



**TC01393**

**Appeal number: TC2010/08535**

*Excise Duty – seizure of vehicle involved in commercial for profit transportation of tobacco goods – refusal to restore vehicle – reasonableness of Commissioners’ decision – appeal dismissed.*

**FIRST-TIER TRIBUNAL**

**TAX**

**IMRAN HAFEJI**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: Lady Mitting (TRIBUNAL JUDGE)  
Alban Holden (MEMBER)**

**Sitting in public in Manchester on 3<sup>rd</sup> August 2011**

**The Appellant did not appear and was not represented.**

**Simon Charles of Counsel for the Respondents**

## DECISION

1. The decision under appeal is that of the Commissioners, taken on review and notified by letter dated 6 October 2010, to refuse restoration of a VW Golf Motorcar H4FYG ('the vehicle') owned by Mr Imran Hafeji and seized from him on 29 June 2010.

2. On 2 August 2011, the Tribunal Centre received an application from Mr Hafeji's representatives applying for a postponement of the hearing. The e-mail read,

"Due to unforeseen circumstances it has become impossible to attend this meeting. The person dealing arrived back from holiday on 29 July giving him little time to prepare the case. We have informed the solicitors dealing on behalf of HMRC as well. We request an adjournment in this case please."

The application was put before the Judge who refused it, the representatives being notified of the refusal on that same day. The Judge considered the application was totally without merit given that the date of the hearing had been notified to the parties on 13 April 2011 and the representatives had therefore had more than adequate time to prepare their case. The Judge had also ascertained that the Appellant personally was aware of the hearing date as the Commissioners' bundle of documents had been served on him personally on 27 July. Not only did the bundle carry the hearing date on the front of it but it was also accompanied by a confirmatory letter. The Appellant did not attend the hearing but the tribunal considered it to be in the interests of justice to proceed in his absence.

3. The review officer, whose decision is the matter under appeal, was not present in court but her senior officer, Ms Judith Sweatman did attend and gave oral evidence. The review officer's absence did cause certain problems to which we refer below but these were resolved with the assistance of Ms Sweatman and Counsel.

### Background

4. From the unchallenged documentation before us, we find the following facts. On 29 June 2010, police officers intercepted the vehicle in Manchester. It was being driven by the Appellant and also in the vehicle were his older brother, Mohammed Hafeji and a Mr Zamil Munshi. On inspection the officers found in the vehicle 5,600 cigarettes and 9 kilograms of hand rolling tobacco (together referred to as 'the goods') and £6,400 in cash. Mr M Hafeji and Mr Munshi were business partners, owning shops in Wellington Street, Gorton, Manchester and Stockport Road, Longsight Manchester. The goods all belonged to Mr M Hafeji who had purchased them with the intention of re-selling them without the imposition of excise duty for profit. The cash was owned by Mr M Hafeji as to £2,700 and Mr Munshi as to £3,700. The goods had been placed in the boot and on the back seat of the vehicle. The Appellant was employed by his brother as the Manager of the Wellington Street shop and had been since at least October 2007. There had been seven recorded seizures of non UK duty paid tobacco products from the two shops, three of them from the Wellington Road shop since October 2007. The car, cash and goods were all seized.

### **The Appellant's representations**

5. As the Appellant did not attend the hearing and his written representations were therefore the only evidence before the tribunal, we set these out in some detail. On 6  
5 July 2010 the Appellant wrote in seeking the return of the vehicle. He claimed in his letter that the goods did not belong to him and neither did he know they were there and he needed the vehicle for “everyday use, back and forth from work”.

6. By letter dated 22 July 2010, the Commissioners gave the Appellant full reasons for the seizure and in response to this letter, the Appellant's legal advisers wrote in  
10 on the 18 August 2010 repeating that the Appellant had been unaware of the presence of the goods in his car and claiming that he did not even understand what non duty paid products means. The representatives went on to say that as per their cultural traditions, the Appellant, as younger brother, was not allowed to question an older brother although the representatives did add that with the benefit of hindsight  
15 the Appellant accepted that he ought to have done so.

### **The Review Letter**

7. The review letter was written by Mrs Maria Finelli whose decision it was to refuse restoration. This is the decision under appeal. Mrs Finelli begins by setting  
20 out the background to the seizure and states that as the legality of the seizure had not been challenged she was dealing with the matter as an improper commercial transportation of excise goods. Mrs Finelli went on to summarise the Commissioners' policy which was that vehicles used for the improper importation or transportation of excise goods would not normally be restored unless the transportation fell into the category of “small amounts and first offence” or where  
25 the vehicle was needed for an ongoing and specific humanitarian purpose. This transportation did not fall into the category of small amounts and first offence because the amount exceeded the HRT guide level of 5 kilograms. Mrs Finelli did not consider that the representations put forward as to the need for the vehicle amounted to exceptional hardship or a specific humanitarian need. She dealt with  
30 the issues that had been raised in the two letters which had been written in by the Appellant and on his behalf but found that the representations made were not plausible, especially as the Appellant had been employed for some years in his brother's shop. Mrs Finelli concluded that she saw no reason to depart from the Commissioners' policy in this case and upheld the refusal to restore.

### **Conclusions**

8. The jurisdiction of the Tribunal is limited to assessing the reasonableness of the Commissioners' decision. In so doing we consider whether the officer took into  
40 account all relevant factors or indeed considered any which were not relevant; whether due weight was applied to all factors and finally whether she made any error of law.

9. We had one reservation about Mrs Finelli's letter and that concerned the issue of proportionality and to which we return below. That apart, we find that Mrs Finelli took into account all relevant factors. She gave proper thought and consideration to the issues which the Appellant had raised in his correspondence and in our view quite rightly and understandably dismissed them.

10. The letter, unfortunately, was silent as to Mrs Finelli's consideration of proportionality. She quite rightly in the first sentence of her conclusion identified proportionality as a matter which she had to consider but thereafter her letter makes no reference to it. However, on this subject we heard extremely helpful oral evidence from Ms Sweatman who put into evidence the review file which Mrs Finelli would have had in front of her when she carried out the review. The review file contained the Car Condition Report which would have been made out at the time of seizure by the third party contractors who dealt with the removal. This revealed that the vehicle had done 110,542 miles; was a 1999 VW Golf and was in a condition described as 'poor' with scratches and dents on three sides and one worn tyre. There was no evidence on the file that Mrs Finelli had obtained any valuation of this vehicle but Mrs Sweatman obtained a telephone valuation for us from their expert assessors and the value was put at £800. Even had Mrs Finelli not obtained her own valuation, from the Report alone it would have been apparent to her that this was a vehicle of low value. The review file also contained the Notice of Seizure from which it was apparent that Mrs Finelli had manually annotated the list of the goods seized with the approximate amount of duty evaded. The total was £2,810 (although this possibly included the VAT element).

11. We are fully persuaded by these two documents that Mrs Finelli would have and did consider the issue of proportionality and from these documents she would have concluded that the non restoration was proportionate, as indeed it clearly was.

12. We are therefore able to say that all relevant factors were considered by Mrs Finelli and due weight was attached to them. She took into account nothing that was not relevant and her decision was not one which no reasonable panel of Commissioners could have reached.

13. We have looked at the grounds of appeal put in by the Appellant which we set out below.

'HMRC decisions are based upon assumptions and deductions rather than facts. I have never been involved in purchase or sale of any (non-UK duty paid) cigarettes or tobacco. I am merely an employee so there is no point as I would not be able to sell due to the fact that I have no shop of my own and on my wages I would not be able to afford such a purchase in any case.

I am a smoker. As any smoker will tell you, I cannot smell the tobacco smells etc and therefore it is correct that I could not have known that any cigarettes or tobacco was being carried in my car.

Mr Mohammed Hafeji (Appellant's older brother) and Mr Zamil Munshi also smoke. Together we are allowed to have 3,200 cigarettes and 5kg tobacco each

making 15kg tobacco and 9600 cigarettes. The seizure lists 9kg of tobacco and 5600 cigarettes.

Previous history again has nothing to do with me as I have merely been an employee throughout'

5 14. We see no merit in any of these grounds. The goods were being transported by  
the Appellant in his own vehicle for a purpose that was clearly illegal in that it  
involved the transportation and intended sale of non UK duty paid goods. We share  
Mrs Finelli's views that the Appellant's pleaded innocence of what he was carrying  
is implausible. The Appellant does not come across as credible. In particular the  
10 assertion in his representative's letter of 18 August that the Appellant did not  
understand what 'non duty paid products' meant cannot be believable given the  
three seizures from the Wellington Street shop during the period in which he was  
employed there. We cannot accept mere assertions made by the Appellant in writing  
and that the Commissioners' had no opportunity to test in cross examination.

15 15. The appeal is dismissed. Mr Charles was instructed by the Commissioners' to  
make an application for costs which we do not consider to be appropriate and we  
refuse it.

16. 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  
20 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.

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**TRIBUNAL JUDGE**

**RELEASE DATE: 11 August 2011**

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