



**TC05468**

**Appeal number: TC/2014/01497**

*EXCISE DUTIES – whether refusal to restore vehicle was unreasonable –  
no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**AGNIESZKA SZOTOWICZ T/A A G A TRANSPORT      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE FAIRPO  
LESLEY STALKER**

**Sitting in public at Fox Court on 9 March 2016**

**The Appellant did not appear and was not represented**

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

## DECISION

1. The appellant did not attend and was not contactable.

5 2. It was clear from the file that the appellant had been notified of the hearing and had not objected to the listing. Further, it was noted that the appellant had elected not to attend the previous hearing of this matter.

3. HMRC argued that the hearing should take place in the absence of the appellant on the basis that it was obvious that the appellant had been notified of the hearing and  
10 had made no objection to its proceeding, having been warned of the consequences of not appearing.

4. We had due regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”). We decided that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with Rule 33  
15 of the Rules since there was no explanation as to the non-appearance by or for the appellant. The appellant’s attention is drawn to Rule 38 of the Rules in the event that there was good cause for the non-attendance at this hearing.

5. 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  
20 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.

### 25 **Introduction**

6. This is an appeal against a refusal by the Respondents (HMRC) to restore a vehicle seized under section 141(1) of the Customs and Excise Management Act (CEMA) 1979.

### **Background**

30 7. A tractor unit registered in Poland with registration number F271226 and a trailer also registered in Poland with registration number FZ92819 were seized in Selby, North Yorkshire, on 26 September 2013. The tractor and trailer (together ‘the vehicle’) had been used to transport 1,949,600 cigarettes found packed into boxes labelled as containing IKEA products.

35 8. The cigarettes were seized as having been smuggled into the UK, with the intention of evading duty of £437,138, and the vehicle was seized accordingly.

9. On 3 October 2013 the appellant requested restoration of the vehicle. On 28 October 2013, HMRC advised the appellant that the vehicle would not be restored.

10. On 16 December 2013, the appellant requested a review of the non-restoration decision. On 3 February 2013, HMRC wrote to the appellant upholding the decision not to restore the vehicle.

### Relevant law

5 11. Section 141(1) CEMA 1979 provides that:

(1) Without prejudice to any other provision of the Customs and Excise Acts 1979, where any thing has become liable to forfeiture under the customs and excise Acts—

10 (a) any ship, aircraft, vehicle, animal, container (including any article of passengers' baggage) or other thing whatsoever which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and

15 (b) any other thing mixed, packed or found with the thing so liable, shall also be liable to forfeiture.

12. Section 152 CEMA 1979 provides that:

The Commissioners may, as they see fit—

20 (a) . . . [compound an offence (whether or not proceedings have been instituted in respect of it) and compound proceedings] or for the condemnation of any thing as being forfeited under the customs and excise Acts; or

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

### 25 Appellant's evidence and submissions

13. The appellant provided documentary evidence, translated into English, consisting of transport orders, references, 'archived conversations' (apparently of messages from the Trans-EU website, described as being similar to Facebook) relating to the load, and consignment notes (CMR) in respect of the load. No witness statement was provided, but the grounds of appeal contained further information and submissions. The grounds of appeal are written in the third person, but the grounds of appeal are stated to be filed by the appellant personally.

14. In the grounds of appeal, the appellant stated that she had received an order on 20 September 2013 via the Trans-EU website requesting transport to the UK to unload near to York. The exact address for unloading would be given later. Another "order" "for collection" in Manchester was received on 23 September 2013; she accordingly sent the driver, Leszek Linczer, a CMR showing the "delivery" address as Manchester. We assume that the reference to "collection" is an error and that this should refer to delivery, as in the CMR. It appears that this second "order" is intended to refer to an updated delivery address for the original order.

15. The appellant states that the load was collected on 24 September 2013 and, whilst the load was en route, she received a message from the client stating that the driver would be contacted with the unloading address and that the CMR should be completed showing York, without a specific address as this was the wish of the client's client. The appellant stated that completion of a CMR after departure of the load was common practice where the consignor wanted to exclude possible trade competition from the intermediary. The documentation provided included examples of other orders completed on this basis. Accordingly, the appellant stated that such CMR could not be regarded as unlawful.

16. The appellant stated that she was "shocked that a large quantity of contraband cigarettes were found in our lorry" and that she "had no knowledge of this". She did not allow her lorry to be used for smuggling, and trained drivers to ensure that they did not carry goods which were not included on the CMR.

17. The appellant stated that the driver was instructed to make all appropriate CMR checks and inform the client of any inconsistencies with the CMR. The permitted checks were visual checks only; the carrier is not authorised to open the packaging.

18. The appellant stated that the driver, Mr Linczer, had been employed by her since 2007 and that he had an exemplary reputation as a worker. She had no reason to regard him as responsible for smuggling the cigarettes and she was convinced that the cigarettes must have been smuggled "within the palletted load".

19. Further, the appellant had checked the consignor with the national register of companies and checked their tax reference. These checks had all been positive and she had had no reasonable doubt the legitimacy of the consignor; however, since then, the company had disappeared without a trace and they had not been able to contact the consignor.

20. The appellant stated that restoration of the vehicle was necessary as they had lost several months' earnings and were close to bankruptcy. Restoration of the vehicle would enable her to pay off her debts, and her position was one of exceptional hardship.

### 30 **HMRC evidence and submissions**

21. Ms Bines, an officer of HMRC who carried out the review of the refusal decision, provided a witness statement and gave oral evidence.

22. The vehicle had been seized at a site in Selby, where HMRC officers had seen the vehicle arrive and be directed to a warehouse. On searching the warehouse, the officers had found pallets of IKEA branded boxes which, when opened, were found to contain 1,949,600 'MG' brand cigarettes with Spanish health warnings.

23. Two CMR documents were found in the vehicle, both with the same shipment number. One was for transportation from Poland to IKEA Manchester, the other for transportation from the Netherlands to York.

24. The driver of the vehicle and three other men were arrested on suspicion of the fraudulent evasion of excise duty, contrary to Section 170 CEMA 1979. All four pled guilty and were subsequently convicted of the offence, albeit after the initial decision to refuse restoration was made and after the review of that decision.

5 25. The appellant's request for restoration of the vehicle was refused on the basis of the amount of duty evaded and the presence of false CMR documents in the vehicle.

26. The review of the request for restoration of the documents concluded that arranging to transport goods for a new and unknown client on a social media site was not a safe business practice. The changing of a legitimate IKEA address on the CMR  
10 to a site which was not IKEA premises should have also raised suspicion. Ms Bines explained that she had concluded that this method of conducting business indicated that the appellant was not taking reasonable steps to ensure that the loads carried were legitimate and, accordingly, upheld the decision not to restore the vehicle.

27. It was submitted for HMRC that the decision to refuse to restore restoration is  
15 reasonable in the circumstances.

### **Discussion and decision**

28. The Tribunal's jurisdiction in this matter is limited to the question of whether the decision not to restore the vehicle was unreasonable (per *Revenue and Customs Commissioners v Jones and another* [2011] ECWA Civ 824).

20 29. We note that the burden of proof is on the appellant to show that it would be unreasonable not to restore the vehicle, but note also that the appellant has not provided any evidence to support her statements that drivers receive training to ensure that they are not involved in smuggling, or that she was suffering from exceptional hardship. We consider that an appellant seeking to show that the decision was  
25 unreasonable would be able to provide evidence such as training materials and bank statements to support such statements.

30. We agree with HMRC that the use of social media to arrange orders and the acceptance of a non-IKEA address for delivery of goods described as being IKEA products indicate a failure to take reasonable steps to ensure that the vehicle was not  
30 used for smuggling.

31. In the circumstance, we consider that the decision not to restore the vehicle, and the subsequent upholding of that decision, was reasonably made.

32. The appeal is dismissed.

33. This document contains full findings of fact and reasons for the decision. Any  
35 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

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**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 31 OCTOBER 2016**

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