



[2021] UKFTT 0340 (TC)

TC08274

EXCISE DUTY – tobacco products – restoration sought and refused – whether the Respondents’ decision not to restore was reasonable - appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01910

BETWEEN

VASIL ATANASOV

Appellant

-and-

THE DIRECTOR OF BORDER REVENUE

Respondent

TRIBUNAL: JUDGE KELVAN SWINNERTON

I determined the appeal on 1 June 2021 without a hearing given that both parties had agreed to the matter being determined on the papers. I considered the Notice of Appeal of the Appellant of 21 March 2020, the Statement of Case of the Respondents dated 21 July 2020, the Reply of the Appellant and all of the other documentation contained in a consolidated bundle which consisted of Part 1 (132 pages) and Part 2 (121 pages).

DECISION

INTRODUCTION

1. This is an appeal against a review decision dated 26 February 2020 which stated that the Respondent would not restore to the Appellant 15.87kg of goods described as cigars (“the Cigars”) seized on 9 November 2019.

THE FACTS

2. A parcel addressed to the Appellant at 14 Manchester Street, Morpeth, Northumberland from Germany was interrupted at Coventry International Hub on 9 November 2019. There was no customs declaration attached to the parcel.

3. The label attached to the parcel detailed that the sender of the parcel was Irina Ulrich, Torfstecherweg 1, 21147 Hamburg, Deutschland.

4. The parcel contained Don Duarte tobacco products in respect of which excise duty had not been paid.

5. The Border Force Officer involved was satisfied that the Cigars were held for commercial purposes. The Cigars were seized under section 139(1) of the Customs and Excise Management Act 1979 (“CEMA”) as being liable to forfeiture under Regulation 88 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010.

6. On 9 November 2019, the Appellant was issued with a Notice of Seizure (with Ref: E5310273/FP1 CY2520260DE). This explained that the Cigars were liable for payment of duty and that duty had not been accounted for.

7. The Notice of Seizure referred also to the process for appealing against seizure to the Magistrates Court. It explained that the Appellant could contest the legality of the seizure of the Cigars in a magistrate’s court by sending a notice of claim within one month of the date of the Notice of Seizure. The Appellant made no challenge to the legality of the seizure.

8. On 26 November 2019, the Appellant wrote to the Respondent seeking restoration of the Cigars. That request was refused by the Respondents on 24 December 2019.

9. On 21 January 2020, the Appellant requested a review of the decision not to restore the Cigars.

10. The review decision of 26 February 2020 refused to restore the Cigars to the Appellant.

THE LAW

11. Regulation 88 of the Excise Goods (Holding, Movement, and Duty Point) Regulations 2010 states:

“If in relation to any excise goods that are liable to duty that has not been paid there is –

(a) a contravention of any provision of these Regulations, or

(b) a contravention of any condition or restriction imposed by or under these Regulations,

those goods shall be liable for forfeiture”.

12. Section 49(1) of the Customs and Excise Management Act (“CEMA”) states:

“(1) Where –

(a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being goods chargeable on their importation with customs or excise duty, are, without payment of that duty-

(i) unshipped in any port

(ii) unloaded from any aircraft in the United Kingdom.

(iii) unloaded from any vehicle in, or otherwise brought across the boundary into, Northern Ireland, or

(iv) removed from their place of importation or from any approved wharf, examination station or transit shed; or

(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; or

(c) any goods, being chargeable goods with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship or aircraft or, while in Northern Ireland, in any vehicle; or

(d) any goods are imported or concealed in a container holding goods of a different description; or

(e) any imported goods are found, whether before or after delivery, not to correspond with the entry made thereof; or

(f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer, those goods shall, subject to subsection (2) below, be liable to forfeiture”.

13. Section 139(1) of CEMA states:

“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”.

14. Section 152 of CEMA states:

“The Commissioners may, as they see fit-

...(b) restore, subject to such conditions (if any) as they think proper, anything forfeited or seized under those Acts”.

15. Sections 14 to 16 of the Finance Act 1994 include provisions in respect of requiring the Commissioners to review a decision, what the Commissioners may do on that review and the powers of an appeal tribunal.

DISCUSSION

16. The appropriate test to be applied when determining the reasonableness of the decision under appeal is whether the Review Officer acted in a way in which no reasonable Review Officer could have acted, whether he took account of an irrelevant matter or whether he disregarded something to which he should have given weight (*Customs and Excise v J.H. Corbitt (Numismatists) Ltd [1980] STC 231 (HL)*). The burden of proof rests with the Appellant to show that the appeal should succeed.

17. The Appellant has explained his case at length in a number of documents which include, amongst others, a detailed Request for restoration of seized goods (dated 26 November 2019) which makes reference to case law, a 'Request for Review of Decision of Mrs J Gilbey' dated 24 December 2019 which also refers to case law, a Notice of Appeal and a Reply. I have considered that documentation from the Appellant in detail along with all of the other documentation provided by the parties in the context of going on to set out in summary form the arguments of the parties in this appeal.

18. I have also considered the case law referred to by the Appellant which included the First-tier Tribunal cases of *Booze Factory (UK) Limited v The Commissioners for Her Majesty's Revenue & Customs (19 April 2017)* and *David Ward v Director of Border Revenue (30 January 2014)*.

19. The Appellant maintains that he was informed by the vendor that the necessary taxes had been paid and that those necessary taxes had been included in the price that was paid by the Appellant for the Cigars which was 1800 euros. An amount of £1558.98 was sent by PayPal to the vendor on 22 October 2019.

20. The Appellant emphasises also that he is a lay person and that he did not have any knowledge of the legal requirements involved in the purchase of the Cigars. The Appellant states also that he is a person of good character and that he has not been involved in an issue of this nature previously.

21. The Appellant contends that the Cigars were not fit for human consumption and that they were collectors' items. The Appellant states also that the weight of the tobacco was, at less than 5kg, less than a third of the 15.87kg as stated by the Respondent.

22. The Respondent's case is that the duties/taxes had not been paid and that there was no evidence that the Appellant had made any or any reasonable enquiry as to which duties were actually payable in respect of the Cigars. The Respondent stated that if, as claimed by the Appellant, the fault for not paying the necessary taxes lies with the vendor, then the remedy of the Appellant is to claim a refund from the vendor or to seek a remedy from the vendor by other channels.

23. The Review Officer in this case was Mr. M Collins who has provided a short witness statement dated 3 August 2020. The review decision of Mr Collins dated 26 February 2020 states that UK duty must now be pre-paid on all postal importations of excise goods.
24. Mr Collins referred to the policy that seized goods should not normally be restored especially if there are aggravating circumstances such as a failure to declare the goods. It is stated further by Mr Collins that each case, with respect to restoration, is determined on its merits and that, in the case of the Appellant, the Review Officer saw no reason to depart from the policy and decided that there were no exceptional circumstances.
25. Turning now to a consideration of the issues in this appeal, the Notice of Seizure details that the Cigars were liable for payment of duty and that duty had not been accounted for. As referred to above, the Notice of Seizure explained that the Appellant could contest the legality of the seizure of the Cigars in a magistrate's court by sending a notice of claim within 1 month from the date of notice of seizure. It is not in dispute between the parties that the Appellant did not contest the legality of the seizure of the Cigars by following the process detailed in the Notice of Seizure.
26. The Notice of Seizure made clear, and therefore it was made clear to the Appellant, that if no valid Notice of Claim was given within the stipulated timeframe, the goods seized become condemned one month thereafter.
27. The Appellant has not, as far as I can see, provided any explanation at all as to why he did not take up the opportunity to contest the lawfulness of the seizure of the Cigars in the Magistrates court. I find that especially difficult to understand given that the Appellant now states that the weight of the Cigars is considerably less than the weight described in the Notice of Seizure of 15.87kg, that the Cigars were not fit for human consumption and were collector's items.
28. The notebook entry of the Border Force Officer dated 9 November 2019 has been provided and it refers to tobacco products having been seized. The Notice of Seizure is dated 9 November 2019 and, under the heading 'Description', it is stated 'Cigars'. Under the heading 'Quantity', it is stated '15.87Kg'. I see no reason to call into question the weight of the Cigars seized as specified on the Notice of Seizure and I accept as correct the weight of Cigars as stated on the Notice of Seizure and the description of the goods as detailed on the Notice of Seizure.
29. In respect of any enquiries undertaken by the Appellant, he has referred to two specific WhatsApp messages and has provided screenshots from his mobile phone of what the Appellant states to be messages from the vendor of the Cigars. These two messages are dated 'Sat 19 Oct' and 'Sat 26 Oct' respectively. On the face of the messages, there is no identification or description in relation to who has sent the messages.
30. In respect of the message dated Sat 19 Oct, this includes the words "the boxes are sealed and taxed".
31. The message dated Sat 26 Oct (which is after the Appellant had already sent the monies for the Cigars) includes the words "as all the things are taxed".
32. Neither of the two messages provide any detail at all in respect of what, if any, enquiries were made by the Appellant as to which taxes were to be paid, how much tax was to be paid, or as stated by the Respondent, whether or not the vendor would pay the UK excise duty as well as any duties and taxes payable or already paid in the vendor's country (Germany).

33. As stated above, it is the duty of the Appellant to make reasonable enquiries in respect of any duties to be paid and I find that the two messages provided by the Appellant fall well short of demonstrating that he has met that duty and I find that the Appellant did not make any reasonable enquiry as to which duties were actually payable in respect of the seized goods.

DECISION

34. I conclude that the decision of the Respondent did not take into account irrelevant matters or place insufficient weight on relevant matters. I conclude also that the decision not to restore the seized goods was not disproportionate and that it was not a decision which no reasonable decision-maker could have reached.

35. I dismiss the appeal for the reasons set out above.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

36. 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.

**KELVAN SWINNERTON
TRIBUNAL JUDGE**

RELEASE DATE: 14 SEPTEMBER 2021