



TC04659

Appeal number: TC/2015/02641

EXCISE DUTY – Refusal of late request to carry out review of decision not to restore seized goods – Whether decision should be upheld – No – Application allowed and review directed – Section 14A Finance Act 1994

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WIPOX Sp Z O O

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
HELEN MYERSCOUGH ACA**

Sitting in public at Fox Court, Brooke Street, London EC1 on 1 October 2015

Andrew Zalewski , counsel, instructed by Ardens Solicitors, for the Appellant

J Alastair Smith, counsel, instructed by the Director of Border Revenue, for the Respondents

DECISION

1. On 1 June 2014 a tractor unit and trailer which was carrying 22,324 litres of mixed beer was seized by UK Border Force (“UKBF”) Officers at Dover Eastern Docks. The tractor and trailer belonged to Wipox Sp Z O O (“Wipox”), a Polish company which, shortly after the seizure, wrote to UKBF.

2. In its reply, dated 3 June 2014 UKBF wrote:

Thank you for your letter, undated, received in our office on 2 June 2014 in which you have indicated that you wish to follow one of the procedures listed below:

- Appeal against the legality of the seizure of the items.
- Request restoration of the seized items.
- Appeal against the legality of the seizure and request restoration of the seized items.

The letter also requested proof of ownership of the vehicle and stated that UKBF “will now begin processing your case.”

3. On 5 June 2014 UKBF wrote again to Wipox enclosing “Notice 12A” which explained its legal rights in respect of the seizure and also the appeals process. The letter gave an address to which a request for restoration of the goods and/or appeal against the legality of the seizure should be sent. Wipox replied on 9 June 2014 enclosing proof of ownership of the vehicle and requested UKBF to “process our case as soon as possible.”

4. A further letter from Wipox, dated 23 June 2014, requested the return of the seized items “because they should not be subject to forfeiture.” It would appear that this letter crossed in the post with a letter to Wipox from UKBF, dated 25 June 2014, which sought further details to enable a decision to be made to the “request for restoration” of the tractor and trailer. Information was sent by Wipox to UKBF in “explanatory” letters of 9 July and 5 August 2014.

5. UKBF wrote to Wipox on 16 September 2014. The letter first set out its restoration policy for commercial vehicles before stating that the tractor and trailer would be restored on payment of £33,336.15. The letter concluded stating that if the decision was not accepted a review could be requested but that any such request must be received by UKBF within 45 days ie by 11 November 2014.

6. On 23 December 2014 Ardens Solicitors (“Ardens”) sent an Agent Authority Form to UKBF explaining that they had been appointed by Wipox. In its reply, dated 29 December 2014, UKBF stated:

For your information a restoration decisions was issued to your client on 16 September 2014, I enclose a copy. The decision letter was also faxed on 17 September 2014 to your client. I enclose a copy of out transmission verification report.

Your client had until 11 November 2014 to request a review no review was requested, we have now closed our file and disposal action will start in due course.

5 If your client wishes to request an out of time review please write to the Review Team, details in the decision letter [of 16 September 2014] and give the reasons why the review request was not within the timescale.

7. On 16 January 2015 Ardens wrote to UKBF making a formal request for a review of the decision dated 16 September 2014. The letter explained:

10 As far as we are aware the client did not respond to your letter of 16.9.2014. Unfortunately our client [a named individual who is the director of Wipox] suffered a severe nervous breakdown at the end of October 2014. This was probably attributable to her company loosing vehicles due to seizure and mounting financial problems stemming from the unsustainable company finances as trade diminished. [The individual] was admitted to hospital in November 2014. [The individual] is now recovering at home and please find enclosed the doctors certificates. Our client could only give this firm a full instructions (sic) after the Xmas break and that is following 5.01.2015 when our offices were opened.

The letter concluded with a request to UKBF to “initiate the statutory condemnation proceedings at the Magistrates’ Court as soon as reasonably practicable.”

8. Clearly the “client” referred to in the letter was not the company, Wipox, but, as is apparent from the letter its director. She is also a 49% shareholder of Wipox and her husband holds the remaining 51% of its shares.

9. UKBF replied to Ardens on 23 January 2015 acknowledging receipt of their letter and explaining that as the request for a review “appears to be outside the 45 day limit” it would be referred to a reviewing officer to decide what action is required.

10. In undated letter Officer Helen Perkins, the review officer, who declined to conduct a late review, explained that the statutory limit, under s 14(3) of the Finance Act 1994, for requesting a review is 45 days and that the request of 20 January 2015 was late. She referred to Ardens letter of 16 January 2015, the “a severe nervous breakdown” suffered by their client and her subsequent admission to hospital. The letter continued:

35 Having given serious consideration to your request to conduct an out of time review on behalf of your client, I am not satisfied that the information you have provided to date, namely a prescription warrants an extension of time of constitutes a reasonable excuse for being 77 days late in requesting a review.

40 The letter went on to refer 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, at [35]:

45 “... 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."

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11. On 1 April 2015 Wipox appealed to the Tribunal against the decision of Officer Perkins not to undertake a review.

12. As stated in the undated letter of Officer Perkins letter to Ardens declining to undertake a review, under s 14(3) Finance Act 1994:

10 The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.

15 13. However, s 14A of the same Act, which provides for a review out of time, applies where notice requiring a review is given after the end of the 45 day period mentioned in s 14(3). In such circumstances the officer must carry out a review if satisfied:

20 (1) there was a reasonable excuse for not giving notice requiring a review before the end of that 45 day period, and

(2) the notice given after the end of that period was given without unreasonable delay after that excuse ceased.

14. If the officer is not "satisfied" that these conditions have been met the Tribunal may order a review although it can only do so if satisfied that the officer could not reasonably have reached the decision she did not to undertake a review (see s 16 Finance Act 1994). As Lord Phillips MR (as he then was) said, at [40] of *Lindsay v HMRC* [2002] STC 588 in regard to whether a decision was one that could reasonably have been reached:

30 "... the Commissioners will not arrive reasonably at a decision if they take into account irrelevant matters, or fail to take into account all relevant matters"

15. In the present case while Officer Perkins Jurisdiction did refer to the "severe nervous breakdown" of the director at the end of October 2014 and subsequent admission to hospital she does not appear to have taken into account the likelihood that such a condition would have had an adverse effect on the person for some time before being diagnosed and that this may have been the reason why a review was not requested before 11 November 2014, 45 days form the decision not to restore the tractor and trailer.

16. Although Officer Perkins did not refer to it in her letter, in her witness statement, dated 24 April 2014, she sets out a list of the documents relied on in making her decision not to carry out a review. Included in this list is the Polish "National Court Register" showing the person suffering the nervous breakdown was not the majority shareholder in Wipox but that this was her husband and as Officer Perkins observed "no information has been supplied to date as to why he did not seek a review within 45 days". However, in making such an observation Officer Perkins

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does not appear to have taken into account that the letter of 16 January 2015 from Ardens referred to this individual (who suffered the breakdown) as the director of Wipox and, as such, would have been more likely to have been involved in its day to day operation than its shareholders.

5 17. By failing to take account of these matters, which in our judgment are clearly relevant, Officer Perkins cannot have reasonably arrived at her decision not to undertake a review.

18. In the circumstances we direct that a review be carried out having regard to this decision in general and in particular paragraphs 15 and 16, above.

10 19. While this is sufficient to dispose of this application we should note that before us Mr Zalewski made wide ranging submissions in relation to the seizure of the vehicle and whether, relying on the decision of the Tribunal in *Wnek v Director of Border Revenue* [2013] UKFTT 575 (TC), there had been a request for condemnation proceedings. However, as was made clear in the letter to Ardens from the Tribunal,
15 dated 20 April 2015, the purpose of this hearing was to consider the application for a review out of time and we have therefore restricted our decision solely to this issue.

20. 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
20 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 BROOKS

TRIBUNAL JUDGE

RELEASE DATE: 19 OCTOBER 2015

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