

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

REEFCO SERVICES, INC.,

Plaintiff,

v.

**GOVERNMENT OF THE VIRGIN ISLANDS
and VIRGIN ISLANDS BUREAU OF
INTERNAL REVENUE,**

Defendants.

Civil No. 2014-110

Taylor W. Strickling, Esq.

Attorney for Plaintiff

Marjorie Rawls Roberts, P.C.

St. Thomas, VI

Carol Thomas – Jacobs, Esq.

Hugh A. Greentree, Esq.

Tamika Archer, Esq.

Attorneys for Defendants

St. Thomas, VI

ORDER

THIS MATTER came before the Court for an evidentiary hearing on March 9, 2021. Therein, the Government of the Virgin Islands (“GVI”) was required to put forth evidence that it has been assessing and collecting the excise tax against local manufacturers since January 1, 2021. For the reasons set forth below, the Court will vacate the injunction articulated in this Court’s November 15, 2018 Order and accompanying Memorandum Opinion, and permit the GVI to proceed with its plans to assess and collect the excise tax against local manufacturers and importers alike.

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In its Opinion dated October 7, 2020, the Court of Appeals for the Third Judicial Circuit (“Third Circuit”) wrote that, “. . . it is not clear from the record whether the GVI has begun to collect excise taxes,” and remanded this matter “for further proceedings on that issue alone with an instruction to the District Court to lift the November 26th injunction upon receiving evidence that the GVI is in fact assessing an excise tax on local manufacturers.” ECF No. 131-1, at 9. The Third Circuit went on to “affirm the District Court’s declaratory and monetary relief ordered in its [September 28, 2018] Judgment and Opinion,” and “also affirm the District Court’s [November 26, 2019] Memorandum Opinion in part, as to its enjoining of the GVI from continuing to collect excise tax from importers, but not local manufacturers.” *Id.* at 10. The Third Circuit further instructed that this Court hold an evidentiary hearing to “obtain[] proof that the GVI is assessing the excise tax on local manufacturers.” *Id.*

In the evidentiary hearing held December 9, 2020, the GVI argued that it had been in a ‘catch-22’: that it was unable to begin assessing the excise tax against local manufacturers without violating this Court’s November 15, 2018 Order enjoining the GVI from the same. The GVI further presented evidence, via the testimony of Glenford Hodge, Supervisor of Excise Tax Officers, that the Bureau of Internal Revenue is poised to begin assessing and collecting the excise tax effective January 1, 2021, provided the injunction is lifted to so permit. In response, Reefco argued that the Third Circuit’s mandate permits the GVI to assess the excise tax against local manufacturers, but cannot assess the tax against importers until it provides proof of assessment against local manufacturers.

This Court’s November 15, 2018 Order enjoined the GVI “from collecting excise taxes in a manner inconsistent with the Court’s holding in its September 28, 2018 Judgment; that

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is, the GVI is enjoined from collecting excise taxes in a manner that violates Commerce Clause principles.” ECF No. 93, at 3. The Third Circuit directed this Court to lift this injunction “upon receiving evidence that the GVI is in fact assessing an excise tax on local manufacturers.” ECF No. 131-1, at 9. Moreover, the injunction was affirmed “in part, as to its enjoining of the GVI from continuing to collect excise tax from importers, but not local manufacturers.” *Id.* at 10. Accordingly, the Court partially lifted the injunction on December 10, 2020, permitting the GVI to assess and collect the excise tax from local manufacturers only, and demonstrate proof thereof before the injunction is to be entirely lifted to permit collection from importers. ECF No. 137.

The March 9, 2021 evidentiary hearing was held for the GVI to present evidence that it has assessed and collected the excise tax from local manufacturers. The GVI presented evidence, via the testimony of Glenford Hodge, that the Virgin Islands Bureau of Internal Revenue began assessing the excise tax against local manufacturers effective January 1, 2021. Hodge further testified that the excise tax is a voluntary tax, meaning that local manufacturers are bound by an “honor system” to accurately report their cost bases and pay taxes accordingly, whereas importers can expect to have their goods inventoried and held at customs until the tax is paid.

Now over three months into 2021, the GVI presented evidence that it has cumulatively assessed and collected a total of approximately twenty-seven dollars (\$27.00) in excise tax from local manufacturers. While it strains credulity that the GVI is industriously pursuing its newly enforceable tax revenue from local manufacturers, the Third Circuit vacated the portion of the November 26, 2018 order requiring this Court’s approval of the

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promulgated rules and regulations. Thus, the Third Circuit's mandate is clear: this Court must lift this injunction "upon receiving evidence that the GVI is in fact assessing an excise tax on local manufacturers." ECF No. 131-1, at 9. In considering the evidence presented in the March 9, 2021 evidentiary hearing, the Court must find that the GVI is in fact assessing an excise tax on local manufacturers, and that it has collected approximately twenty-seven dollars of said tax. It remains to be seen if this newly implemented honor system will result in the collection of excise taxes in a manner that satisfies Commerce Clause principles. However, this concern goes beyond the scope of the Third Circuit's mandate.

The premises considered, it is hereby

ORDERED that for the reasons set forth above and on the record at the March 9, 2021 evidentiary hearing the injunction articulated in this Court's November 15, 2018 Order and accompanying Memorandum Opinion is **VACATED IN FULL**. It is further

ORDERED that, effective immediately, the Government of the Virgin Islands may proceed with its plan to assess and collect the excise tax from both importers and local manufacturers alike.

DATED: March 12, 2021

/s/ Robert A. Molloy
Robert A. Molloy
District Judge