



**TC05524**

**Appeal number: TC/2016/02188**

*TYPE OF TAX – Seizure of Goods, application of restoration policy,  
Reviewing Officer's decision reasonable*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HM MOBILES**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE GETHING  
Mrs Helen Myerscough**

**Sitting in public at Fox Court, Court 12, 4th Floor, 30 Brooke Street, London  
EC1N 7RS on Tuesday 15 November 2016**

**Mr Mohammed Yaseen for the Appellant**

**Ms Carpenter, instructed by the General Counsel and Solicitor to HM Revenue  
and Customs, for the Respondents**

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## DECISION

1. Having heard Mr Mohammed Yaseen for the Appellant and Ms Carpenter of  
5 Counsel for the Respondents and having heard evidence from Mr Yaseem and Mrs  
Hodge the Reviewing Officer for HMRC, The Tribunal decided for the reasons set out  
in paragraphs 12 to 17 below that the appeal be dismissed.

2. The case concerns the seizure of goods imported at Heathrow airport by HM  
10 Mobiles, the Appellant, from China in circumstances where the customs declaration  
as to the content of the packages did not correspond with the actual content of the  
packages, in consequence of which all of the goods were liable to forfeiture under  
section 49(1)(a) Customs and Excise Management Act 1979 (CEMA) and capable of  
being seized. No proceedings have taken place in the Magistrates Court in which the  
15 lawfulness of the seizure was challenged, the time to do so has expired and in  
consequence the goods are deemed to be forfeited. The Appellant sought restoration  
of the goods from HMRC under section 152(b) CEMA which permits restoration  
"subject to such conditions (if any) as they think proper, anything forfeited or seized  
under [the customs and excise acts]".

3. The officer who considered the application refused to restore the goods. That  
20 decision was then reviewed by Mrs Hodge, the Reviewing Officer, under section  
14(2) Finance Act 1994 ("FA 1994"). The Reviewing Officer confirmed the officer's  
original decision.

4. The appeal is made by the Appellants against the Reviewing Officer's decision  
25 under section 16 FA 1994. Under section 16(3) this Tribunal is required to consider  
whether the Reviewing Officer could not reasonably have arrived at the decision. If  
the Tribunal were to determine that the Reviewing Officer could not have reasonably  
come to the decision, the Tribunal may make directions, including quashing the  
Reviewing Officer's decision and requiring it to be remade. The burden of proof is  
imposed on the Appellant to establish the grounds on which the appeal is brought,  
30 under section 16(6) FA 1994.

5. No new material had been provided to the Reviewing Officer by the Appellant  
to assist her in the review. The Reviewing Officer issued her decision by letter dated  
18 March 2016. In applying the policy of restoration adopted by the Border Force the  
Tribunal consider that the reviewing Officer took into account the following facts in  
35 reaching her decision:

(1) A consignment of goods (in 12 boxes) imported from China was  
examined by Border Force at Heathrow airport on 7 December 2015. The  
customs declaration said that the boxes contained "chargers" which weighed  
230 Kilos.

40 (2) The consignment contained an undated invoice for \$200 from World  
Marketing Group (HKG) Ltd ("the WMG Invoice") for the following goods:

(a) 2,000 chargers@ \$0.07 per unit, \$140

(b) 2,000 screen protectors @ \$0.02 per unit, \$40

(c) 500 plastic packing @ \$0.04 per unit, \$20

(3) The consignment was detained on 7th December 2015 and examined on 9th December and was found to contain:

5 (a) Cardboard packing for screen savers and cloths

(b) 2,500 screen protectors for mobile phones and tablets

(c) 2,000-2,500 mobile phone chargers, and

(d) 300 blue tooth headphones and packaging.

10 (4) The goods were seized on 9th December 2015 as the description of the goods in the declaration did not correspond to the goods contained in the consignment.

15 (5) The Appellant had explained by letter dated 21 December 2015 that the headphones and plastic packaging had been included by mistake by the shipper. The shipper in China had advised him that these items were to be sent separately, the Appellant also asserts the declaration refers to Adapters and Screen protectors. The appellant explained the seizure had badly affected his business over the Christmas period and that there were goods in the consignment with a total consideration of US\$343.50 comprising:

(a) 500 headphones @ \$0.3 per unit, US\$150

20 (b) 700 paper packaging @\$ 0.005 per unit , US\$3.50

(c) 2,500 screen protectors @\$0.02 per unit, US\$50

(d) 2,000 chargers (referred to as adaptors in China) @ US \$0.07 per unit. \$140

25 (6) In response to a request made by Border Force on 24 December 2015 for the Appellant to prove the ownership of the goods (which was required to enable the restoration policy to be applied) the Appellant replied by letter of 1 January in which it is stated the appellant paid for the goods in cash and provided an invoice from MX Shen Zehn Ming Xing Digital Technology ("the MXS invoice") for a total value of RMB 2,356.1 (US\$363) which is dated 27  
30 December 2015 and refers to :

(a) 500 blue tooth headphones (300 with microphones @US 1.95 per unit and 200 without@US\$ 1.90 per unit)

(b) 2,000 adapters (1000 black @US\$0.45 and 1000 coloured @US\$0.47 per unit)

35 (c) 2,427 screen protectors @US\$0.19 per unit.

(7) The MXS invoice does not mention whether payment had been received in cash and no other proof of payment was provided.

(8) By letter of 1 February 2016 Border Force advised the appellant of its refusal to restore.

5 (9) On 7 February 2016 by email and letter the Appellant offered to pay duty and VAT on the goods which was taken by Border Force to mean the Appellant had requested restoration and by letter of 9 February 2016 Border Force indicated it would undertake a review and asked for any further information the Appellant may have to support the claim for restoration.

(10) The Reviewing Officer considered the position afresh taking into account the circumstances of the seizure and the related evidence listed above so as to try and identify any mitigating or exceptional circumstances that could be taken into account in the exercise of the discretion to restore.

10 (11) In the section of her letter of 18 March 2016 notifying the Appellant of the outcome of the review, the Reviewing Officer indicated that:

(a) There was a discrepancy between the content of the consignment and the customs declaration. Headphones and screen savers were not included in the declaration. The discrepancy warranted seizure.

15 (b) The lawfulness of the seizure had not been challenged within 30 days so the goods are liable to be forfeit.

(c) There was no evidence that the headphones ought to have been sent by separate consignment. The further evidence relating to the headphones comprised an invoice dated 27 December 2015 which indicated 500 and not 300 blue tooth head phones had been purchased together with 2,427 screen protectors and not 2,500

20 (d) There was no evidence of a cash withdrawal from the Appellant's bank account to pay for the goods in China or any foreign exchange receipts on conversion of pounds Sterling into RNB in China, only an assertion that goods were paid for in cash.

25 (e) There is a discrepancy in the values of the goods. \$200 in WMG Invoice and \$343 in the MXS invoice.

(f) The values per unit were so low that having regard to retail values of these produces which the Reviewing Officer had identified on-line the return of 1000% would ensue. Such a return seemed unlikely. The goods seem to have been undervalued to avoid the payment of customs duty and VAT.

30 (g) As only \$200/\$343 had been paid for the goods it was impossible to accept that that the seizure had severely affected the business.

35 (h) Having looked for information on the Appellant's business on-line and finding none, the Reviewing Officer was not convinced that the Appellant carried on a legitimate business. The Reviewing Officer had a photo of the address from which the appellant conducts his business. It is a residential two story domestic dwelling house.

40 6. The Reviewing Officer indicated that if the appellant had more information she would be willing to consider it. Thereafter the Appellant provided a photocopy of his passport which he said showed he had a visa to enter China.

7. The Reviewing Officer had taken the view that Appellant did not carry on a legitimate business. She had done so based upon three facts two of which were that the Appellant's business address was in a residential street and the business had no website. This factor which went to the credibility of the appellant had been taken into  
5 account in the Reviewing officer's decision but was based upon supposition only and the Appellant had been unable to comment on these issues before the decision was made. In consequence, the Tribunal felt it was in the interests of justice that the Appellant be able to give oral evidence to the Tribunal about the nature of the business and how it was conducted. Counsel for the Respondents objected to the  
10 Appellant being given this opportunity to give his evidence arguing that the Tribunal was to review the Reviewing Officer's decision only by reference to facts known by the Reviewing Officer. The Tribunal insisted that the interests of justice required that this evidence be heard.

8. Mr Yaseen gave evidence to the Tribunal under oath. He said:

15 (1) His business was the sale of mobile phone accessories which he sold directly to small mobile accessory shops. He conducts his business from home. He has a VAT registration number 024000913387 but had no returns with him. He has an accountant who keeps all of his receipts to make up his accounts. He has a bank account out of which he pays his VAT etc.

20 (2) He had heart trouble and had undergone triple bi-pass surgery in February, 2014 and had been given the all clear in November 2014. He had a young family and had to provide for them.

25 (3) He imported the goods he sold in the business from China. He visited China in person as goods were very cheap there and it was still cheaper to go to China to buy goods than to buy them in the UK even after the cost of the flight and hotel accommodation had been taken into account. The goods that are the subject of this appeal were bought on his first trip to China since his surgery.

30 (4) He flew to China on 23 November 2015 and a flight reservation form in his mobile phone showed he had returned on 7 December 2015. A hotel bill however recorded that he left China two days later.

35 (5) He said the goods which were seized at Heathrow on 7th December were acquired from a supplier who was closing down. The owner was migrating to the USA. The prices were very very low in consequence. He initially described the sale as an auction but later said he was not competing in his bids with other bidders. He did not get a receipt for the goods or a detailed list of the goods purchased. The MXS invoice supplied to the Border Force was obtained by Mr Yaseen after his return to the UK.

40 (6) He took the goods which weighed 230 Kilos on a trolley to the packing company which was 50 yards from the shop on the first floor. As he had no list of goods to give to the packer, the packer had to count each of the items before packing.

(7) Later Mr Yaseen said he had in fact had a list of goods which he had supplied to the Border Force and he had given that list to the packer ("List of

Goods"). The Tribunal had a copy of that List of Goods and it refers to screen protectors only.

5 (8) He had a list of items which corresponded to the list of items in the consignment intercepted at Heathrow. This was shown to the Tribunal and the Respondents. The Respondents had never seen it before. It is undated. It is addressed to "to whom it may concern" and is made by an enterprise by the name of GUANGZHOU LINGYUE INTERNATIONAL EXPRESS CO., LTD. There is no address shown in the document. We refer to this document as the "GUANGZHOU list".

10 (9) Mr Yaseen said that he had had goods intercepted on a previous occasion. This was confirmed by the Reviewing Officer. From enquiries made by the Reviewing Officer, two consignments had been intercepted in November 2015. They contained headphones and some were counterfeit. The counterfeit goods had been handed to the IP owners concerned. Given Mr Yaseen's modus operandi involved travelling to China in person to purchase goods The Tribunal suggested that he must have made a trip to China at the beginning in October or early November. He admitted he had.

15 (10) Mr Yaseen had taken £4,000 in cash to China to acquire goods. He changed the cash into RMB at the bank known as ABC. He had no receipt for the exchange.

(11) He explained he could not get the Chinese shippers to admit to the mistake about sending the headphones separately because that is not how Chinese people do business.

25 (12) He explained that the shipper was expected to send the headphones with the plastic bags but what he received separately was just plastic bags. He showed the Tribunal a DHL courier statement concerning plastic bags but the customs declaration and the duty and VAT paid related only to plastic bags. Had the declaration mentioned headphones and had he paid duty on the bags as if they were headphones that may have explained the error but it seemed to do no such thing.

30 (13) He had sent to the Reviewing Officer after she had made her decision a photocopy of his passport and what he claimed was his visa to China. In fact the photocopy was not of a visa but the first page of his passport. He had a photo on his phone of his passport which he showed the Tribunal. The pages seen by the Tribunal showed various date stamps of entry in 2014 but not a visa.

35 (14) Mr Yaseen was unable to explain the different companies that had issued the various invoices and list of goods that he had provided and on which he relied:

40 (a) The MXS invoice was dated 27/12/ 2015 (includes 500 headphones) and bears the invoice number 0001397, Guangzhou.

(b) The Packing List is for Order no 1129 delivery date 02/12/15- on which there is no name or address of the issuer

(c) WMG Invoice issued by World Marketing Group (HKG) (HKG) Ltd (Kowloon) is undated and has no mention of headphones

(d) The GUANGZHOU List is undated, bears no address, and is addressed to "To whom it may concern" apparently confirming quantities of goods sent to DHL including 500 headphones and a total value of \$343.

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(15) In relation to exceptional hardship to his business, although Mr Yaseen says he paid only US\$200 or US\$343 for the goods, he says he could have made a lot of money from the sales of the items at Christmas 2015. At that time he could sell the goods for much more than the market can now stand. For example he could sell the screen protectors for £1.00 to £1.50 each but now the price is much lower being 60p. He accepted he had bought other goods as he had taken £4,000 to China and the price paid for the seized goods was only US\$200/343. His trip was not wasted and he will make profit out of those goods. He insisted however that the up-lift on these goods at that time would have been exceptional. He had therefore suffered exceptional loss.

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9. When Counsel for the respondents cross examined Mr Yaseen on the discrepancies and inconsistencies he said he could not remember. His memory had been bad since his surgery notwithstanding his having been signed off as being fully recovered.

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Our findings in relation to credibility

10. Having heard Mr Yaseen's oral evidence and the Respondent's cross examination of Mr Yaseen, the Tribunal found he lacked credibility. There were so many inconsistencies in his statements:

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(1) He said he always visited China to buy goods for his business. The trip during which he bought the seized goods was his first following his recovery from surgery in 2014 and began on 23 November to 7 December 2015. Yet he had had other goods seized at Heathrow before 23 November 2015.

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(2) He said he had received no list of goods purchased and in consequence the shipper had to count each item but then later produced a list which was only partial.

(3) He had no receipts for the goods handed to the shippers.

(4) He could not explain the different names and addresses on the invoices and list of goods and which company had undertaken the shipment.

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(5) It was not credible that he had a young family to feed but waited over a year before making his first trip to China to purchase the goods he needed for the appellant's business.

(6) The invoice he had for the goods was created after he returned to the UK and was dated 27 December, 2015.

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(7) The explanation that the headphones were expected to be delivered separately with plastic bags was not corroborated by the DHL document

showing receipt of plastic bags and payment only of duty in respect of plastic bags not plastic bags and headphones.

(8) The inconsistent numbers of headphones in the various documents.

5 (9) When requested to explain these inconsistencies in cross examination Mr Yaseen complained of having a poor memory following his surgery.

11. The Tribunal also found that Mr Yaseen had not provided the Reviewing Officer with any evidence to support his ownership of the forfeited goods by 18 March 2016. His accountant would need more evidence of the goods purchased and cost of the goods to prepare the Appellant's VAT and Corporation Tax returns. It was  
10 not credible that an experienced businessman who considers the Chinese suppliers do not do business as it is done in the UK would place such enormous trust in the Chinese suppliers and shippers and not obtain receipts for payment of goods and receipts for delivery of goods to be shipped to the UK.

12. The Tribunal also found it difficult to accept that the loss of goods for which the  
15 appellant paid US\$200 would cause the appellant exceptional hardship.

#### Our decision

13. As mentioned above the appeal in this case is made by the Appellants against the Reviewing Officer's decision not to exercise the discretion conferred on the Commissioners to restore the goods which discretion is conferred by section 252(b)  
20 CEMA. The appeal is made under section 16 FA 1994. Under section 16(3) this Tribunal is required to consider whether the Reviewing Officer could not reasonably have arrived at the decision. The burden of proof is imposed on the Appellant to establish the grounds on which the appeal is brought, under section 16(6) FA 1994.

14. The Border Force policy in relation to restoration of goods is that goods may  
25 only be restored if there are exceptional circumstances to justify restoration or not to restore would cause exceptional hardship. Before the discretion may be exercised in favour of an Appellant, the Appellant must provide evidence of ownership of the goods. The burden of proving ownership rests with the Appellant.

15. We found that the Appellant had failed to provide any satisfactory evidence of  
30 ownership of goods which were bought during Mr Yaseen's trip to China between 23 November and 7 December 2015. There was an assertion he had paid in cash, in RNB which he had bought with £4,000 that he had taken with him to China. The Appellant had produced no evidence of the withdrawal of the cash from the Appellant's bank account. He had produced no evidence of the exchange transaction with ABC bank  
35 and the invoice which the Appellant had produced was dated 27 December 2015 (which post-dates his return to the UK) and related to 500 headsets not 300 which had been imported on 7 December 2015.

16. We also found that it was impossible to see how the Appellant had suffered  
40 exceptional hardship through the seizure of goods purchased for US\$200/US\$345. Mr Yaseen said the goods seized were capable of generating substantial profit because he had bought them at a knockdown price. The Appellant had taken £4,000 to China.



5 He had spent approximately £1,000 on his flight and hotel accommodation leaving £3,000 to purchase cheap goods for re-sale in his business. The re-sale of those goods must have generated a profit and it is difficult to accept the loss of profit from the re-sale of goods costing US\$200 would outweigh the profit from the sale of goods costing £3,000.

10 17. The Tribunal found that the Reviewing Officer in reaching her decision had taken into account information which was not available to the original Officer and which information was not provided by the Appellant. That information is set out in paragraphs 4(11)(f), (g) and (h) above and goes to the credibility of the Appellant. We question the rationality of the conclusion drawn about the legitimacy of the Appellant's business on the basis of it being conducted from a residential address and having no web address. The Reviewing officer also considered that the possibility of generating extraordinary rates of return on sales of goods pointed to the business not being a legitimate business and was indicative that the value of the goods imported had been marked down on the customs declaration to avoid VAT and customs duty. We consider that would be a reasonable conclusion to draw. Further having heard Mr Yaseen's evidence in relation to the conduct of the Appellant's business we consider that Mr Yaseen was not a credible witness, the business practices seemed to us extraordinary and there are reasonable grounds for questioning whether the Appellant carries on a legitimate business.

20 18. We consider the Appellant had failed to provide to the original officer, the Reviewing officer or the Tribunal evidence of ownership of the goods, or exceptional hardship or other exceptional circumstance as to why the goods should be restored to the appellant. We further consider that Border Force restoration policy has been applied by the Reviewing Officer in a fair manner and the Reviewing Officer's decision was reasonable. We accordingly dismiss the appeal.

25 19. 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.

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**JUDGE GETHING  
TRIBUNAL JUDGE**

**RELEASE DATE: 30 NOVEMBER 2016**

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## Appendices

### S49 Customs and Excise Management Act 1979

#### Forfeiture, offences, etc in connection with importation

Forfeiture of goods improperly imported

- 5 (1) Where—
- (a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being goods chargeable on their importation with customs or excise duty, are, without payment of that duty—
- (i) unshipped in any port,
- 10 (ii) unloaded from any aircraft in the United Kingdom,
- (iii) unloaded from any vehicle in, or otherwise brought across the boundary into, Northern Ireland, or
- (iv) removed from their place of importation or from any approved wharf, examination station or transit shed; or
- 15 (b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment; or
- (c) any goods, being goods chargeable with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are
- 20 found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship or aircraft or, while in Northern Ireland, in any vehicle; or
- (d) any goods are imported concealed in a container holding goods of a different description; or
- (e) any imported goods are found, whether before or after delivery, not to
- 25 correspond with the entry made thereof; or
- (f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,
- those goods shall, subject to subsection (2) below, be liable to forfeiture.
- (2) Where any goods, the importation of which is for the time being prohibited or
- 30 restricted by or under any enactment, are on their importation either—
- (a) reported as intended for exportation in the same ship, aircraft or vehicle; or
- (b) entered for transit or transshipment; or

(c) entered to be warehoused for exportation or for use as stores,  
the Commissioners may, if they see fit, permit the goods to be dealt with accordingly.

### **S152(b) Customs and Excise Management Act 1979**

#### **Power of Commissioners to mitigate penalties, etc**

5 The Commissioners may, as they see fit—

(b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts;

### **S14 Finance Act 1994**

#### **Requirement for review of decision under section 152(b) of the Management Act 10 etc**

(1) This section applies to the following decisions [by HMRC], not being decisions under this section or section 15 below, that is to say—

(a) any decision under section 152(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any  
15 person or as to the conditions subject to which any such thing is so restored;

(b) any relevant decision which is linked by its subject matter to such a decision under section 152(b) of the Management Act.

(2) Any person who is—

(a) a person whose liability to pay any relevant duty or penalty is determined by,  
20 results from or is or will be affected by any decision to which this section applies,

(b) a person in relation to whom, or on whose application, such a decision has been made, or

(c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or  
25 applied,

may by notice in writing to the Commissioners require them to review that decision.

(2A) But in the case of a relevant decision that falls within subsection (1)(b), a person may require HMRC to review the decision under this section only if HMRC are also required to review the decision within subsection (1)(a) to which it is linked.

5 (3) 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.

10 (4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—

(a) requests such a notification;

(b) has not previously been given written notification of that decision; and

15 (c) if given such a notification, will be entitled to require a review of the decision under this section.

(5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—

20 (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and

(b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

(6) . . .

25 (7) . . .

## **S16 Finance Act 1994**

### **Appeals to a tribunal**

(1) An appeal against a decision on a review under section 15 (not including a deemed confirmation under section 15(2)) may be made to an appeal tribunal within  
5 the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates.

(1A) An appeal against a deemed confirmation under section 15(2) may be made to an appeal tribunal within the period of 75 days beginning with the date on which the review was required.

10 (1B) Subject to subsections (1C) to (1E), an appeal against a relevant decision (other than any relevant decision falling within subsection (1) or (1A)) may be made to an appeal tribunal within the period of 30 days beginning with—

(a) in a case where P is the appellant, the date of the document notifying P of the decision to which the appeal relates, or

15 (b) in a case where a person other than P is the appellant, the date the other person becomes aware of the decision, or

(c) if later, the end of the relevant period (within the meaning of section 15D).

(1C) In a case where HMRC are required to undertake a review under section 15C—

20 (a) an appeal may not be made until the conclusion date, and

(b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(1D) In a case where HMRC are requested to undertake a review in accordance with section 15E—

25 (a) an appeal may not be made to an appeal tribunal—

(i) unless HMRC have notified P, or the other person, as to whether or not a review will be undertaken, and

(ii) if HMRC have notified P, or the other person, that a review will be undertaken, until the conclusion date;

(b) any appeal where paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;

5 (c) if HMRC have notified P, or the other person, that a review will not be undertaken, an appeal may be made only if the appeal tribunal gives permission to do so.

(1E) In a case where section 15F(8) applies, a notice of appeal may be made at any time from the end of the period specified in section 15F(6) to the date 30 days after  
10 the conclusion date.

(1F) An appeal may be made after the end of the period specified in subsection (1), (1A), (1B), (1C)(b), (1D)(b) or (1E) if the appeal tribunal gives permission to do so.

(1G) In this section “conclusion date” means the date of the document notifying the conclusion of the review.

15 (2) An appeal under this section with respect to a decision falling within subsection (1) or (1A) shall not be entertained unless the appellant is the person who required the review in question.

(2A) An appeal under this section with respect to a relevant decision (other than any relevant decision falling within subsection (1) or (1A)) shall not be entertained  
20 unless the appellant is—

(a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by the relevant decision,

(b) a person in relation to whom, or on whose application, the relevant decision has been made, or

25 (c) a person on whom the conditions, limitations, restrictions, prohibitions or other requirements to which the relevant decision relates are or are to be imposed or applied.

(3) An appeal which relates to a relevant decision falling within any of paragraphs (a) to (h) of section 13A(2), or which relates to a decision on a review of any such relevant decision, shall not be entertained if the amount of relevant duty which HMRC have determined to be payable in relation to that decision has not been paid or  
5 deposited with them unless—

(a) the Commissioners have, on the application of the appellant, issued a certificate stating either—

(i) that such security as appears to them to be adequate has been given to them for the payment of that amount; or

10 (ii) that, on the grounds of the hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate;

or

(b) the tribunal to which the appeal is made decide that the Commissioners should  
15 not have refused to issue a certificate under paragraph (a) above and are satisfied that such security (if any) as it would have been reasonable for the Commissioners to accept in the circumstances has been given to the Commissioners.

(3A) Subsection (3) above shall not apply if the appeal arises out of an assessment under section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.

20 (3B) Sections 85 and 85B of the Value Added Tax Act 1994 (settling of appeals by agreement and payment of tax where there is a further appeal) shall have effect as if—

(a) the references to section 83 of that Act included references to this section, and

(b) the references to value added tax included references to any relevant duty.

(4) In relation to any decision as to an ancillary matter, or any decision on the  
25 review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

- (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, [a review or further review as appropriate] of the original decision; and
- 5 (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by [a review or further review as appropriate], to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.
- 10 (5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.
- (6) On an appeal under this section the burden of proof as to—
- (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,
- 15 (b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and
- (c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1), (1AA), (1AB) or (1AC) or 23(1) of the Hydrocarbon Oil Duties Act 1979 (use of fuel
- 20 substitute or road fuel gas on which duty not paid),
- shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.
- (7) An appeal tribunal shall not, by virtue of anything contained in this section, have any power, apart from their power in pursuance of section 8(4) above, to
- 25 mitigate the amount of any penalty imposed under this Chapter.
- (8) Subject to subsection (9) below references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 13A(2)(a) to (h) above.



(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in the following paragraphs of Schedule 5—

(a) paragraph 3(4);

5 (b) paragraph 4(3);

(c) paragraph 9(e);

(d) paragraph 9A.

(10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A  
10 of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule.

(11) If it appears to HMRC that there is any description of decisions falling to be made for the purposes of any provision of—

(a) the Community Customs Code,

15 (b) any [EU] legislation made for the purpose of implementing that Code, or

(c) any enactment or subordinate legislation so made,

which are not decisions to which sections 13A to 16 otherwise apply, HMRC may by regulations provide for those sections to apply to decisions of that description as they apply to relevant decisions or the decisions referred to in section 14.

20 (12) The power to make regulations under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—

(a) to provide, in relation to any description of decisions to which this section is applied by any such regulations, that subsection (4) shall have effect as if those

25 decisions were of a description specified in Schedule 5 to this Act; and

(b) to make such other incidental, supplemental, consequential and transitional provision as HMRC think fit.