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Application No. 2 of 2015

**IN THE ANTI-MONEY LAUNDERING AND
COUNTER-TERRORIST FINANCING (FINANCIAL
INSTITUTIONS) REVIEW TRIBUNAL**

IN THE MATTER of a Decision made
by the Commissioner of Customs and
Excise pursuant to s 30 of the
Anti-Money Laundering and Counter-
Terrorist Financing (Financing
Institutions) Ordinance, Cap. 615

and

IN THE MATTER of s 59 of the
Anti-Money Laundering and Counter-
Terrorist Financing (Financing
Institutions) Ordinance, Cap. 615

BETWEEN

UPPLAN CO. LTD. Applicant
and

COMMISSIONER OF CUSTOMS AND EXCISE Respondent

Before : Chairman, Martin Liao Cheung-kong, SBS, JP,
Written Submissions : 2 & 8 December 2015 and 12 January 2016
Date of Decision : 1 April 2016

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DECISIONS

1. On 5 July 2012, Upplan Company Limited (the Applicant”) made an application No. P-NL-12-00787 through Ms. Li Ho Ping (“Ms. Li”) to the Customs & Excise Department (“C&E”) for a money service operator licence. After several rounds of communication, the Commissioner of C&E decided to refuse the application and the decision of refusal was communicated to the Applicant by way of a Notice dated 28 October 2015 (“the Notice”).

2. The Notice was mailed by recorded delivery to the Applicant’s company address (“Company address”), which had been provided by the Applicant.

3. In the Notice, the Applicant was advised that should it feel aggrieved by the Commissioner’s decision, it might apply to this Tribunal for review within 21 days of the date of the Notice. The address of the Tribunal was provided in the Notice.

4. By a letter dated 27 November 2015, the Applicant wrote to C&E indicating that it intended to apply to review the Commissioner’s decision. It also explained that the Company address was vacant as no money exchange business could be carried out there without a licence and the Applicant only sent staff to collect mail and fax from time to time. According to the Applicant, the Notice was picked up at the post office on 17 November 2015. This letter was copied to the Tribunal. No time

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extension was sought in this letter. The letter was a notification of the Applicant's intention to apply for review to the Commissioner.

5. By a letter dated 2 December 2015 to the Tribunal, the Applicant explained its delay along similar line and requested in effect an extension of time to apply for a review of the Commissioner's decision.

6. The Commissioner objected to the request for time extension. The Commissioner informed the Tribunal, amongst other things, that:

(a) On 23 October 2015, an officer of C&E contacted Ms. Li who confirmed that the address stated in the application was still valid; and

(b) On 28 October 2015, the officer informed Ms. Li over the telephone of the Commissioner's decision and a refusal notice would be sent to the Applicant by post.

7. The Secretary of the Tribunal has in writing asked both parties whether they would require a hearing for the application for the extension of time. Both parties responded that they did not require a hearing.

8. The Tribunal has power to extend the time for filing an application for review under *section 59(2) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap.615* ("the Ordinance"). By *section 59(3) of the Ordinance*, the Tribunal can only exercise such power after a reasonable opportunity to

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be heard has been given to the parties and if it is satisfied that there is a good cause for granting an extension of time.

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9. As both parties have declined a hearing, it remains for me to consider whether there is a good cause for granting an extension of time in the circumstances shown in the documents before me.

10. It is quite clear that the Company address was provided by the Applicant to C&E. It is the responsibility of the Applicant to provide an effective address so that postal communication could be sent to and received by the Applicant in a timely fashion. This would be important for an application for a licence from the government such as this. The Applicant's failure in providing an effective address such that important correspondence from C&E might not be received in time was the cause for the delay averred to by the Applicant. The decision in providing the Company address to C&E, in leaving the premises at the Company address unattended and in collecting mail only from time to time were made by the Applicant. In making those decisions, the Applicant must be conscious of the risk in a failure to receive correspondence in time. At least, they were careless in doing so.

11. Furthermore, according to the Commissioner's submissions, Ms. Li confirmed the Company address to a C&E officer on 23 October 2015. On 28 October 2015, the day when the Notice was sent by recorded delivery, Ms. Li was further notified by the C&E officer of the Commissioner's decision in refusing to grant a licence and that the Applicant would be formally notified by post.

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12. In the circumstances, I am not satisfied that there is a good cause for granting an extension of time.

13. The application for time extension is therefore dismissed.



(Martin Liao)

Chairman,

Anti-Money Laundering and

Counter-Terrorist Financing (Financial Institutions) Review Tribunal

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