

# Duty Tribunal Cases

## Classification Of Lifting Machines

The appeal concerned the Versa-Lift 40/60, described as an extendable frame lift truck powered by a 3 litre 4 cylinder multi-fuel engine. Customs applied a tariff code which would attract duty at 4.5%. The importing appellant company contended for a nil rate of duty. It argued that it was a works truck fitted with a crane, self propelled with tyres. The Tribunal considered that together with the lifting apparatus mounted on it, it had the function of a crane. Customs' classification was correct. Appeal dismissed

**POOLER-LMT LIMITED**  
C00195 MAN/04/7041

## Pick Up Vehicle Classification

The appellant had imported 21 American single cab and dual cab pick up vehicles entered as vehicles primarily designed for the transport of persons, and paid duty at 10%. Customs issued a post-clearance demand for duty at 22%, on the basis that they should have been entered as vehicles for the transport of goods. The Tribunal considered that the texts governing the issue were unclear, but on the basis of HSEN explanatory notes issued by the World Customs Organisation, it found in favour of Customs' argument and dismissed the appeal.

**DON SCOTT COMMERCIALS**  
C00196 LON/04/7025

## Simplified Import VAT Accounting

This was the first Tribunal consideration of an alteration by Customs of a trader's authorisation for simplified import VAT accounting (SIVA), introduced in 2003. It had not been revoked but the security requirement had been altered from nil to

## Gavin McFarlane of Temple Chambers, Cardiff, looks at the latest Duty Tribunal cases

100%. Customs claimed that the SIVA scheme was a concession to the trader and that it had a duty to protect the revenue. The Tribunal said that a default was not necessarily indicative of a risk to the revenue, even without reasonable excuse. Here it was the consequence of an innocent mistake. The appeal was allowed and a further review ordered.

**MARTIN YAFFE INTERNATIONAL LIMITED**  
C00197 MAN/04/7035

## From Scotland By Van

The appellant had travelled from Scotland with his stepson to mainland Europe in his second-hand van. On his return he was intercepted by Customs at Coquelles with excise goods which had cost approximately £860. The excise goods and the van were seized and the appeal was against the refusal to restore the van. He worked as a North Sea diver and there had access to tobacco from bond. The Tribunal decided that there was ample evidence that the venture had a commercial objective. The appellant had been stopped on three previous occasions. The appeal was dismissed.

**FELLA, ANTONIO**  
E00873 EDN/04/8007

## Cigarettes From Poland

Customs stopped a Volvo HGV with trailer at Dover. Confectionary was declared as the load but more than 1 million cigarettes were found behind the load. Two days later another vehicle belonging to the same appellant was stopped and again more than 1 million cigarettes were found in a cargo of tubes

of putty. The vehicles and cigarettes were seized and application made for restoration. The Tribunal expressed reservations about whether the level of checks demanded by Customs was compatible with the free movement of goods but as the appellant had previously had a vehicle stopped, he must have been on notice. Appeal dismissed.

**TRACZ, TOMASZ**  
E00874 LON/04/8058

## Use Of Rebated Diesel Not Agricultural

The appellants claimed that when using red rebated diesel in their tractors, they were engaged in agricultural purposes when taking them on the roads. They had been removing waste product from a creamery and spreading it on agricultural land as slurry, within a radius of ten miles. It was not being spread on their own fields. The Tribunal concluded that the appellants' activities were primarily waste disposal and therefore not primarily agricultural. Appeal dismissed.

**BRYAN, EDWARD; THOMAS, ANDREW DAVID**  
E00875 MAN/04/8012.

## Continued Friction Between Condemnation And Restoration

This was another appeal for the restoration of a vehicle seized by Customs in which Customs had sought to contend that the appellant should have pursued the condemnation route. The Tribunal did not agree and allowed the appeal. Customs could not rely on minor discrepancies between the evidence of the appellant and



that of his son. It was just as likely that they were importing tobacco in equal quantities, in which case the guidelines would not have been broken. A further review was directed.

**WELLINGS, GEOFFREY**  
**E00876 MAN/04/8118**

#### Reversal Of Burden Of Proof

A quantity of tobacco goods had been seized from the appellants by Customs on their return to Birmingham airport from Spain. The statement of case maintained that the officer had not been satisfied that the goods had been imported for own use, and were not being held for a commercial purpose. No-one attended the hearing for Customs, but the Tribunal decided to proceed on the basis that the review officer had considered that the burden of proof lay on the appellants. The appeal against refusal to restore the goods was allowed and a further review directed.

**GRIFFITHS, ALAN; GRIFFITHS, VALERIE JEAN**  
**E00877 MAN/04/8085**

#### Fuel Imported From Mainland Europe

The appellant haulier had become aware that it was possible to save money by purchasing diesel fuel in Belgium and transporting it to the UK, 'up to £250 on a single purchase of 1,000 litres'. Special fuel cruises had been offered by the ferry companies. The appellant's tanks were modified to increase fuel capacity. The issue was whether the assessment Customs had issued had been global, or a series of assessments. The Tribunal decided that it had been global, and therefore time barred. The appeal was allowed.

**KEYES TRANSPORT LIMITED**  
**E00878 LON/04/8011**

#### Diversion Of Company Vehicle

The two appellants appealed against Customs' refusal to restore a vehicle and trailer which had been seized by them at Dover. The vehicle contained machinery for delivery to Walton on Thames, and 1,110 kilos of tobacco. The driver said that he had been approached in Calais and offered £2,000 to follow that person to Stroud with the load. Given the time and cost of the diversion, it was difficult to see that the company would have been

unaware of what was proposed. No evidence was produced on behalf of the appellants and the appeal was dismissed.

**FIRBY LIMITED; CHALKLEY JOHN**  
**E00879 LON/02/8210**

#### Rebated Kerosene In Taxi

The appellant appealed against an assessment raised by Customs for £6,467 back duty in respect of the use of rebated kerosene in his taxi. The appellant claimed that he had only used kerosene in this way on the single occasion on which he had been stopped and the taxi seized by Customs, but had never done so on any previous occasion. The Tribunal was not satisfied that the receipts which the appellant produced to it were in fact his. His evidence was unsatisfactory in a number of respects. The assessment was reduced to £4,634, which the Tribunal found eminently reasonable.

**SHAFIQ, MOHAMMED**  
**E00881 MAN/04/8106**

#### Failure To Renew Amusement Machine Licence

The appellant club was assessed to duty for a period of one month by Customs, although the length of time during which it had omitted to renew its gaming machine licence had been eight days. The Tribunal concluded that the assessment had been properly calculated. It also decided that it had no power to reduce or remit the duty so assessed. The legislation did not provide for the backdating of a gaming licence to commence earlier than receipt of an application. Although the default had been the result of inadvertence, the appeal was dismissed.

**BANBRIDGE AND DISTRICT MASONIC SOCIAL CLUB**  
**E00882 & 3 LON/04/8033**

#### Evidence Of Previous Trips

The appellant had excise goods and the vehicle in which they were carried seized from him on his return to the UK, and appealed against Customs' refusal to restore the vehicle. He claimed that this refusal was disproportionate. The Tribunal considered his purchase of 150 litres of beer to be consumed by 12 people at a single event to be incredible. It appeared to the Tribunal that he was

making importations of excise goods for commercial sale. This was not a small illicit first importation. The appeal was dismissed.

**BARKER, CARL**  
**E00844 MAN/04/8067**

#### Claim For One Third Of Goods

The appellant with two companions was stopped at Coquelles, and 1,200 litres of beer they were seeking to import was seized by Customs, together with the hired van in which they were travelling. The van was restored to the hire company, and only the appellant appealed against the refusal to restore his third of the goods. The Tribunal did not find the evidence which he gave to be credible. He was seeking to present points on a revised version of his evidence which the review officer had not previously seen. The appeal was dismissed.

**ALI, ABBAS**  
**E00865 MAN/04/8109**

#### Appellant Lied To Customs

D borrowed his grandfather's car without telling him he was taking it to the continent. He also took his friend R with the intention of buying excise goods. They were stopped by Customs on their return, the goods were seized, and restoration refused. D had told clear lies to the Customs officers at the outset. It was unlikely that R was giving away such large quantities of tobacco, and more probably that he was receiving money's worth. It was not possible to decide at a late stage which goods belonged to whom, but the appeal was dismissed.

**E00886 LON/04/8043**  
**LON/04/8044**

#### Vehicle Alleged To Have Been Stolen

When stopped the appellant was found to have been driving his Ford Escort on rebated red diesel. He claimed that the vehicle had been stolen, and later recovered, and that he had not refuelled it since that recovery. He claimed to be unaware of the difference between red and white diesel. There was no record of the theft having been reported to the police. Although fully fuelled for the period of loss, it had travelled 277 miles. The appeal against the penalty was dismissed.

**DYSON, STUART JAMES**  
**E00887 MAN/03/8195**