

Duty Tribunal Cases

Whether Jaguar cars were collectors pieces

A Jaguar XK120, an XK 140 and an XK 150 had been imported from the United States for restoration and resale. Customs classified them under heading 87.03 but the appellant argued that they should be classified under 87.05 as collectors' pieces of historical interest. The Tribunal applied the criteria used by the European Court in *Eirika Daiber* Case C 200/84 and *Uwe Clees* Case C 259/97. While the cars were of greater value than ordinary cars, they did not meet the ECJ's criteria. Nor did the technical changes amount to 'historic interest'. The appeal was dismissed.

BARNFINDS LIMITED
C00198 LON/05/7005

Unsatisfactory application of condemnation procedure

This is another case in which confusion over whether condemnation had been sought arose. The Tribunal considered that Customs' decision to proceed against only one of two travellers suggested that all the circumstances of the importation had not been considered. The review decision had failed to take into account that in law the appellant should be able to argue that the goods were for own use, where he had chosen not to challenge the legality of the seizure. The decision failed to allow for departure from Customs' policy of non-restoration. Appeal allowed.

BUTTERS, THOMAS ALFRED
E00888 MAN/04/8069

Condemnation again - hearing not notified

The appellant through solicitors had appealed against the legality of Customs' seizure of her excise goods. Although the goods were condemned by magistrates, no notification of the hearing had been

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

given to the appellant or her solicitor. The judges in *Gora* and *Gascoyne* had been concerned that an appellant should not have two bites at the cherry. The Tribunal observed that the appellant had not been given an opportunity to put her version of the matter to the magistrates. Nor had she failed to appear in the magistrates court through her own fault. Appeal allowed.

MCNEILL, IRENE
E00889 MAN/04/8111

Refusal of restoration unreasonable

The Tribunal considered that on the evidence, many of the features of commercial smuggling were absent from the episode leading up to the seizure of excise goods and a vehicle. Customs had placed insufficient weight on the financial circumstances of the parties and their relationship as colleagues. Customs' approach on the burden of proof had not reflected the decision in *Hoverspeed*. There was no factual basis for the inference that the goods had been bought on a not-for-profit basis. Appeal allowed.

ASH, RICKY; BASS, LLOYD
E00890 MAN/04/8123, MAN/04/8014

Another plea for less complex legislation

The Tribunal said that, as previous courts and tribunals have stated, it has become urgent that steps are taken to ensure that either the law is less complex and confusing, so that mistakes are not made about the proper forum to which travellers should have recourse in order to present their cases in respect of seized excise

goods, or that the jurisdiction should be concentrated in the hands of one system of courts or tribunals, so that travellers do not by inadvertence find themselves without a remedy. The appellant had withdrawn condemnation proceedings without understanding the consequences but the Tribunal dismissed the appeal.

GUEST, GEORGE
E00891 MAN/04/8124

Refusal of restoration not disproportionate

The appellants had lodged an appeal against the seizure of their vehicle and initiated condemnation proceedings but withdrew that appeal by letter. The vehicle was subsequently condemned as forfeit. Thus it was clear from *Gascoyne* and *Gora* that the Tribunal could not maintain any assertion that the goods which the vehicle had been carrying were for own use, since the seizure had accordingly been deemed to be proper. The retail value of the car had been £6,400, while the duty on the goods involved had been £7,718, with VAT of £2,607. The appeal was dismissed.

SHAND, DAVID; SHAND, GILLIAN
E00892 EDN/04/8010

Shopping for diesel across Irish border

Customs found that a Volvo commercial vehicle belonging to the appellant firm was fitted with two tanks and that it regularly filled up with diesel across the border in the Irish Republic, prior to returning to Northern Ireland. An appeal was brought against Customs' decision to uphold a review of an assessment for £77,691. The

Tribunal conducted an analysis of the invoices which had been submitted to it. It allowed relief where there had been single purchases of fuel but not where there had been multiple purchases. Appeal allowed on the limited basis of a 25% reduction.

**JAMES CHESTNUTT t/a
CHESTNUTT ANIMAL FEEDS
E00893 LON/03/8086**

Chairman's casting vote

The appeal was against an assessment of £37,474 in respect of unpaid duty on 72,680 litres of fuel imported in breach of the Travellers Reliefs (Fuels and Lubricants) Order 1995. Fuel tanks were fixed to the trailers of articulated lorries. Did the fuel imported in the tanks of the trailers attract relief from duty under the Order? The Tribunal Chairman held that the legislation prevented the fuel in the trailer being used by another vehicle, although that fuel could power the refrigerator unit. Her colleague disagreed, saying that the appellant's activities were within Council Directive 92/81. The Chairman applied her casting vote and the appeal was dismissed.

**PENFRO PECHE LIMITED
E00895 LON/04/8042**

No abuse of process

Customs applied for an appeal against their decision to refuse to restore 5,000 cigarettes, which had been seized, to be dismissed as an abuse of process. The appellant had requested condemnation proceedings and then withdrawn from them. The application represented a policy decision by Customs since *Gascoyne*. VATA 1994, Schedule 12, paragraph 9 does not cover provisions for ensuring that a notice of appeal must contain reasons which are valid in law. The Tribunal commented again on the unsatisfactory mismatch of the condemnation and restoration procedures. The appellant had been misled by Customs. The application was dismissed.

**SMITH, DEBORAH
E00896 LON/04/8102**

Rewards for agents not own use

The appellant's Mercedes car had been seized by Customs at Coquelles. It contained seven boxes of tobacco. One was a gift for his father and the others were rewards for agents of the company for which he worked. He had used £900 of

his own money in respect of each agent. He only appealed against Customs' refusal to restore the car. The Tribunal found this explanation implausible. Taking other discrepancies into account, the appeal was dismissed.

**SHANLEY, JOHN ANDREW
E00897 MAN/05/8013**

Goods seized within guidelines

Once again Customs raised the contention that a Tribunal cannot consider whether the goods were bought for the appellant's own use because there had been a 'deemed forfeiture' arising from his failure to bring condemnation proceedings. The Tribunal disagreed with this submission and allowed the appellant to raise the issue. The goods which had been seized were within the guidelines but the Tribunal dismissed the appeal, apparently because the appellant declined the opportunity to smoke when interviewed by Customs.

**BELL, JAMES
E00898 MAN/04/8128**

Reduction of restoration fee

A Scania tractor had been seized when it was found to be carrying cigarettes concealed in pallets. The revenue evaded was £456,232. The vehicle was valued at £5,400. Restoration had been offered on payment of 20% of the revenue evaded. Customs subsequently agreed that the trade value of the vehicle was £3,875. By consent the appeal was dismissed, on Customs agreeing to restore the vehicle on payment of £2,500.

**FORMOSA, DARREN
E00899 LON/04/8063**

Commerciality, hardship and proportionality

Deemed forfeiture was not applied in this case, where large quantities of excise goods and the vehicle carrying them had been seized and restoration refused. The Tribunal pointed out that there was nothing in the Customs booklet 12A to indicate that by choosing the restoration route only, a traveller would lose the right to argue before a Tribunal that the goods were for own use. Nevertheless, the Tribunal declined so to hold and decided that there was no hardship or lack of proportion. Appeal dismissed.

**JONES, PHILIP; NASH, LEONARD
ARTHUR
E00901 MAN/04/9104, MAN/04/8105**

Lottery or fixed odds betting?

Did the Great Weather Lottery provide facilities for numerous charitable societies to run lotteries, under the Lotteries and Amusements Act 1976, s 5, or was it, as Customs argued, fixed odds betting? If the former, no general betting duty arose, if the latter duty liability applied under the Betting and Gaming Duties Act 1981, s 1. The Tribunal held that there was nothing in the appellant's scheme which disqualified it from being regarded as a lottery. It could not properly be regarded as a form of betting. The appeal was allowed.

**PRIZE PROVISION SERVICES
LIMITED
E00902 MAN/04/8030**

Wrong burden of proof applied

Excise goods and the vehicle in which they were carried had been seized by Customs. The appeal was against their refusal to restore. Although the amounts being transported were clearly above the guidelines, the Tribunal considered that the original decision to seize and the subsequent decision not to restore were flawed because Customs had been incorrect in law in imposing the burden of proving own use on the appellants. Appeal allowed.

**PYRAH, LINDSAY CLARE;
BEVINS, ANDREW LESLIE
E00903 MAN/01/8366; MAN/01/8367**

Allegations against contemporaneous notes dismissed

Although the excise goods seized were within the guidelines, both they and the vehicle they were in were seized. The appellant had travelled across the Channel on six days in a single week. The appellant alleged that the Customs officer's notes had been created later and were not contemporaneous. An adjournment was granted to allow the interviewing officer to attend. Once again, the Tribunal declined to accept Customs' argument that a deemed forfeiture prevented the Tribunal from hearing arguments about own use. But goods had been seized from the appellant on two previous occasions. The appeal was dismissed.

**HARRISON, COLIN
E00904 MAN/04/8086**