



# Duty Tribunal Cases

## File under excise

Although this case has been allocated a number in the C (Customs) series, on the facts it is a cross-border shopping case concerning minimum indicative limits for excise goods. The appellant laid much stress on her mother having disappeared on their return to Hull ferry port from Zeebrugge, and claimed that her testimony would be relevant, but the mother did not lodge a witness statement or appear at the hearing. The Tribunal found that there were a number of serious discrepancies in the appellant's evidence, and dismissed the appeal.

**SAUNDERS, MICHELLE**  
E00194 MAN/03/8087

## Evidence at hearing changes review officer's conclusion

The appellant and his friend had been intercepted by Customs on their return to the UK and a vehicle and excise goods seized. At the hearing of the appeal the reviewing officer told the Tribunal that if he had been aware of the matters the appellant and his friend had mentioned at the hearing, the result of his review might well have been different. The parties agreed a direction that a further review be carried out, to consider questions of own use, and the proportionality of seizing the appellant's van, in the context of restoration. Costs were awarded to the appellant, on the ground of late disclosure by Customs.

**ATKINSON, RICHARD**  
E00849 MAN/02/8218

## Unexceptional hardship

The appellant did not contest that he had been carrying 50 kilos of tobacco and 24,000 cigarettes, together with beer, wine and spirits within the minimum indicative limits. He appealed against the refusal to restore his vehicle, claiming

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exceptional hardship. He worked in London but his home and family were in Sunderland and he was obliged to use public transport to travel to see them. The reviewing officer had not been convinced that the appellant was a smoker and the Tribunal appreciated why she had been suspicious. The appeal was dismissed.

**DUELL, WILLIAM**  
E00850 LON/04/8061

## Non-attendance attracts costs award for Customs

Excise goods were seized from the two male appellants on their return to the UK, together with the vehicle they had been using, which belonged to the female appellant. Customs alleged that the goods had been bought for commercial purposes, as the male appellants had been given money by family members. Although there was correspondence about the refusal to restore from the appellants, none of them attended the hearing. The Tribunal dismissed the appeal, being satisfied that the reviewing officer's decisions were reasonable. As the appellants had not attended, witness expenses and counsel's fee were awarded to Customs.

**CROCKER, GRAHAM; CROCKER, PAMELA; EVANS, STEPHEN**  
E00851 MAN/04/8038

## Customs seized goods left on coach

The elderly appellant is losing his sight, and suffers from diabetes and dementia. When the coach on which he was travelling arrived at Dover, he left it in haste in order to take his medication. He

left by mistake his excise goods, which were only half a kilo over the minimum indicative limit, on the coach. He wrote to ask for them back but Customs had seized them as abandoned and refused restoration. There was no evidence that the goods were not for the appellant's own use. The appeal was allowed, the Tribunal ordering Customs to carry out a further review.

**LATHAM, TREVOR ALBERT**  
E00852 MAN/03/8163

## Customs failed to consider proportionality

Mr Marriott and his companion Mr Harrison gave evidence to the Tribunal about Customs' seizure of excise goods and a vehicle on their return to the UK. Customs did not lead oral evidence. The Tribunal observed that it did not necessarily follow from an attempt to conceal goods that they were being imported for a commercial purpose. Customs had imposed the wrong burden of proof, the reviewing officer had misunderstood his role, and he had failed to take the question of proportionality into account. The appeal was allowed in part.

**MARRIOTT, MALCOLM**  
E00853 MAN/03/8004

## Effect of abandonment of condemnation proceedings

This was another Tribunal case to consider *Gascoyne*. The appellant had required Customs to institute condemnation proceedings and a date had been fixed for this by a magistrates court. A letter on their behalf was treated as a request for restoration, the request for



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condemnation proceedings was withdrawn. The Tribunal concluded that it would not be correct to allow the appellants to ventilate before it matters which would have been appropriate to the condemnation proceedings. The appeal was dismissed on its merits.

**EMMERSON, NIGEL; EMMERSON, SUSAN**  
E00854 MAN/04/8087

### **Burden of proof placed on appellant**

Excise goods were seized from the appellant at Manchester airport. According to the report, the customs officer 'informed the appellant that he suspected that the goods were for a commercial use, and that if no satisfactory explanation was (sic) given, he would conclude that the goods were for the appellant's own use and seize them'. Although a number of authorities were considered, the point on burden of proof was not taken by the Tribunal and the appeal was dismissed.

**WADSWORTH, WILLIAM**  
E00855 MAN/03/8053

### **Lower limits for Canary Islands**

A husband and wife returned to Manchester airport from the Canary Islands with 6,800 cigarettes between them. As the islands are not part of the EU for the purposes of excise duty, the limit under the Travellers' Allowances Order 1994 was only 200 per person. Customs seized the cigarettes and declined to restore them. The Tribunal dismissed the appeal, brought on the ground that the travellers had been misinformed. Customs action was not unreasonable, though the Tribunal observed that it might be thought hard for Customs not to have restored their allowances of 400.

**LAWTON, CHARLES**  
E00856 MAN/04/8103

### **Goods to be passed on at cost**

The appellant and his daughter were stopped at Coquelles, for reasons the Tribunal was not told. His vehicle and the excise goods it was carrying were seized. The declaration they made had only been given to Customs in stages and the appellant was to be reimbursed by people to whom he would pass some of the goods. Restoration of the vehicle was

offered for £4,125. The amount of duty evaded was £5,011. Customs had been reasonable, so the appeal was dismissed.

**LAWSON, MICHAEL**  
E00857 MAN/04/8082

### **Conflict of evidence**

The appellant appealed against refusal to restore his cigarettes, which had been seized at Manchester airport on his return from a day trip to Spain. Customs claimed that he had abandoned the goods when stopped by Customs in the green channel. The appellant contended that he had not abandoned the goods and said that he had been stopped by Customs not in any channel but at the side of the carousel. There had been a discrepancy by Customs in the correspondence but the Tribunal preferred the evidence of Customs and dismissed the appeal.

**SPAVEN, THOMAS**  
E00858 MAN/04/8086

### **Making a meal of it**

An appeal was brought against the refusal of Customs to restore 740 cigarettes which had been seized from the appellant and his wife at Aberdeen airport following their return from Turkey. Their baggage did not return on the same flight and was subsequently searched by Customs on arrival. The Tribunal observed that matters had been complicated by a 'verbose and *pro forma*' statement of case by Customs, which had gone at length into provisions applicable to the EU and the Member States. Turkey was non-EU and the Travellers' Allowances Order 1994 applied. Appeal dismissed.

**HAY, HENRY**  
E00860 EDN/05/8000

### **What are exceptional circumstances?**

In this appeal against the terms of restoration of the appellant's vehicle, which was dismissed, the Chairman said that he had frequently asked Customs in other cases to provide an example of exceptional circumstances but none had ever been provided. The reviewing officer's letter did not give extensive details on the point. The Tribunal disagreed with the interpretation of comments made by Moses J in *Johnstone v Tribunal Chairman and CCE* [2005] EWCH 115, where *Gascoyne* did not appear to have been considered. Parliament could not have

intended the Tribunal's jurisdiction to be illusory.

**CROZIER, GARY**  
E00861 MAN/04/8060

### **Tobacco dealing in Dundee**

The appellant and a friend assisted on a random basis at a second-hand-furniture shop run by the appellant's daughter. In 1999 the appellant had been found in possession of excise goods in which he had been dealing from those premises. A Fiat van was then seized from him and restored on payment of £1,500. Subsequently Customs found excise goods only retailed in the USA and the EU in the appellant's Land Rover at those premises. The appellant offered no clear explanation of how he had come by them. The Tribunal considered his answers evasive and dismissed the appeal.

**McCASH, RODERICK**  
E00862 EDN/01/8003

### **Could own use be considered?**

Customs had submitted that it was not open to the Tribunal to consider the issue of own use in this case. The decision in *Gascoyne* was considered. The Tribunal said that the appellant had no idea of the implication of withdrawing his appeal against seizure, or that it could remove his only opportunity to plead that the goods were for own use. The Tribunal felt that it had power to re-open this issue. The transaction was in part at least commercial. The reviewing officer had, however, not given sufficient consideration to hardship. The appeal was allowed on the car restoration, for further review subject to medical reports.

**HAYWOOD, KEVIN**  
E00863 MAN/04/8099

### **Importation from Cyprus**

The baggage of an entire flight of passengers returning from Cyprus was searched at Newcastle airport in March 2002. No reason for this was given, but 6,000 cigarettes were found in the appellant's baggage. They were seized and he appealed against the refusal to restore them to him. At that time Cyprus was not a member of the EU and by the Travellers' Allowances Order 1994, his allowance was only 200 cigarettes. His appeal against the seizure was dismissed.

**WALLACE, ANTHONY GLEN**  
E00864 MAN/04/8011