



Courts and Tribunals Judiciary

IN THE NORTHAMPTON MAGISTRATES COURT

Case No: 2400027105

Before District Judge (Magistrates Court) Mehta

THE COMMISSIONERS FOR HIS MAJESTYS REVENUE AND CUSTOMS

Complainant

V

ECO DRY ENERGY LTD

Respondent

JUDGEMENT

This judgement is being sent to the parties representatives electronically on 19 August 2025 which is the date of handing down.

Introduction

1. This judgement is given at the conclusion of a hearing at Northampton Magistrates Court on the 16th of July 2025.
2. These Proceedings arise as a result of His Majesty's Revenue and Customs seizure of nine vehicles and machines used in the production of firewood from Eco Dry Energy Ltd on the 25th of April 2023.

Background

3. On the 25th of April 2023 His Majestys Revenue and Customs (under s.139 of the Customs and Excise Management Act 1979) seized 9 vehicles and machines from Eco Dry Energy Ltd. These machines were:
 1. Merlo TF42-7 Telehandler
 2. Merlo TF42-7 145 Telehandler
 3. Merlo TF42-7 140 Telehandler
 4. Avant 735 135 Optidrive Telehandler
 5. Kubota U72-4 Mini digger
 6. Doosan Generator
 7. Valtra Tractor T151 registration AJ58 52C
 8. Massey Ferguson Tractor 5455 registration CX11 FDD
 9. Hitachi Digger number 2X135US-SB

The Allegations

4. The machines were seized under Section 139 of the Customs and Excise management Act 1979 and the complainants allege they are liable to forfeiture under section 13(6) and s 24A(7) Of the Hydrocarbon Oils Duties Act 1979 and s.141 Customs and Excise management Act 1979 because after sample testing they were found to contain UK marked rebated fuel (“red diesel” or “marked oil”). Otherwise known as “rebated fuel” In contravention of the Hydrocarbon Oils Duties Act 1979.
5. The use of rebated fuel is permitted only in an “excepted machine”. Excepted Machines include agricultural vehicles and other machines when they are used in “Forestry” or “Arboriculture”. The complainants allege that the use of the machines/vehicles seized were not for “Forestry” or “Arboriculture” and therefore the use of rebated fuel was not permitted.

The Respondents

6. The respondents Claim that their business which consists of processing logs felled and delivered to them by a third party into firewood with only occasional (less than 1% of work undertaken) felling amounts to “forestry” or “arboriculture”.
7. The respondents further state within their notice of claim:
 - a. the processing of firewood is covered under “forestry” within the government standard industrial classification codes (SIC)
 - b. Notice 75 is inconsistent with the spirit of the legislation
 - c. Notice 75 is incomplete as it does not consider the preservation of harvested crops
 - d. notice 75 was changed between the site visit on the 25th of April 2023 and the interview on the 10th of May 2023, becoming more restrictive
 - e. notice 75 has not been brought up to date following changes to the law in March 2023

The Law

Seizure and forfeiture

8. The powers for seizure and forfeiture of seized goods are provided in the Hydrocarbon Oils Duties Act 1979 and the Customs Excise Management Act 1979:
9. Hydrocarbon Oils Duties Act 1979 provides:

Section 12

Rebate not allowed on fuel other than for excepted machines.

(1) If, on the delivery of heavy oil for home use, it is intended to use the oil as fuel [other than for an excepted machine], a declaration shall be made to that effect in the entry for home use and thereupon no rebate [under section 11 above] shall be allowed in respect of that oil.

(2) No heavy oil on whose delivery for home use rebate has been allowed (whether under section 11 above or section 13ZA or 13AA(1) below) shall—

(a) be used as fuel other than for an excepted machine, or

(b) be taken into any vehicle, vessel, machine or appliance, other than an excepted machine, as fuel,

unless an amount equal to the amount for the time being allowable in respect of rebate on like oil has been paid to the Commissioners in accordance with regulations made under section 24(1) below for the purposes of this section.

Section 13(6)

(6) Any heavy oil—

(a) taken into a vehicle, vessel, machine or appliance, other than an excepted machine, in contravention of section 12(2) above or supplied as mentioned in subsection (2) or (3) above; or

(b) taken as fuel into a vehicle, vessel, machine or appliance at a time when it is an excepted machine and remaining in that vehicle, vessel, machine or appliance as part of its fuel supply at a later time when it ceases to be an excepted machine,

shall be liable to forfeiture.

Section 24A

Penalties for misuse of marked oil.

(1) Marked oil shall not be used as fuel other than for an excepted machine.

(2) For the purposes of this section marked oil is any hydrocarbon oil in which a marker is present which is for the time being designated by regulations made by the Commissioners under subsection (3) below.

(3) The Commissioners may for the purposes of this section designate any marker which appears to them to be used for the purposes of the law of any place (whether within or outside the United Kingdom) for identifying hydrocarbon oil that is not to be used as fuel [other than for excepted machines].

(4)

(5) Where a person uses any hydrocarbon oil in contravention of subsection (1) above, his use of the oil shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).

(6) If a person who uses any marked oil in contravention of subsection (1) above does so in the knowledge that the oil he is using is marked oil, he shall be guilty of an offence and liable—

(a) on summary conviction, to a penalty of £20,000 or to imprisonment for a term not exceeding 6 months, or to both;

(b) on conviction on indictment, to a penalty of any amount, or to a term of imprisonment not exceeding [F714] years, or to both.

(7) Any marked oil which is in a vehicle, vessel, machine or appliance other than an excepted machine shall be liable to forfeiture.

(8) Where in any proceedings relating to this section a question arises as to the nature of any substance present at any time in any hydrocarbon oil—

(a) a certificate of the Commissioners to the effect that that substance is or was a marker designated for the purposes of this section shall be sufficient, unless the contrary is shown, for establishing that fact; and

(b) any document purporting to be such a certificate shall be taken to be one unless it is shown not to be.]

(9) This section does not apply in relation to marked oil—

(a) the use of which is lawful in accordance with section 12 (rebate not allowed on fuel other than for excepted machines),

(b) which, on or after 1 April 2022, is taken into a vehicle, vessel, machine or appliance that is not an excepted machine in accordance with the law of a place outside the United Kingdom, or

(c) which is used or taken in as mentioned in section 14E (private pleasure craft).

Schedule 1A

1. Any vehicle, vessel, machine or appliance of one of the following descriptions is an “excepted machine” for the purposes of this Act.

Agricultural vehicle

2. (1) An agricultural vehicle at a time when it is used for—

(a) purposes relating to agriculture, horticulture, pisciculture or forestry,

(b) cutting verges bordering public roads,

(c) cutting hedges or trees bordering public roads or bordering verges which border public roads, or

(d) clearing or otherwise dealing with frost, ice, snow or flooding,

including when it is going to or from the place where it is to be or has been used for any of those purposes.

Other machines or appliances

8

(1) A machine or appliance that is not a vehicle or vessel at a time when it is used—

(a) for purposes relating to agriculture, horticulture, pisciculture, aboriculture or forestry;

10. Customs and Excise Management Act 1979 provides

Section 139

Provisions as to detention, seizure and condemnation of goods, etc.

(1) Anything liable to forfeiture under the Customs and Excise acts may be seized or detained by any officer or constable or any member of her majesty's armed forces or Coast Guard.

Section 141

Forfeiture of ships, etc. used in connection with goods liable to forfeiture

(1) Without prejudice to any other provision of the Customs and Excise Acts 1979, where any thing has become liable to forfeiture under the customs and excise Acts

(a) any vehicle, animal, container (including any article of passengers' baggage) or other thing whatsoever which has been used for the forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and

(b) any other thing mixed, packed or found with the thing so liable,

shall also be liable to forfeiture.

(2) [...]

(3) Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners at any office of customs and excise.

(4) If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

(5) ...

(6) Where notice of claim in respect of anything is duly given in accordance with paragraphs 3 and 4 above, the Commissioners shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture the court shall condemn it as forfeited.

(7) Where any thing is in accordance with either of paragraphs 5 or 6 above condemned or deemed to have been condemned as forfeited, then, without prejudice to any delivery up or sale of the thing by the commissioners under Paragraph 16 below, the forfeiture shall have effect as from the date when the liability to forfeiture arose

The Evidence

11. I heard evidence from Mr Clarke who is an officer of HMRC and works as an Excise Policy Advisor for the Fuel Duties Policy Team. I heard evidence of Mr Patmore who is a director of Eco Dry Energy Ltd.
12. Counsel served skeleton arguments and made supplementary oral submissions. A hearing bundle was also served consisting of 816 pages. I have had regard to all the evidence and submissions made during the hearing and in writing before reaching my decision.

Discussion and Findings

13. I must decide whether the machines and/or machines were being used for Forestry or Arboriculture within the meaning of Hydrocarbon Oils Duties Act 1979.
14. Schedule 1A of the Hydrocarbon Oils Duties Act 1979 states that an excepted vehicle or machine includes an agricultural vehicle “at a time when it is used for purposes relating to agriculture, horticulture, pisciculture, arboriculture or forestry”. The meaning of purposes relating to agriculture, horticulture, pisciculture, arboriculture or forestry is not further defined in the act.
15. HMRC have interpreted the terms (by way of HMRC’s excise Notice 75) and by memorandum of understanding between HMRC, DVLA, National Farmers Union, Ulster Farmers Union, National Association of Agricultural contractors, Confederation of Forest Industries and the Horticultural Trades Association. By virtue of s.12 of the notice 75:

“Meaning of ‘purposes relating to forestry’

In our view, forestry is the upkeep and management of forests including the growing and harvesting of timber and other forestry products.

By ‘forest’ we mean

- *Of land where trees have been planted (often in rows and columns) with the intention that they will be grown and harvested for timber, or other forestry products*
- *a pre-existing natural forest which is being maintained and managed so that it can be harvested for timber, or other forestry products*

Using a vehicle for purposes relating to forestry includes using it to:

- *travel to and from a place where it will be used for forestry*
- *transport trailed or mounted forestry implements and machinery to and from the place they will be used for forestry*
- *move timber that you (or your coworker) have harvested from where it was harvested to the place where it is to be stored, sold or processed*

...

Activities not accepted as falling within the definition of agriculture, horticulture or forestry include:

- *dealing in agricultural, horticultural or forestry products*
- *the further processing and preparation of agricultural, horticultural or forestry produce, or slaughtered animals, except where this is a necessary extension of the agricultural, horticultural or forestry operation to facilitate the handling, storage and transport of them, for example by Bailey*

Forestry work

Clearing felled timber is part of forestry harvesting. This must be in a forest, or a commercial forestry enterprise. Cutting down trees anywhere else is not forestry work, even if you sell the timber. “

7. Terminology we use when describing excepted vehicles and machines, and allowed uses

This section explains what we mean by some of the terms we use to describe excepted vehicles and machines, and allowed uses in sections 3 to 6.

...

7.5 Agriculture, horticulture, aquatic farming, or forestry

HMRC applies the following definitions of agriculture, horticulture, aquatic farming, and forestry:

7.5 Forestry - the science and art of forming and cultivating forests and the management of growing timber.

7.7 Arboriculture - mainly focuses on the growing, care and management of trees, shrubs and woody plants. These are usually in gardens, parks or other populated settings, for the enjoyment, protection, and benefit of people.

16. Mr Patmore's evidence was that ECO Dry Energy Ltd buy in the timber and they then dry it. Less than 1% is directly felled by Eco Dry Ltd. He further went on to say that Eco Dry is not a forestry management company but that they would buy from a forestry management company when the timber was still standing and also when it had been felled.
17. The respondents challenge the interpretation of the section 75 notice. The First Tier Tax Tribunal when deciding the case of *Peter Taylor [2012] UKFTT 58 (TC)* decided the Section 75 notice does not have the force of law, that the memorandum of understanding is not intended to be exhaustive and in any event does not have the force of law and that HMRC's definition of forestry in the excise notice is a dictionary definition and held the term forestry should be given a wide meaning. In that case forestry was held to include tree work generally and not simply that involved in commercial woodlands or large expanse of trees. Whilst I accept that a decision of the First Tier Tax Tribunal is not binding upon me I bear in mind that the First Tier Tax Tribunal is a specialist tribunal and the tribunal's decision is persuasive.
18. The First Tier Tax Tribunal also considered in the case of *Renfrewshire Council v HMRC (E00963)* that the words "purposes related to" within the statutory test "is plainly broader than horticultural purpose or agricultural purpose. The use and purpose must have a relationship or connection with horticulture" it was said that when one activity is part and parcel of another they should be treated inclusively for the purposes of applying the statutory test.
19. In a further case before the First Tier Tax Tribunal *Neales Waste Management Ltd v HMRC (E01092)* it was decided that entitlement to use red diesel attaches to the relevant use and is not determined by the identity of the person using it. The court must look at identifying the functions performed.
20. I found Mr Patmore to be a credible and consistent witness and I accept his evidence. Mr Patmore has been involved in the renewable energy sector since 2009 and is a director of Eco Dry Energy Ltd. His responsibilities include checking that the company are aware and compliant with current and future rules which affect the operation of the business. Mr Patmore manages most interactions with regulators and is responsible for the overall direction and strategy implementation of the business. Most of the process of the drying of their products is from wood chip or firewood processing waste and a large proportion of the electricity used comes from their own solar panels Eco Dry Energy still uses some diesel in their process. This included using diesel and a generator for the firewood processes and to power the machines moving logs around the site.
21. Eco Dry Energy Ltd sources most of its timber from third party suppliers. The volume of timber they process each year means it would be almost impossible for them to own the volume of forestry land which provided consistent annual harvests. Mr Patmore stated that the company would need to own in excess of 20,000 acres of land to sustainably supply its customers. They therefore have to source most of its timber from third party suppliers.
22. I find as facts the following:
 1. Eco Dry Ltd source most of their timber from third party suppliers.
 2. Eco Dry Ltd Supply kiln dried firewood.
 3. Eco Dry Ltd use diesel in the process of drying their products including diesel in a generator for the firewood processes and to power the machines which move logs around their site.
 4. Without the process of force drying the timber ECO Dry Ltd could not lawfully sell the timber

5. The use and purpose of the diesel is connected to forestry. The use of diesel to power the machines and vehicles is part and parcel of the felling of the trees. Without one the other would not take place.

23. I am satisfied that the process adopted by Eco Dry Ltd and the use of red diesel is for Purposes related to forestry. Their process for the kiln drying of the wood is a continuation of the process from when the tree is felled ending in the wood being sent to their customers. The whole process is forestry.

Decision

24. I find the seizure of the machinery and vehicles was unlawful.

District Judge (Magistrates Court) Mehta

19 August 2025

