[2017] UKFTT 701 (TC)

TC06120

Appeal number: TC/2016/04056

CUSTOMS – appeal against decision not to restore seized goods (s 16 FA 1994) – import of foodstuffs at an airport that is not a designated border inspection post (reg 13 TARP) / designated point of entry (Article 8 Regulation 2016/6) – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

EVGENY TKACHENKO **Appellant**

- and -

DIRECTOR OF BORDER REVENUE **Respondent**

TRIBUNAL: JUDGE CHRISTOPHER STAKER

Sitting in public at Plymouth on 7 September 2017

The Appellant in person

Dr R Childs, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

Introduction

1. The Appellant appeals against a decision of the Respondent dated 12 May 2016, upheld in a review decision dated 29 June 2016, refusing his request for restoration of goods seized by the Respondent on 2 April 2016.

Background

2. The Appellant resides in Germany, and his business is based there. He has consistently stated, and the Respondent has not disputed, that he imports goods from Japan and sells them in various EU and other countries via the Amazon website. The goods to which this appeal relates arrived at Glasgow Airport, having been consigned by Fine Japan Co Ltd in Osaka, Japan. The agent for the importation was Air Sea Scotland Ltd ("**ASS**"); Mr Iain McKissock of ASS dealt with the matter. The Respondent's officers inspected the goods, and seized them on the basis that they included foodstuffs that were being imported contrary to:

(1) the Trade in Animals and Related Products Regulations SI 2011/1197 ("**TARP**"), and

(2) Commission Implementing Regulation (EU) 2016/6 of 5 January 2016 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 322/2014 ("**Regulation 2016/6**").

3. The goods in question are described in the seizure documentation and in the Respondent's decisions as:

> Milk and milk products—24.3 kg
> Food stuffs and supplements—5.9 kg
> Cosmetic gel—150g

4. At the hearing, the Appellant gave evidence (repeating what had been stated in his earlier correspondence) that the goods described as "Milk and milk products" and as "Food stuffs and supplements" were in fact all food supplements. Both parties accepted that the goods described as "cosmetic gel" did not contain any feed or food or animal products.

5. The goods were seized by the Respondent under s 139 of the Customs and Excise Management Act 1979 ("**CEMA**") as being goods liable to forfeiture. The goods described as "Milk and milk products" and as "Food stuffs and supplements" were considered to be liable to forfeiture under s 49(1)(b) CEMA, and the goods described as "cosmetic gel" were considered liable to forfeiture under s 141(1)(b) CEMA on the basis that it was mixed or packed or found with the other goods liable to seizure. The Appellant did not contest the legality of the seizure, and accordingly

the goods were condemned as forfeit to the Crown under paragraph 5 of Schedule 3 CEMA.

6. By an e-mail dated 11 April 2016, the Appellant requested restoration of the goods. In a letter to ASS dated 12 May 2016, the Respondent refused this request. Following further representations from the Appellant, the Respondent upheld this decision in a review decision dated 28 July 2016. Following yet further representations from the Appellant, the Respondent issued further letters stating that the decision remained unchanged. The Appellant now appeals to the Tribunal against the Respondent's refusal to restore the goods.

7. The Tribunal notes at the outset the following.

8. First, this Tribunal is bound by the decision in *HMRC v Jones* [2012] Ch 414, [2011] EWCA Civ 824. The place for challenging the legality of the seizure is in condemnation proceedings in the Magistrates Court. If condemnation proceedings are not brought before the Magistrates Court, the goods are deemed by the legislation to have been duly condemned as forfeited as illegally imported goods. In the present appeal, the Tribunal accordingly proceeds upon the basis that the goods were lawfully seized by the Respondent and that they have now been lawfully deemed condemned as forfeited.

9. Secondly, the Respondent does not suggest that the seized goods in the present case are goods the importation of which is inherently prohibited. Rather, the Respondent's case is in essence as follows. The goods are of a nature that they must undergo inspection by the Respondent who will then decide whether or not they can be safely imported. The legislation requires that such goods be imported into the UK via one of a limited number of specified ports and airports which are equipped to administer such tests. Glasgow Airport is not one of these. The goods in this case were thus liable to seizure by virtue of the fact that they had been imported via the wrong airport, without the specified procedures being followed. Had the goods been imported via one of the specified ports or airports in accordance with the specified procedures, and had they been subjected to the applicable tests, the Respondent might have allowed them to be imported into the UK. Whether or not this would have happened cannot be known because the goods have not undergone those tests.

10. Thirdly, the Respondent does not suggest that there has been any dishonesty on the part of the Appellant or his agent, or any deliberate non-compliance with UK law. There is no suggestion, for instance, that the Appellant sought to evade the applicable tests by attempting to conceal from the Respondent the nature of the goods being imported. At the hearing, the Tribunal asked Dr Childs whether it would have been apparent to the Respondent from the labelling and customs documentation accompanying the consignment that the goods were of the nature that led them to be liable to seizure. Dr Childs said that he could not answer this question, but did not suggest that this was not the case. The notebook of the officer who seized the goods appears to confirm that this *was* the case. It states that the goods arriving were described as food supplements, and that when opened the consignment was found to contain food supplements. The notes then simply state that feed or food originating

from Japan must enter the UK through a designated airport of which Glasgow was not one. The Tribunal proceeds on the basis that the Appellant has acted openly, transparently and honestly, albeit in unknowing non-compliance with UK customs procedures.

Applicable legislation

11. Regulation 13 TARP provides that "No animal or product may be brought into England other than at a border inspection post designated for that animal or product".

12. Article 8 of Regulation 2016/6 provides that "Consignments of products referred to in Article 5(1) shall be introduced into the Union through a designated point of entry within the meaning of point (b) of Article 3 of Commission Regulation (EC) No 669/2009 ('the designated point of entry')".

13. For the reasons given in paragraph 8 above, the Tribunal proceeds on the basis that the provisions in the previous two paragraphs apply to the goods seized in the present case, and that Glasgow Airport was not a designated border inspection post or point of entry for purposes of those provisions.

14. Section 49(1) CEMA relevantly provides that "Where … (b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment … those goods shall, subject to subsection (2) below, be liable to forfeiture". For the reasons given in paragraph 8 above, the Tribunal proceeds on the basis that one or both of the provisions referred to in paragraphs 11 and 12 above is a "prohibition or restriction" for purposes of s 49(1)(b) CEMA.

15. Section 139(1) CEMA provides that "Any thing 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 coastguard".

16. Section 141(1) CEMA relevantly provides that "…where any thing has become liable to forfeiture under the customs and excise Acts … (b) any other thing mixed, packed or found with the thing so liable, shall also be liable to forfeiture".

17. Section 152 CEMA provides that "The Commissioners may, as they see fit … (b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts".

18. Section 16(4)-(6) of the Finance Act 1994 provides as follows:

> (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

(6) On an appeal under this section the burden of proof as to [specified matters, not relevant to the present appeal] … shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.

19. For purposes of s 16 of the Finance Act 1994, an "ancillary matter" includes "any decision under section 152(b) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored": Finance Act 1994, s 16(8) and Schedule 5, paragraph 2(1)(r).

The Appellant's request for restoration and the Respondent's decisions

20. When making his original request for restoration, the Appellant advanced to the Respondent the following representations, and the Respondent gave the following decisions.

21. In his letter dated 11 April 2016, the Appellant said that he had been advised by the forwarder that the goods were eligible for import into the UK; furthermore, the Appellant intended to sell the goods via Amazon, and the UK Amazon site showed many similar products from Japan on sale. The Appellant's business was very small, and was threatened with bankruptcy as a result of the seizure. The Appellant requested permission to remove the goods to another EU country or to Japan.

22. The 12 May 2016 decision of the Respondent not to restore set out a "summary" of the policy for the restoration of restricted or prohibited items. It states:

> The general policy regarding the improper importation of prohibited or restricted items into the UK is that they will not be offered for restoration.

> However, each case is looked at on its merits to consider whether there are any *exceptional* circumstances that would warrant a departure from that policy.

23. The decision then concluded as follows:

> I conclude that there are no exceptional circumstances that would justify a departure from the Commissioners' policy as the majority of the load was in breach of TARP regs and the entire consignment in breach of EU 2016/6 and as no exceptional circumstances have been submitted for me to consider, I can confirm on this occasion *the goods will not be restored*.

24. The Appellant then submitted to the Respondent various further materials under cover of a letter dated 31 May 2016. The covering letter stated that the Appellant had previously imported the goods via Finland, Germany and other countries. It stated that all relevant information had been provided to Mr McKissock, and that legal costs were prohibitively high for the Appellant's small business. The attachments to the letter included the following:

(1) There is an invoice issued by Fine Japan Co Ltd dated 18 March 2016 in relation to the seized goods. The invoice lists a number of different goods included in the consignment, and indicates that apart from the cosmetic gel, the goods were all food supplements in either powder, liquid or tablet form. It is not evident from the invoice that all of these goods contained lactose (for instance, one item is described as "fermented black oolong tea" in powder form, another as "Japanese green" in powder form). The invoice indicates that the place of delivery of the goods would be Glasgow airport.

(2) There is a Binding Tariff Information ("**BTI**") document issued by the German tax authorities. This appears to relate to goods of the kind included in the consignment of seized goods (namely the goods described in the invoice as "Hyaluron & Collagen + CoQ10"). It indicates that the product contains milk fat and milk protein, and that it is to be classified in the commodity code under Chapter 29 ("Miscellaneous edible preparations"), heading 2106 ("Food preparations not elsewhere specified or included"). Box 8 of the document states "dass die Ware nach den geltenden lebensmittelrechtlichen Bestimmungen verkehrsfähig ist". The Tribunal put it to the parties at the hearing that the sense of this sentence was that "the goods are marketable according to the applicable provisions of food law". The Appellant agreed, and the Respondent did not seek to contradict this and did not request an opportunity to further look into the matter.

25. Under cover of a subsequent letter dated 7 June 2016, the Appellant sent further documents to the Respondent. The covering letter stated that "There is clearly no illegal intentions on my side", and noted that all relevant information had been provided to Mr McKissock. The attachments comprised a series of e-mail correspondence between the Appellant and Mr McKissock of ASS.

(1) An e-mail from Mr McKissock to the Appellant dated 24 February 2016 states that "In this case with your products being a foodstuff and going into the human food chain they should not be subject to VAT … You mention superfood … I see from the invoice it is in powdered form—it is a "fitness" supplement or similar type product—it is possible it will come under the same chapter of 2106 but with a different subheading".

(2) An e-mail from the Appellant to Mr McKissock dated 25 February 2016 states "we received our goods inside EU before (or via EMS)".

(3) An e-mail from the Appellant to Mr McKissock dated 16 March 2016 states: "Important is that you have to mention [in your contract] about your full responsibility about the successful custom clearance. I am not a logistics expert, so this is your firm, who must check all the papers before the shipment's pick up".

(4) An e-mail from the Appellant to Mr McKissock dated 17 March 2016 states: "We haven't imported these goods to Germany directly. But we sell them in UK and Germany yet."

(5) An e-mail from the Appellant to Mr McKissock dated 17 March 2016 states that the Appellant had applied to the German authorities for commodity code 2106 90 92 609, and had been assured by phone that this would be alright for German customs. The e-mail goes on to state that "We are not logistics experts, that is why I ask you to check with your customs whether there would be any issues with imports. These products are routinely sold in USA but who knows what EU wants. Please, check this, to make sure that if there are any additional documents required, we could get them all!"

26. In a subsequent letter to the Respondent dated 13 June 2016, the Appellant stated that he had sent all product specifications and even the customs classification to Mr McKissock, and had relied on Mr McKissock's professional services.

27. The 20 June 2016 review decision of the Respondent stated:

> The general policy is that seized products of animal origin should not normally be restored. However, each case is examined on its merits to determine whether or not restoration may be offered exceptionally.

28. As to the Appellant's contention that he had relied on the professional services of Mr McKissock, the review decision stated that:

> As you are the importer, even if you engage a freight forwarder to facilitate the movement, importing those goods into the UK correctly remains your responsibility, and ignorance of the law is not considered reasonable excuse.

29. The review decision went on to state that information on the importation of foodstuffs was readily available from the Food Standard Agency website, the EU website, "press release from Brussels", and that advice could be sought directly from Border Force or HMRC. The review decision also considered that the Appellant had

not provided any evidence of the claimed financial impact of the seizure on his business.

30. In a further letter to the Respondent dated 5 July 2016, the Appellant again stated that he was unable to take care of all formalities himself which was why he had engaged the professional services of Mr McKissock. The Appellant also enclosed a series of bank statements to show the effect of the seizure on the finances of his business. The letter noted that the seized goods were not in fact prohibited products, but that they had been seized due to failure to follow the correct importation procedure.

31. A letter from the Respondent dated 28 July 2016 noted that the bank statements supplied were not in English, and that it would be necessary for the Appellant to establish, not just through bank statements, but also through business records, that the seizure had specifically resulted in exceptional financial hardship.

32. The Appellant sent some further information relating to the financial impact of the seizure in a letter to the Respondent dated 9 August 2016. In a response dated 18 August 2016, the Respondent considered that exceptional financial hardship had not been established.

The hearing

33. The Appellant represented himself, participating in the hearing by telephone from Germany. He gave evidence and was cross examined, and made submissions. The Respondent was represented by Dr Childs, who called as a witness Border Force Officer Helen Perkins, the officer who made the review decision in this case.

The Appellant's evidence

34. The Appellant said in his evidence amongst other matters as follows. He ordered items from Japan to bring to Europe to sell on Amazon. He had been selling these products for years in the EU, including the UK, and countries outside the EU including the United States. This was the Appellant's first experience of importing the items into the EU with a point of entry in the UK. Previously he had imported into the UK via Germany or Austria. The Appellant was unfamiliar with UK customs procedures, and cannot monitor the legislation in every country into which he imports, so he employed the services of a customs agent, Mr McKissock. He did not personally check the requirements for importing goods into the UK from Japan, but would have acted on whatever advice he was given by the customs agent. He was dissatisfied with the services of Mr McKissock. The Appellant accepted that he was personally responsible for complying with all relevant customs procedures, and was responsible for whatever Mr McKissock did on his behalf. At the time that the goods in question were imported into the UK, he had applied for the BTI in Germany, but was still awaiting the decision on that application. The Appellant is not a limited company and cannot separate his personal finances from his business finances. Following the seizure, he had to borrow money using his credit card and put it into his current account in order to avoid insolvency.

The evidence of Officer Perkins

35. Officer Perkins said in her evidence amongst other matters as follows. The Respondent's policy on restoration has not been placed before the Tribunal. The Respondent's practice is only ever to provide a summary of the policy. Animal products and foodstuffs may contain diseases or otherwise be hazardous. Under the correct importation procedure, an importer would give pre-notification to the Respondent of the arrival of goods at an appropriate designated airport. On arrival, the Respondent may decide to subject the goods to tests before deciding whether or not the goods are safe to be imported. Officer Perkins was not certain who paid for the cost of tests when goods are tested on arrival by the Respondent, but understood that the importer paid for storage and tests. She accepted that this was a case in which the importer had not attempted surreptitiously to circumvent the import procedures. It is possible for the Respondent to restore seized goods unconditionally or upon payment for a fee. The Respondent is able to grant an import permit retrospectively. The Respondent could also restore goods on condition that they be re-exported from the UK, although this is not the Respondent's general policy.

The submissions of the parties

36. The respective positions of the parties have already been set out above.

The Tribunal's findings

37. Under s 16(4) of the Finance Act 1994, the Tribunal can only disturb the Respondent's decision if the Tribunal is satisfied that the person making the decision could not reasonably have arrived at it.

38. This condition will be satisfied if a decision is so unreasonable that no reasonable decision maker could have arrived at it. However, this condition will also be satisfied in other circumstances, including where the decision maker failed to have regard to relevant considerations, or had regard to irrelevant considerations, or based the decision on an incorrect understanding of the applicable legal provisions.

39. In making a decision of this kind, the decision maker is entitled to have regard to any applicable policy of the Respondent dealing with the manner in which the restoration power is normally to be exercised. Indeed, it may be unreasonable for a decision maker to fail to have regard to any such policy.

40. Where the Respondent has such a policy, and where the decision maker takes it into account in making the decision, the decision may also be one that could not reasonably have been arrived at in circumstances where the decision is based on an incorrect understanding of the terms of the policy.

41. Where the Respondent has such a policy, the decision maker, while taking the policy into account, must still look at each case on its own merits. The 12 May 2016 and 20 June 2016 decisions of the Respondent recognised that this is the case.

42. The decision maker has a range of possible responses to a request for restoration. The Respondent could refuse restoration at all, or could restore upon payment of an amount representing a small part of the value of the seized goods, or upon payment representing a large part or whole of the value of the seized goods. The Respondent therefore has the ability to exercise the restoration power in a flexible way to treat more serious cases more severely, and less serious cases less severely.

43. Officer Perkins acknowledged that the Respondent is able to grant an import permit retrospectively, and may restore goods on condition that they be re-exported from the UK. This adds additional flexibility to the range of the Respondent's possible responses to a request for restoration.

44. Another consideration is that goods imported into one EU Member State may in principle circulate freely within the EU. In determining the severity of a breach of UK customs procedure, it would be relevant to take into account, if it be the case, that another Member State has already permitted identical goods to be imported, and that such goods have previously lawfully entered the UK from another Member State.

45. In the present case, in deciding whether or not to grant restoration, the Tribunal considers that the matters referred to in the previous three paragraphs, as well as paragraphs 9-10 above, were clearly relevant considerations. If the Respondent's policy expressly dealt with all such circumstances, then it may have been sufficient for the decision maker to apply the policy, and to note that the present case presents no particular circumstances that take it outside the terms of the general policy. However, the Respondent has not produced its policy in these proceedings, and the very short summary of the policy set out in the challenged decisions does not indicate that the policy itself does address all of these types of considerations. In the circumstances, the decision itself should by its own wording show that all of these circumstances have been considered and taken into account.

46. The operative part of the 12 May 2016 decision states simply that the importer is responsible for knowing the applicable customs requirements, information about which is freely available, and that no exceptional circumstances have been established.

47. The 29 June 2016 review decision states that the decision maker has considered all of the circumstances of the case, "including the circumstances of the events leading up to the seizure and the related events". Some of these circumstances are set out in the early part of the decision, dealing with the facts of the case and the contents of the correspondence between the Appellant and the Respondent. However, the operative part of the decision, setting out the decision maker's consideration of whether or not the goods should be restored in this case, contains three substantive paragraphs, on the fourth page of the decision. The first of these paragraphs deals with the accident at the Fukushima nuclear power plant in Japan, and the intention of the legislation to reinforce controls on imports of food and feeds from certain regions of Japan. The second of these paragraphs finds that reliance on a freight forwarder, and ignorance of the law, do not amount to a reasonable excuse for failing to comply with UK customs procedures. The third of these paragraphs finds that the Appellant

has not demonstrated that the seizure will cause financial hardship leading to his insolvency, and that it was not the Respondent's policy to allow the re-export of the goods in circumstances such as these.

48. The 28 July 2016 and 18 August 2016 decisions dealt with the Appellant's claims about the financial hardship caused by the seizure.

49. The Tribunal considers that it is not apparent from the wording of the decisions that the decision maker took into account the matters referred to in paragraphs 9, 10 and 44 above, or that the decision maker considered the matters in referred to in paragraphs 42 and 43 above in the light of the matters referred to in paragraphs 9, 10 and 44 above.

50. It is apparent from the e-mail correspondence quoted at paragraph 25 above that the Appellant made it clear to his UK agent that the consignment contained foodstuffs, and that the Appellant was relying on the UK agent to ensure that all applicable UK customs requirements were complied with. It is also apparent that the consignment was declared to have a commodities code that indicated that it contained foodstuffs. The Tribunal accepts that reliance on an agent, and ignorance of the law, are not a "reasonable excuse" for failing to apply with the applicable UK customs requirements. Nevertheless, the fact that the Appellant was a trader resident in Germany who traded in several different countries, whose first language was not English, and who paid for and relied in good faith on the services of a professional customs agent to ensure that the relevant formalities were complied with in the UK, a country into which he was importing for the first time, are all circumstances that are relevant to the question whether or not the goods should be restored, and if so, on what conditions.

51. The 12 May 2016 decision and the 29 June 2016 review decision give slightly different descriptions of the Respondent's general policy. According to the 12 May 2016 decision, the policy required the decision maker to consider "whether there are any exceptional circumstances that would warrant a departure" from the general policy of non-restoration. According to the 29 June 2016 review decision, the decision maker was required to consider "whether or not restoration may be offered exceptionally". However, the 29 June 2016 review decision found that the Appellant's lack of knowledge of UK customs procedures and his reliance on a customs agent did not amount to a "reasonable excuse". As noted above, a "reasonable excuse" for not complying with customs procedures is not the same thing as "exceptional circumstances" or as circumstances justifying "restoration … exceptionally". The decision in this respect therefore appears to be based on an incorrect understanding of the terms of the policy.

52. The Appellant stated at the hearing that he had previously imported identical goods into other EU countries including Germany. Although there may be questions as to whether that claim is reconcilable with some of the statements in e-mails quoted in paragraph 25 above, this was not explored in cross-examination. The Appellant produced a German BTI indicating that goods included in the consignment were marketable in Germany (see paragraph 24(2) above). It is acknowledged that this

document was provided by the Appellant without any translation into English, but this is not of itself a reason why it should not be taken into account by the decision maker. It is noted for instance that in *Law Print and Packaging Management v Revenue and Customs* [2016] UKFTT 284 (TC) at [33]-[34], it was the Respondent's officer who relied on three BTIs issued by the German authorities, and gave evidence that there is a database of all BTIs issued in the EU. Through translation tools freely available on the internet, the gist of official documents in languages other than English can be established even by someone not familiar with that language. Dr Childs made something of the fact that the German BTI was issued only after the seizure of the goods to which this appeal relates, so that the Appellant could not have been relying on it at the time of the seizure. However, the Appellant's evidence was that he had previously been given oral assurances by the German authorities. In any event, the German BTI was submitted to the Respondent before the review decision was given. Even if the German BTI was not relied on by the Appellant at the time that the goods were seized, the fact that the German authorities considered the goods to be marketable in the EU would have been a relevant consideration in deciding whether or not the goods should be restored.

53. The Tribunal is therefore satisfied that the decision is one which could not reasonably have been arrived at, within the meaning of s 16(4) of the Finance Act 1994.

54. The Tribunal was informed at the hearing by the Respondent that the seized goods still exist and are still being held by the Respondent. The Tribunal therefore directs, pursuant to s 16(4) of the Finance Act 1994, that the review decisions are to cease to have effect from the date of the hearing of this appeal, and that the Respondent is to conduct a further review of the original decision, having regard to all the relevant circumstances of this case.

55. The Appellant has indicated that he would consider it a satisfactory outcome if he were permitted to re-export the goods to Germany, where he says that the German authorities have previously permitted him to import identical goods. At the hearing, Officer Perkins confirmed that the Respondent could restore the goods on condition that they be re-exported to Germany, and furthermore, that the Respondent would be able to alert the German authorities to the fact that the goods were being taken to Germany. At the hearing, the Tribunal noted that that appeared to be a pragmatic solution. However, the new decision will be a matter for the Respondent.

Conclusion

56. The appeal is allowed, on the basis indicated in paragraph 54 above.

57. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

"Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DR CHRISTOPHER STAKER
TRIBUNAL JUDGE

RELEASE DATE: 22 SEPTEMBER 2017