



**TC04473**

**Appeal number: TC/2015/00634**

*EXCISE DUTY – refusal to restore a car seized under CEMA 1979 – request for a statutory review under s.15 FA 1994 made late – decision made to decline to carry out the statutory review – whether that decision should be quashed or upheld – no reasonable excuse given for the late request for the statutory review – decision to refuse to carry out a statutory review upheld – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TARLOK SINGH KHURANA**

**Appellant**

**- and -**

**THE DIRECTOR OF BORDER REVENUE**

**Respondent**

**TRIBUNAL: JUDGE JOHN WALTERS QC  
JOHN CHERRY**

**Sitting in public at Fox Court, London on 2 June 2015**

**A.J.A. Hadi, for the Appellant**

**Natasha Barnes, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant, Mr Khurana, brought into the United Kingdom on 20 September  
5 2014 a quantity of excise goods – viz: 15 Kg of hand rolling tobacco, 2000 cigarettes  
and 19.2 litres of vodka. According to the Border Force’s letter to Mr Khurana’s  
representatives dated 14 November 2014, ‘a quantity’ of this tobacco was concealed  
in the rear quarter panel of his car, a Vauxhall Astra registration LY13 FZU. Mr Hadi,  
for Mr Khurana, did not deny that this was the fact. Indeed, we were told that Mr  
10 Khorana accepts that it was wrong to bring in the alcohol and tobacco and that he was  
willing to pay a reasonable penalty.

2. The Border Force seized the tobacco and the vodka, and also the car on the  
basis that it (the car) had been used to carry the excise goods.

3. Mr Khurana made no request for condemnation proceedings to challenge the  
15 legitimacy of the seizure. Restoration of the car was, however, requested on his  
behalf and in the request (dated 2 October 2014) it was stated that the car was the only  
vehicle owned by Mr Khurana and it had been used by him to earn a living and for  
family purposes. Mr Khurana told us that he ran a fabric shop.

4. In response to Mr Khurana’s request, the Border Force, in their letter dated 14  
20 November 2014 referred to above, refused restoration of the car, stating that the  
general policy was that private vehicles should not normally be restored but that all  
relevant circumstances would be taken into account in making a decision on  
restoration in any particular case. The letter went on to state that the Border Force  
was unable to identify any exceptional circumstances that would justify a departure  
25 from the policy and that the car would not be offered for restoration.

5. The letter dated 14 November 2014 stated that if Mr Khurana did not accept the  
Border Force’s decision, he could request that it be reviewed by an impartial Review  
Officer and that a request for a statutory review must be received by the Border Force  
within 45 days.

6. No request was however made until a letter was sent by Mr Khurana’s  
30 representatives dated 9 January 2015. That letter acknowledged that the request was  
being made late and explained that the reason for the delay was that the member of  
the representatives’ staff who dealt with the matter had been away on holiday abroad  
in Sri Lanka and as a result the Border Force’s letter had not received their prompt  
35 attention.

7. We were told that, additionally, a reason for the delay had been that there had  
been no additional information or evidence to present for the Border Force’s  
consideration over and above that given in the original request for restoration.

8. On 28 January 2015 the Border Force (Officer Hodge, a Review Officer)  
40 responded to the letter dated 9 January 2014, which had been received on 14 January  
2015. That letter stated that the Border force had written to Mr Khurana’s

representatives on 14 January 2015 inviting them to provide evidence of any reasonable excuse for the lateness of their request for a statutory review, but that no reply had been received. Officer Hodges's decision was that he was not satisfied that there had been a reasonable excuse for the late request. The letter made reference to the decision of Laddie J in *Commissioners of Customs and Excise v Ronald Angliss* of 20 June 2002. In that decision, Laddie J had said:

‘ ... I do not accept the Tribunal's view that because Mr Angliss may have lost the right to appeal to the Tribunal, his Article 6 rights have been breached. It is to be noted that the Tribunal did not suggest that there was anything inherently unfair or unworkable in the three-stage appeal procedure created by [the Customs and Excise Management Act 1979] and [the Finance Act 1994]. Nor was it suggested that the 45-day period for applying for a Review was in any way unfair or too restrictive. If anything, it is generous to persons in Mr Angliss's position.’

9. Officer Hodge's decision was to decline to conduct a review because the request for it had been late and he was not satisfied that there had been a reasonable excuse for the lateness. On that basis he refused to exercise his discretion to conduct a review.

10. The decision not to restore the car was amenable to a requirement given by notice in writing by the person affected to review it (see: section 14(2) Finance Act 1994). However, such a notice needed to be given within 45 days of the decision for the requirement for a review to be absolute (see: section 14(3) Finance Act 1994). A notice given late does not impose an absolute requirement for a review to be made. Such a review can be declined to be made, provided it is declined on a reasonable basis. The jurisdiction of this Tribunal to consider, on appeal, a refusal to restore is limited to a jurisdiction to consider a decision made on a review (see: section 16 Finance Act 1994). It follows that if there has been no review, this Tribunal cannot consider the refusal to restore.

11. Thus, in this appeal, it was for us to consider whether the decision of Officer Hodge to decline to review the decision not to restore the car was reasonable.

12. The only reason given to Officer Hodge, or to us, as to why the Border Force should review the decision not to restore the car, on a late application for such a review was that the member of Mr Khurana's representatives' staff charged with the matter had been away on holiday in Sri Lanka and that there was no further information or evidence to be given to support the request for a review.

13. We did not consider that on this basis Officer Hodge's decision to refuse a review was unreasonable. The time limit imposed by statute of 45 days does appear to us, as it appeared to Laddie J in *Angliss*, to be quite generous to an appellant. Such time limits are imposed in the general expectation that they will be adhered to unless there is good reason for them not to be adhered to. In this case, we agree with Officer Hodge that no good reason has been put forward. We would have expected a professional office to make arrangements to cover the responsibilities of a member of

5 staff on an extended holiday, to make sure that time limits were complied with. Furthermore, the decision not to restore the car because there were no exceptional circumstances justifying a departure from the normal practice not to restore, seemed to us not to be so egregious that a review ought to have been made whenever the request for it had been made.

14. We therefore refused Mr Khurana's appeal against the Border Force's decision not to conduct a review following the late request.

10 15. Although it did not form part of our reasoning in reaching the decision to refuse Mr Khorana's appeal, we did mention at the hearing that we had formed the view that it was highly likely that, given the element of concealment of excise goods which featured in this case, any decision on review would have confirmed the decision not to restore the car, and any appeal to this Tribunal against such a decision on review would have failed, because such a decision would not be shown to have been unreasonable. Thus, we considered that, in practice, our decision did not deprive Mr  
15 Khurana of any realistic chance of obtaining restoration of the car and it seemed to us that it was better, in the interests of all parties, that this litigation should be brought to an end sooner rather than later. The considerations mentioned in this paragraph fortified us in our view that Mr Khurana's appeal should be refused.

16. Finally, we mention that, by Directions issued on 21 April 2015, Judge  
20 Cornwell-Kelly directed the Director of Border Revenue to require the unnamed officer, who issued the original letter of 14 November 2014 in which the decision not to restore the car was contained, to attend the adjourned hearing to give evidence.

17. At the hearing before us, which was the adjourned hearing referred to, there was no such attendance, but we did not take any point with Ms Barnes, representing the  
25 Director, on this, because it was for Mr Khurana to satisfy us that Officer Hodge's decision to refuse a review had been unreasonable, and no evidence from the unnamed officer could have been relevant on that point.

18. 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  
30 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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**JOHN WALTERS QC  
TRIBUNAL JUDGE**

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**RELEASE DATE: 11 June 2015**