the company's services. Over time, however, Mr X has learned more about the goods, assumed a more proactive role, developed relationships with the company's customers, and is able to understand where to source the goods required by the customers.

Background

Mr X has never received any in-house training about the UK's export control laws. He has never attended any seminars run by the Department for Business, Innovation and Skills (formerly the DTI). He has sometimes seen warnings on the paperwork from the company's US suppliers that the goods were "restricted" or "subject to US export control laws", but assumed this was a matter for the US exporter. Some of the company's customers ask that the goods be sent via a free trade zone in a package marked with the label "misc. electrical equipment" rather than a detailed description of the components. Mr X thought this was odd and queried it with Mr Y, who said that Middle Eastern countries have complicated import restrictions and it was "better for business" simply to follow the instructions of the company's customers.

Recently there has been a sourcing issue with a customer who says that electrical switchboards need to be designed to "military specifications" to withstand high operating temperatures. These goods were harder to source and some came from discontinued US military stock. Mr X wondered how the goods were to be used. He looked briefly at the customer's website and saw pictures of vehicles, planes, helicopters and buildings surrounded by Arabic text, but thought no more about it. The switchboards are expensive and produce high margins for the business. Even more recently the company found that it could only source a particular type of electrical relay from Serbia, and Mr Y decided that it would be better to broker the sale of these relays directly from Serbia to its customer in Iran. Mr X is aware that these relays were designed to military specifications, but as the goods

were not imported into or exported from the UK, he thought he was doing nothing wrong. Mr X assumed that if the company was doing something wrong, the Government would step in and provide some guidance.

HMRC intervention

Two days ago Mr X received a call from Her Majesty's Revenue and Customs, which has seized a package at Heathrow Airport which was destined for Iran. Customs officials tell him that the description of the goods on the package label is false and misleading. They refer to a "UK military list" (Mr X now recalls Mr Y mentioning this once or twice) and say that the goods were designed to have military as well as civilian uses. They ask about the Iranian importer and Mr X refers them to the importer's website.

Customs officers appeared at the company's premises at 7am this

morning with a search warrant. Mr Y is overseas on business. Mr X is told that he is being arrested on suspicion of “exporting goods with an intention to evade an export prohibition” contrary to section 68 (2) of the Customs and Excise Management Act 1979. He overhears the officers talking about electrical relays bought by the company from Serbian ex-army officers. Customs seize all paperwork, desktops and laptops, and load their vans with the goods being stored in the company’s warehouse ready for export. Mr X is driven to the police station, held in a police cell and told that he will be interviewed under caution and that everything he says will be tape recorded and could be used in criminal proceedings against him. He is told that he can have a lawyer present but this is not compulsory.

Mr X’s Dilemma

Mr X doesn’t know what to do. Should he ask for a lawyer? Should he answer questions and tell them everything he knows about the

business? If he tells the officers that he was sometimes suspicious, does that mean he has committed a criminal offence? Is he exposed to UK sanctions in any way because the company brokered the sales of electrical relays from Serbia to Iran? What can be done about the package of goods seized at Heathrow? How is he supposed to meet all the outstanding orders now that the warehoused goods have also been seized? Should he try to contact Mr Y before his interview, or before Mr Y returns to the UK and is himself arrested?

Possible Outcomes

The answers to these questions are complex and will depend upon the precise facts of the case. However, it is likely that Mr X would be charged with a criminal offence of deliberately evading export and/or trade control prohibitions, certainly if he fails to give any explanation of his role within the company during his interview. These offences are serious and can attract lengthy

“ The criminal law and procedure in this area is complex and the penalties are often severe. Early legal advice from a firm with expertise in this area is essential. ”

Peter Binning, Corker Binning

terms of imprisonment. However, solicitors can, in appropriate cases, write letters of representation at an early stage as to why their clients should not be charged. These letters can be successful in securing out of court disposals, e.g. cautions. Export control cases throw up many serious issues even for junior employees caught up in investigations. As well as export offences, advice may be needed about the risk of incrimination under foreign law, particularly where US sanctions may be involved, with the attendant risk of extradition. In many cases, assets may be frozen during the investigation.

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