



**TC03942**

**Appeal number: TC/2013/07367**

*EXCISE DUTY – Restitution appeal – notice of appeal served 6 months out of time  
– Appellant applying for permission to bring a late appeal – application refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JADWIGA MKOLAJCZK t/a TRANS MARCO                      Appellant**

**- and -**

**BORDER FORCE    Respondents**

**TRIBUNAL: JUDGE JOHN WALTERS QC  
MRS LESLEY STALKER**

**Sitting in public at Bedford Square, London on 3 June 2014**

**Adam Gosiewski, for the Appellant**

**R Salis, Counsel, for the Respondent**

## DECISION

1. This matter came before us at a Directions hearing on 17 February 2014. As a  
5 result of that hearing, on 5 March 2014, we directed that the Appellant's application  
for permission to appeal out of time would be adjourned. The application came  
before us again on 3 June 2014.

2. A Scania tractor unit, registration KLI 14491, and a curtainside trailer, registration  
10 number KN2351P, were seized by the Border Force at Dover on 7 May 2012. A large  
amount of contraband (drugs, alcohol and tobacco) was found in the trailer. The  
driver of the tractor unit was Marek Mikolajczyk, the Appellant's husband. The  
Appellant and her husband together run a small family transport business in Poland,  
called Trans-Marco.

3. Mr Gosiewski, who acted informally for the Appellant, wrote, on her behalf in  
15 July 2012 requesting 'full restoration of the vehicle'. That letter was written as from  
the Appellant's address, but unfortunately the postal code was given incorrectly. It  
should have been '34-608 Kamienica' and was in fact '64-308 Kamienica'. (Post code  
64 is for the Poznan region, while post code 34 is for the Krakow region.)

4. An acknowledgement of that letter was emailed by the Border Force to Mr  
20 Gosiewski on 22 August 2012 informing him that a letter had been sent to the Polish  
address provided (as it happens, the letter was sent to the wrong address), requesting  
further information and a signed authority from the Appellant, authorising Mr  
Gosiewski to act on her behalf. No further response to Mr Gosiewski's letter of July  
25 2012 was received from the Border Force until a letter dated 6 February 2013, which  
was sent to the Appellant's correct address in Poland. This letter apparently (we were  
not shown a full copy) contained a decision to restore the trailer but to refuse to  
restore the tractor unit. Following receipt of this letter, Mr Gosiewski telephoned the  
Border Force and wrote to the Review Officer at the National Post Seizure Unit in  
Plymouth on 5 March 2013. That letter was acknowledged by the Border Force on 8  
30 March 2013 and informed Mr Gosiewski that a review would be conducted. The  
decision letter issued at the conclusion of the review, was dated 22 March 2013, but  
was sent to the wrong address in Poland. Mr Gosiewski tried after that to contact the  
Border Force but with difficulty. He successfully contacted them on 18 or 19 April  
2013 and was told that a review had been conducted and that not only would the  
35 tractor unit not be restored, but neither would the trailer.

5. A Notice of Appeal was sent to the Tribunal Centre on 23 April 2013 (two days  
after the time for appealing had expired), but the Notice was rejected because it was  
not accompanied by a copy of the review letter. Mr Gosiewski had not received a  
copy of that letter at that date. A copy of the letter was later obtained (following a  
40 telephone call by Mr Gosiewski in September 2013) and the Notice of Appeal re-  
submitted on 24 October 2013. Thus the appeal was made some 6 months out of  
time. Mr Gosiewski informed us that he had tried to contact the Post-Seizure Unit on  
1, 7 and 10 May 2013 without success, emailing them on 10 May and being, as he put  
it 'unaware that the Post Seizure Unit had ceased to respond to emails'.

45 6. Mr Gosiewski submitted that in all the circumstances it would be just and fair for  
the Tribunal to allow the Appellant to make a late appeal.

7. Mr Salis, resisting the Appellant's application to make a late appeal, conceded that it was unfortunate that correspondence had been sent by the Border Force to the wrong address but said that this was, at least in part, because Mr Gosiewski had himself (in error) given the wrong address in correspondence.

5 8. Mr Salis submitted that Mr Gosiewski had given no explanation for the delay between May and September 2013.

9. We gave our decision at the end of the hearing that we would refuse the Appellant's application and would not allow a late appeal in this case. This was for the following reasons (taken together).

10 10. First, although the review decision letter had been sent to the wrong Polish address, it was the address which Mr Gosiewski had given in his letter of July 2012.

11. Secondly, there had been no adequate explanation for the delay between in submitting the Notice of Appeal between April 2013 and October 2013, during which time Mr Gosiewski knew that a review had been conducted resulting in a decision not  
15 to restore either the tractor unit or the trailer.

12. Thirdly, and most importantly, the proposed appeal appeared to be hopeless on the merits, because restoration of the tractor unit and/or the trailer to the Appellant would be fairly regarded by the Border Force as tantamount to restoration to her husband who had engaged in the conduct which caused the seizures originally (either by  
20 importing contraband or failure to exercise adequate supervision to ensure that contraband was not imported). Restoration in these circumstances would be contrary to the published practice of the Border Force which the Tribunal regards as a reasonable ground for the refusal of restoration in all but exceptional circumstances. Furthermore, the Tribunal could not see that any circumstances in this case could be  
25 regarded as exceptional so as to justify an exception to the application of the policy.

13. The Appellant's application to bring a late appeal was for these reasons refused.

14. 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  
30 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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**JOHN WALTERS QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 August 2014**

