



TC03557

Appeal number: TC/2013/06814

*CUSTOMS DUTY– Transfer of Residence Relief (TOR) – Special Case –
meaning - exceptional or unusual – no - appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JONATHAN LEWIS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ANNE SCOTT
MRS SONIA GABLE**

Sitting in public at Bedford Square, London on 1 May 2014

**Having heard Mr Lewis for the Appellant and Ms McNair-Wilson, counsel for
HMRC**

DECISION

1. This appeal concerns Mr Lewis' challenge to the Formal Departmental Review
5 decision made by Mr Palmer of the Customs Directorate on 6 September 2013. In
that letter, Mr Lewis was informed that the decision was that he did not qualify for
Transfer of Residence Relief (TOR) under Council Regulation (EC) 1196/2009.
Accordingly the request for repayment of import duty of £881.28 plus import VAT of
10 £4,582.63 in respect of an importation of personal belongings consisting of a piano
and piano stool from South Africa was refused.

The Law

2. **Council Regulation (EC) No 1186/2009** (the Regulation) is entitled "setting up
of a Community system of release from customs duty". It includes the following
Articles:-

15 **TITLE II**

RELIEF FROM IMPORT DUTY

CHAPTER 1

**Personal property belonging to natural persons transferring their normal
place of residence from a third country to the Community**

20 *Article 3*

Subject to Articles 4 to 11, personal property imported by natural persons
transferring their normal place of residence from a third country to the customs
territory of the Community shall be admitted free of import duties.

Article 4

25 The relief shall be limited to personal property which:

(a) except in special cases justified by the circumstances, has been in the
possession of and, in the case of non-consumable goods, used by the person
concerned at his former normal place of residence for a minimum of six months
30 before the date on which he ceases to have his normal place of residence in the
third country departure;

(b) is intended to be used for the same purpose at his new normal place of
residence....

Article 7

1. Except in special cases, relief shall be granted only in respect of personal
35 property entered for free circulation within 12 months from the date of
establishment, by the person concerned, of his normal place of residence in the
customs territory of the Community.

HMRC Guidance

3. HMRC's Public Notice 3 – "Bringing your belongings and private motor vehicle to the United Kingdom from outside the European Community (April 2006)" sets out HMRC's understanding of the impact of the Regulation and also of other relevant law which includes the Customs and Excise Management Act 1979 and The Customs and Excise Duties (Personal Relief for Goods Permanently Imported) Order 1992.

4. The relevant portions of the guidance are to be found at 5.1 and 5.4.

5. 5.1 is headed "Can I get relief from duty and tax on transfer of residence? The relevant paragraph, to which we were directed by HMRC, was:- "We will normally waive the second and third conditions if you could not meet them due to circumstances beyond your control". Those two conditions are the requirement for the taxpayer to have had a normal home outside the EC for a continuous period of at least 12 months or to have possessed and used the belongings for at least six months outside the EC before they are imported.

6. 5.4 is headed "Can I import belongings or a vehicle after my arrival?" It states "Yes, but they should normally arrive no more than 12 months after the date you move or return to the EC. We will waive this condition if you can provide us with a reasonable explanation for the delay."

20 Facts

7. The facts are not in dispute. In 1999 Mr Lewis resided with his parents in South Africa and they purchased for him a Steinway baby grand piano (Serial No. 282068) together with a piano stool (the piano). Mr Lewis lived in a small annex to the house and the piano was located there. He regularly played the piano until his departure to the United Kingdom to study at the University of Oxford in October 2000. He returned annually for a visit to his parents and played the piano. On completion of his studies he received temporary sponsorship to work in the UK until 2006 when he obtained a highly skilled migrant visa. Accordingly, he only had a temporary right to reside in the UK. However, that changed in 2008 when he received indefinite leave to remain in the UK. Since moving to Islington, London he resided in two apartments and neither could physically accommodate the piano. In November 2012, he purchased his current home and it has sufficient space for the piano.

8. In May 2013, at his request, his mother arranged for the importation of the piano by White & Company. Mr Lewis completed a form C3 "Bringing your personal belongings to the United Kingdom from outside the European community" which declared that he moved to the UK in October 2000. When the piano had been imported, White & Company raised an invoice in the sum of £5,463.91, being the import duty and import VAT. Mr Lewis asked that that charge be reconsidered as he took the view that TOR should apply. That application was refused and the refusal confirmed on review.

9. It was a matter of agreement that the piano was personal property and that had the piano been imported within 12 months of Mr Lewis' arrival there would have been neither duty nor tax payable. The problem was that it was not.

The Issue

10. The issue for the Tribunal therefore was very simple, namely:- Was this a special case?

Arguments advanced by Mr Lewis

5 11. Mr Lewis' case was predicated on what he stated were two arguments. Firstly, he stated that until 2008 he did not know whether he could stay in the UK permanently and that that was a matter that was entirely outwith his control. The second argument was that a grand piano requires sufficient space to be housed and he could not afford, and did not have, sufficient space to keep the piano until the
10 purchase of his current property in November 2012. That too was outwith his control. His view was that those two arguments, taken together, amounted to a "reasonable explanation" in terms of HMRC's guidance and therefore TOR should be granted.

12. He argued that a reasonable explanation amounted to the same as a "special case" and that the Regulation did not speak of an "exceptional" but rather of a
15 "special" case; therefore HMRC were placing the bar too high in suggesting that the circumstances had to be *force majeure* or something totally beyond his control.

13. He did not pursue his original default argument on the value of the piano.

14. He suggested that neither of the two cases that had been cited were of any assistance (the second case, *G Wilson (Glaziers) Limited v HMRC* TC/2011/05954
20 had originally been cited by him in argument with HMRC).

HMRC's arguments

15. Although in the original review decision it was suggested that the piano did not qualify as personal property that argument was not pursued.

16. In summary, HMRC argued that the statutory intention of TOR is to allow
25 people to bring into the UK, without payment of duty, the personal belongings that they require to live normally. It does not exist to allow the importation of goods at any time in the future simply because the goods are personal property.

17. In order to constitute a "special case" the circumstances should be something that is beyond the control of the individual. It was submitted that their own guidance
30 suggested that because 5.4 should be read with 5.1. In HMRC's view the fact that it was impractical for Mr Lewis to bring his piano to the UK prior to 2013 did not satisfy that test.

18. They agreed with Mr Lewis that "Special case" is nowhere defined and that that wording only appears in Articles 4 and 7. They stated that the predecessor legislation
35 referred to "special situation" and the only reported case where that is considered is *James Andrew Strain v HMRC* LON/2008/7003 (*Strain*). HMRC relied on the *Strain* case arguing that assistance could be found in that case.

Discussion

19. Mr Lewis predicated almost all of his argument on his assertion that he had
40 proffered reasonable explanations so HMRC should grant TOR because that is all that

the guidance requires. However, that is not the crux of the matter for the Tribunal. As we explained at the outset of the hearing our jurisdiction is limited to finding the facts and then applying the relevant law. The Public Notice is HMRC's view of the law, no more and no less. It is issued as guidance but it does not, and cannot replace
5 the law. As we indicate at paragraph 11 above, the only issue for us is whether the circumstances in this case amount to a special case.

20. Our starting point is to look at the language of the Regulation. It was a matter of agreement that "Special" is not defined in the Regulation. Accordingly it should be given its natural and ordinary meaning when read in its context. The word "Special"
10 is defined in the Oxford English Dictionary (OED) as "exceptional in quality or degree; unusual; out of the ordinary". Other dictionaries give similar definitions. The Collins Thesaurus suggests that alternative words would include "extraordinary", "one in a million", "out of the ordinary", "uncommon" and "unusual".

21. It is well established law that when construing legislation which is unclear or
15 ambiguous then a purposive approach should be adopted. In our view there is nothing unclear about the wording of the Regulation in this case but even if we are wrong in that, the purpose of the legislation is very clear. Importation of property from outwith the EC will attract Import Duty *unless* it fits within the narrow parameters of the Regulation. The Regulation provides for relief only if it is personal property of a
20 certain type and other conditions are met including fairly strict and short timetables. If those conditions are not met then, and only then, Articles 4 and 7 come into play. It is quite clear that the legislative intention was that the time limits should apply in most cases where people come to the UK from outwith the UK and import their belongings. We accept and agree with the OED definition.

22. Are the facts in this case exceptional, unusual or out of the ordinary? We find
25 that they are not and particularly not so since 2008. Shortly put, there are a great many families all over the UK and elsewhere, where the parents still have their children's belongings in their homes because the children do not have space to keep them. That is precisely the position in this instance.

23. Even looking to the period before 2008 when Mr Lewis did not have indefinite
30 leave to remain in the UK, he was very, very far from alone in that. There are a great many individuals and families who come to the UK from outwith the EC on a temporary basis to study or to work for a short, medium or long period of time. They almost all have to face the dilemma as to which of their belongings come with them,
35 and which do not, and if they do bring belongings, then when they import them. The legislation is clearly designed to cover those situations.

24. We are not bound by the *Strain* case and it is of no assistance since the
40 legislation considered therein is completely different to that with which we are concerned. In particular, although that Tribunal referred to a "special situation", Article 239, Regulation 2913/92 has no such reference and talks of "circumstances" where there is "no deception or obvious negligence". That is not relevant in this appeal.

25. In summary, whilst we understand why Mr Lewis did not bring the piano to the
45 UK until 2013 and that that was a reasonable decision in his particular circumstances, it most certainly does not amount to a "special case" on any reading of this Regulation.

26. Accordingly, for all these reasons this appeal fails and the decision refusing TOR is confirmed.

27. 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.

10

**ANNE SCOTT
TRIBUNAL JUDGE**

15

RELEASE DATE: 9 May 2014