

Callidus News

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DAMAGE TO CARGO – INHERENT VICE: LIABILITY ON CARRIER



In a recent case, the Court held that where cargo is shipped in good order and damage is caused during the shipment, the Carrier has the burden of proving that the effective cause of damage was the inherent vice and wasn't due to the carrier's own negligence. In this case, coffee beans were shipped from Columbia to Northern Europe, the cargo was damaged due to its hygroscopic characteristic i.e., its tendency to emit moisture. The Bill of Lading of this shipment were on LCL/FCL terms and governed by English law, making the Carrier contractually responsible for preparing the containers for carriage and loading the bags of coffee in them. It is to be noted that the Cargoes like Coffee Beans, Sugar etc. which falls under the category of hygroscopic cargoes, naturally lose and absorb moisture in relation to the ambient conditions. If the said category of the cargo is carried in an unventilated container to a cold region, the cargo is more likely to emit moisture which would condense against the roof and walls of the containers. In such circumstances, the damage to the cargo due to moisture is prevented by dressing the containers – lining the roof and walls

of the containers with an absorbent material. In this case, despite the fact that the Containers were lined with an absorbent material, the coffee beans were found damaged from condensation and the cargo owners initiated a case against the Carrier for breach of its obligation "to carefully load, handle, stow, carry, keep, care for and discharge the cargo". The Court while pronouncing the Judgment, also mentioned that though Coffee beans are hygroscopic and emit moisture as the ambient temperature falls may constitute an inherent vice if the effects cannot be countered by reasonable care in the services contracted for, but not if they can and should be". The Carrier was held liable in this case merely because the measures taken by the Carrier were insufficient to prevent damage to the cargo. There are many other instances where the Carriers are held liable for the damage to the cargo due to its characteristics which was not well sufficiently taken care of to prevent any possible damages to it. Even though it is found that the Containers are in sound condition externally without any hole or defect however, the cargo is found damaged,



Life isn't about waiting for the storm to pass. It is about learning to dance in the rain
- Vivian Greene



the Carrier shall be held liable for the same even if the cargo was damaged due to its inherent vice that was left unnoticed by the Carrier. For example, the problems may arise if hygroscopic cargoes and non-hygroscopic cargoes are not preserved with required ventilation. These cargoes are also likely to damage if loaded into the same compartment since both hygroscopic cargoes and non-hygroscopic cargoes has different characteristics and require different temperature level. It is also to be noted that the most

of the Insurance Companies also do not provide insurance policy that cover the loss or damage to the Cargo due to nature of the cargo/inherent vice. The inherent vice defence can only be applicable when there has been no intervention of an external factor such as some incident including but not limited to ordinary action of waves and winds and/or any sea conditions and it is very important to maintain high level of quality control over the cargoes that are easily damaged by moisture. Hence while entering into a contract

for the carriage of any cargoes with hygroscopic characteristics, the Parties shall mention the characteristics and requirements to protect the cargo from damage, in their Contract and the Carrier has to take all possible steps to protect such cargoes from damage in order to avoid any claims in this regard as the main thing which a Court would look into in such claims is whether the precautions taken by the Carrier or its agents was sufficient enough to prevent the damage to the Cargo.



TRANSFER OF BUSINESS AS A GOING CONCERN BY FEDERAL TAX AUTHORITY (FTA) ON VAT

Value Added Tax (VAT) was introduced in the UAE on 1 January 2018 with an aim to help government move towards its vision of reducing dependence on oil and other hydrocarbons as a source of revenue.

VAT is applicable equally on tax-registered businesses managed on the UAE mainland and in the free zones. However, there are certain free zones as 'designated zone', which are treated as outside the UAE, for tax purposes. The transfer of goods between designated zones is tax-free.

In UAE the VAT is applicable on the supply of goods and services at the rate of 5% and Goods are defined as a physical property that can be supplied including real estate, water, and all forms of energy as specified in UAE VAT and mainly encompass the following forms:-

1. A transfer of ownership of Goods or the right to use them from one Person to another Person

2. Any transfer of title of goods under an agreement
3. Specific Supplies as listed below shall also be considered as Supply of Goods.
 - ✓ Supply of water
 - ✓ Supply of real estate including sale and tenancy contracts
 - ✓ A supply of all forms of energy, which includes electricity and gas including biogas, coal gas, liquefied petroleum gas, natural gas, oil gas, producer gas, refinery gas, reformed natural gas, and tempered liquefied petroleum gas, and any mixture of gases, whether used for lighting, or heating, or cooling, or air conditioning or any other purposes

FTA's clarification on the VAT Exemption of TOGC (transfer of a going concern)

The UAE Federal Tax Authority (FTA)

has published a public clarification on the value added tax (VAT) treatment of the transfer of a business as a going concern. Under Decree-Law No. (8) of 2017 on VAT, the transfer of whole or an independent part of a business from a person to a taxable person for the purposes of continuing the business (i.e. transfer of a business as a going concern - TOGC) is not considered to be a supply for VAT purposes and is effectively exempt.

Under Article 7(2), the conditions that need to be met for a TOGC:

1. There must be a transfer of a whole or an independent part of a business;
2. The transfer must be made to a taxable person; and
3. The recipient intends to continue the business which was transferred.

The onus is on the supplier to ensure that the purchaser has the genuine

intention to use the assets for the same kind of business after transfer. Where the supply has been incorrectly treated as a TOGC, the FTA may recover VAT retrospectively from the supplier.

Where the supply has been incorrectly treated as a TOGC, VAT may be retrospectively due on the supply.

Additionally, the FTA clarifies that if the requirements of a TOGC are met, then TOGC treatment is compulsory i.e. the supply must be treated as out of scope of VAT. This means that a person selling their business is not able to simply charge VAT on the sale of their business (or part of it) as a means of attempting to reduce risk.

TOGC rules have commonly been the subject of tax litigation in other jurisdictions and the principles adopted by the UAE in respect of these transactions are similar. As a result, businesses should pay careful attention to scenarios in which TOGC may apply and take action to review the VAT liability applied.



HOT NEWS



TIPS TO BE SUCCESSFUL IN LIFE

- Think Big
- Find What You Love to Do and Do It
- Learn How to Balance Life
- Do Not Be Afraid of Failure
- Have an Unwavering Resolution to Succeed
- Be a Person of Action
- Cultivate Positive Relationships
- Don't Be Afraid of Introducing New Ideas
- Believe in Your Capacity to Succeed
- Always Maintain a Positive Mental Attitude
- Don't Let Discouragement Stop You from Pressing On
- Be Willing to Work Hard
- Be Brave Enough to Follow Your Intuition

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