[2011] UKFTT 666 (TC)

TC01508

Appeal number: TC/2009/10265

EXCISE DUTY - non-restoration of tobacco - evidence of own use of excise goods - not admitted - abuse of process - was the non-restoration proportionate - yes - did the Appellant suffer exceptional hardship - no - was the decision reasonable - yes - Appeal Dismissed.

FIRST-TIER TRIBUNAL

TAX

WILLIAM SCARRATT **Appellant**

- and -

THE DIRECTOR OF THE UK BORDER AGENCY **Respondents**

TRIBUNAL: Jennifer Trigger (JUDGE)
David Demack (JUDGE)

Sitting in public in Manchester on 1 September 2010

The Appellant did not attend

Ms Elizabeth McClory counsel instructed by the UK border Agency for the Respondents

DECISION

1. Mr William Scarratt ("the Appellant") was not in attendance. An application was made by Ms McClory on behalf of the Director of the UK Border Agency ("the Director") that the appeal be permitted to proceed in the absence of the Appellant. The grounds of the application were that:

a) originally the appeal was due to be dealt with on 9 April 2010. On 6 April 2010 the Appellant requested an adjournment as he was unable to attend. The hearing was adjourned as the Director was unable to attend also on that date.
b) letters were sent to the Appellant on both 12 April 2010 and 6 May 2010 requesting that he provide details of any dates that he would be unable to attend a hearing.
c) on 1 June 2010 Notice of the Hearing, listed for 1 September 2010, was sent to the Appellant.
d) there has been no response from the Appellant either to the letters or to the Notice of Hearing.

2. We decided that in the interests of justice the appeal should proceed in the absence of the Appellant because this is an appeal by the Appellant and this fact places a responsibility upon him to attend to all matters necessary to the progress of his appeal. The Appellant has failed to do this and, has not provided to us, or to the tribunal administration, any reason for his failure to deal expeditiously with his appeal. Furthermore the parties to an appeal are entitled to have those proceedings dealt with with the minimum of delay. The elapse of any lengthy period can undermine the evidence and finality in proceedings is desirable.

3. In all the circumstances we decided that the appeal should proceed in the absence of the Appellant.

The Appeal

4. The Appellant appealed against a decision, of the Director, dated 6 March 2009 to refuse to restore 6kg of Golden Virginia Hand- Rolling Tobacco ("the Goods") seized from the Appellant on his arrival at Leeds-Bradford Airport from Spain on 30 January 2009.

5. The Appellant requested restoration of the Goods and appealed, by letter dated 2 February 2009. Letters dated 3,4and 6 February 2009 were received, also, from the Appellant further demonstrating his request. On 9 February 2009 the Director treated the letter of 2 February 2009 as:

a) an appeal against the legality of the seizure. In those circumstances the Director advised the Appellant that he would be instituting condemnation proceedings before the magistrates' court,

and

b) a request for restoration of the Goods.

6. The Director refused restoration of the Goods in a letter dated 6 March 2009, because he was satisfied that the Goods were being held for a commercial purpose and UK excise duty had not been paid on them. The Director had applied the 'Customs' Policy for the Restoration Excise Goods' which provides that:

> "excise goods seized because of an attempt to evade payment of duty should not normally be restored. However, where a traveller brings into the UK EU tax-paid excise goods which are not for own use but to be passed on to others on a not for profit reimbursement basis, those goods will generally be seized and *provided* there are no aggravating circumstances be offered for restoration for the same excise duty evaded, plus VAT on the duty, plus a penalty of 15% of that total.

7. In all other case the Commissioners general policy is that seized goods should not be restored unless there are exceptional circumstances.

8. Each case is examined on its merits to determine whether or not restoration may be exceptionally offered."

9. The Director found that there were no exceptional circumstances that would justify a departure from the general policy of non restoration, and that the Appellant's case does not meet any of the criteria under which restoration may be offered.

10. The Appellant did not accept that decision and, on 19 March 2009, requested a review. The Director acknowledged, by letter dated 1 April 2009, the Appellant's request for a review.

11. The decision not to restore the Goods was confirmed in a letter to the Appellant dated 29 April 2009. In that letter the Director recorded that the Appellant had challenged the legality of the seizure in the magistrates' court.

12. The Appellant withdrew his Appeal against seizure, in the magistrates' court. No reason was given by the Appellant for the withdrawal of his Appeal. The date on which those proceedings were withdrawn was not before us but we accepted that the Appellant had withdrawn his Appeal.

The Statutory Background

13. Before turning to the details of the Appellant's case, and more details of the facts, it will be useful to set the statutory background first. The statutory background is as follows. An individual is entitled to bring in a certain amount of dutiable goods, in this case tobacco, free of duty, but there are certain limits. Alcoholic drinks, cigarettes and tobacco are chargeable with excise duty upon importation into the United Kingdom as provided for in the Tobacco Products Duty Act 1979.

14. Section 1 of the Tobacco Products Duty Act 1979 provides in the following terms:

"1 Tobacco products

(1) In this Act 'tobacco products ' means any of the following products, namely

(A) cigarettes;
(b)cigars;
©hand-rolling tobacco;
(d) other smoking tobacco;
(e) chewing tobacco

which are manufactured wholly or partly from tobacco or any substance used for tobacco, but does not include herbal smoking products.

(2) Subject to subsection (3) below, in this Act 'hand-rolling tobacco' means tobacco-

(a) which is sold or advertised by the importer or manufacturer as suitable for making into cigarettes; or
(aa) which is of a kind used for making into cigarettes; or
(b) of which more than 25 per cent by weight of the tobacco particles have a width of less than 1mm.

2 charge and remission or repayment of tobacco products duty

(1) There shall be charged on tobacco products imported into or manufactured in the United kingdom a duty of excise at the rates shown,…, in the Table in Schedule1 to this Act".

15. The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations1992 SI1992/3095 provide, in so far as it is relevant:

"4 Excise Duty Point

(1) except in cases specified in paragraphs (2) to (6) below, the excise duty point in relation to any Community excise goods shall be the time when the goods are charged with duty at importation".

16. However, Council Directive (92/12/EC) is relevant to the case. On the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, the relevant part of the Directive reads:

> "Article 8
> As regards products acquired by private individuals for their own use and transported by them, the principle governing the internal market lays down that excise duty shall be charged in the member state in which they are acquired.
>
> Article 9
> (1) Without prejudice to Articles 6, 7 and 8, excise shall become chargeable where goods for consumption in a Member State are held for a commercial purpose in another Member State.
> (2) To establish that the products referred to in Article 8 are intended for commercial purposes, Member states must take account, inter alia, of the following-
>
> - the commercial status of the holder of the products and his reasons for holding them,
> - the place where the products are located or, if appropriate, the mode of transport used,
> - any document relating to the products,
> - the nature of the products
> - the quantity of the products."

17. For the purposes of establishing "the quantity of the products", Member States may lay down guide levels, solely as form of evidence. These guide levels may not be lower than-

> (a) Tobacco products
> cigarettes 800 items
> cigarillos 400 items
> cigars 200 items
> smoking tobacco 1,0kg …"

18. The circumstances in which an individual can bring in goods free of duty are set out in the Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 which amends the legislation cited above. A person who brings in excise goods for his own use, which includes use as a personal gift, is not liable to pay excise duty.

19. Regulation 4(1) of the Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002 amend the above legislation in the following terms. The relevant part of it reads:

> "(1A) In the case of tobacco acquired by a person in another member state for his own use and transported by him to the United Kingdom, the Excise duty

point is the time when those products are held or used for a commercial purpose by any person.

(1B)… (b) "own use" includes use as a personal gift,

(c) if the tobacco products in question are-

(i) transferred to another person for money or money's worth (including any reimbursement of expenses incurred in connection with obtaining them),or

(ii) the person holding them intends to make such a transfer,

those goods are to be regarded as being held for a commercial purpose.

(d) if the goods are not duty and tax paid in the Member state at the time of acquisition, or the duty and tax that was paid will be or has been reimbursed, refunded or otherwise dispensed with, those goods are to be regarded as being held for a commercial purpose."

13 Guidance is given as to how personal use is to be judged in sub-paragraph (e) in the following terms:

"(e) without prejudice to sub-paragraphs (©)and (d) above, in determining whether tobacco are held or used for a commercial purpose by any person regard shall be taken of---

(i) that person's reasons for having possession or control, of those products,

(ii) ….

(iii) that person's conduct including his intended use of those products or any refusal to disclose his intended use of the products,

(vi) the location of those products,

(v) …

(iv) …

(vii) …

(viii) the quantity of those products and in particular whether the quantity exceeds any of the following quantities—

3200 cigarettes

…

3 kilograms of any other tobacco products

(ix) whether that person personally financed the purchase of those products

(x) any other circumstance that appear to relevant."

20. Regulation 23 (1), inserts an additional paragraph after paragraph (a) as follows-

> "(aa) they were acquired by a person in another member state for his own use and transported by him to the United Kingdom."

21. There is therefore an important distinction between "own use" and importation for commercial purposes. Some of the tests for distinguishing between the two are set out in the above provisions. Importation for the latter use attracts excise duty. If excise has not been paid or secured prior to the time that the goods are held for a commercial purpose, they are liable to forfeiture under section 49(1) of the Customs and Excise Management Act 1979 ("CEMA").

22. It was pursuant to these provisions that the Appellant's tobacco was seized.

23. Under section 152(b) the Commissioners may, as they think fit, restore anything forfeited or seized. The present case concerns the exercise by the Director of that discretionary power.

24. Statute provides a mechanism for challenging a seizure of goods. Schedule 3 to CEMA provides for an appeal against seizure of goods. In this case the Appellant did challenge the seizure of the Goods in the magistrate's court but subsequently withdrew his appeal and the court condemned the Goods as forfeit.

The Appellant's Case

25. On 7 May 2009 the Appellant appealed the decision of the Director. The Appellant contended that the Goods were purchased in Spain and that receipts were obtained. The Goods were intended for the Appellant and his family to use, and not for any commercial purpose. As a self employed person he had taken a short trip to Spain. The cost of the visit had included airport transfers to Leeds, the flight to Spain, transfers to and from the airport, hotel fees, plus expenses, and a return to the UK. The amount of tobacco, bought and paid for, would not have returned any profit if it was sold. The Appellant uses the internet to find short breaks and he travels in order to socialise with a small group of friends who are all in the same age group.

The Issues

26. The two issues in the Appeal are:

(1) Was the tribunal entitled to take into account the Appellant's evidence of personal use?

(2) Whether the Director's refusal to restore the Goods, a decision taken on behalf of the Director by Ms Julie Wiggs, was a decision which no reasonable Director of the UK Border Agency could have arrived at. The jurisdiction of the tribunal was to find the primary facts and to decide whether in the light of those findings Ms Wiggs's decision was reasonable. In order for the decision to be reasonable

Ms Wiggs must have considered all relevant matters and disregarded irrelevant matters.

Jurisdiction of the Tribunal

27. The Director's power regarding restoration of goods which have been forfeited or seized is contained in section 152(b) of CEMA referred above.

28. Once the power is exercised whether in the form of a positive decision to restore on terms, or a refusal to restore, the person affected has a right of appeal to a Tax Tribunal. The powers of the Tribunal are limited in the terms set out in section 16(4) of the Finance Act 1994 which provides that:

> "… confined to a power, where the Tribunal are satisfied that the Commissioners or any other person making the 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 further review of the original decision;
> c) in the case of a decision that has already been acted on or taken effect and cannot be remedied by a further review, 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 unreasonableness do not occur when comparable circumstances arise in the future".

29. The precondition to the Tribunal's exercise of one or more of its three powers is that the person making a decision could not reasonably have arrived at it. The test for reasonableness is set out by Lord Lane in *Customs and Excise v JH Corbitt (Numismatists) Ltd* [1980] STC 231 at page 239:

> "…if it were shown the Commissioners had acted in a way in which no reasonable panel of commissioners could have acted ; if they had taken into account some irrelevant matter or disregarded something to which they should have given weight".

30. In *Gora and others v Customs and Excise Commissioners* [2003] EWCA Civ 525, the Court of Appeal decided that the Tribunal had a comprehensive fact finding jurisdiction in restoration Appeals:

> "[The Tribunal] satisfies itself that the primary facts upon which the Commissioners have based their decision are correct. The rules of the tribunal and procedures are designed to enable it to make a comprehensive fact- finding exercise in all appeals.' Strictly speaking, it appears that under s16 (4) of the 1993 Act, the tribunal would be limited to considering whether there was sufficient evidence to support the commissioners finding of blameworthiness. However, in practice, given the power of the Tribunal to carry out a fact-finding

exercise, the Tribunal should decide for itself this primary fact. The Tribunal should then go on to decide whether, in the light of its findings of fact, the decision on restoration was reasonable. The Commissioners would not challenge such an approach and would conduct a further review in accordance with the findings of the Tribunal" (paragraph 39).

31. The Court of Appeal, however, considered that the Tribunal's comprehensive fact-finding jurisdiction did not extend to finding of fact about the legality of the seizure of the goods, which was a matter for the magistrates in the condemnation proceedings. Thus Lord justice Pill in *Gora* at paragraphs 56-58 stated that

"56. The Tribunal accepted that where liability to forfeiture has been determined by a court in condemnation proceedings, there is no further room for fact finding by the Tribunal and it has no jurisdiction. However, the Tribunal went on to hold that Mr Gora did not give a notice under paragraph 3 and as a result the law took its course and the goods were treated as property seized and so liable to forfeiture. No further finding of fact resulted. A deemed fact is not a real fact. It cannot consequentially rank as a consideration relevant to the subsequent decision on restoration until determined by the Tribunal or conceded to exist. It was held open to the Tribunal to determine the question of fact whether the goods were seized.

57. I do not agree with that conclusion. Jurisdiction to decide whether any thing forfeited is to be restored under section 152(b) is with the Tribunal. The jurisdiction in condemnation proceedings is, by virtue of Schedule 3, with the courts. If the deeming provision in paragraph 5 of the Schedule operates, the thing in question shall be deemed to have been duly condemned as forfeited. The effect of this deeming provision is to provide that the thing is to be treated as forfeited. The purpose of the provision is to treat the deemed fact as a fact and I cannot accept that it can be treated as" not a real fact".

58. While the division of jurisdiction between the courts and the tribunal may arguably be curious, and is probably retained because of the long standing jurisdiction of the courts in proceedings for condemnation, the division is clear and it is not intended that the Tribunal should have jurisdiction to reconsider the condemnation of goods as forfeited. Mr Cordara's submission that the Tribunal should have jurisdiction to consider whether duty has been paid is no more than another way of claiming that the court's findings should be re-opened. The Tribunal's view would produce the surprising result that the person whose goods had been seized could make a choice of fact-finding tribunal. If he wanted the court to determine the issue he would serve a notice under paragraphs 3 and 4; if he wanted the Tribunal he would do nothing. In my judgement the statutory scheme does not produce that result. The application to the Tribunal is for restoration under section 152. There is no breach of Article 6 because the owner has recourse to the courts in the condemnation proceedings".

32. In *Gascoyne v Customs and Excise Commissioners* [2004] EWCA Civ 1162 the Court of Appeal elaborated upon Lord Justice Pill's observations regarding the

Tribunal's jurisdiction to reconsider the condemnation of goods as forfeited. Lord Justice Buxton concluded that where there has been a deemed forfeiture of goods, the tribunal could re-open the issues relating to the seizure of the goods provided it would not amount to an abuse of process. In particular at paragraphs 46, 47, 51 to 56 inclusive Lord Justice Buxton stated as follows:

> "46….I do not think it can have been intended that the exporter before the tribunal would have a second bite at the cherry of lawfulness, having failed in the condemnation proceedings, or let them go by default.
>
> 47. To the extent that it was argued that the literal provisions of section 152(b) are wide enough to allow a second bite, I would agree that that is so, but the reason why the importer cannot have that liberty is not because of the terms of the statute, but because of the normal English law rules of *res judicata* or abuse of process.
>
> 51…. If the importer has actually been in court, first of all he has had his say in court in front of a judicial body, and, secondly, as is well known, Convention jurisprudence permits a proportionate restriction on access to a court, provided the essential rights that are in contest from a Convention point of view are not thereby rendered nugatory….
>
> 52….Secondly, however, that jurisprudence itself creates a great deal more difficulty in relation to the deeming provisions under paragraph 5 of Schedule 3. One's instincts,…, suggest that the extent that it was held in *Gora* that those provisions necessarily prevent any further consideration of the legality of the seizure was an excessive limitation.
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> 53. Miss Simler drew our attention in that connection to what was said by Lord Phillips in *Lindsay* at paragraph 64 of his judgement: that the principle of proportionality requires that each case should be considered on its on its particular facts….
>
> 54…. For an importer to be completely shut out in the only tribunal before which he has in fact appeared from ventilating the matters that are deemed to have be decided against him because of paragraph 5 of Schedule 3 does not adequately enable him to assert his Convention rights.
>
> 55… in a case where the deeming provisions under paragraph5 are applied, the tribunal can re-open those issues: though the tribunal will always have very well in mind, considerations of, or similar to, abuse of process in considering whether such issues should in fact be ventilated before it.
>
> 56 The mere fact that the applicant has not applied to the Commissioners, and therefore there have been no condemnation proceedings, would not… be enough. But in my judgement, it goes too far to say that the deeming provisions have always, in every case, got to be paramount."

33. Evans-Lombe J in *Commissioners of Customs and Excise v Weller* [2006] EWHC 237 (Ch) concluded that whether a tribunal should permit an appellant to challenge the legality of the seizure in restoration proceedings would depend on the principle of

proportionality in the particular facts in the case in question.

34. *Summary of the Tribunal Jurisdiction*

(1) The Tribunal's jurisdiction is limited to determining whether the Commissioners decision to refuse restoration or to offer restoration on terms was reasonable,
(2) The Tribunal is not entitled to substitute its own view about whether the goods should be returned.
(3) The test for reasonable is whether the Commissioners have acted in a way in which no reasonable panel of Commissioners could have acted; if they have taken into account some irrelevant matter or disregarded something to which they should have given weight.
(4) In deciding the reasonableness of the Commissioners decision the Tribunal has a comprehensive fact- finding jurisdiction to establish whether the primary facts upon which the Commissioners have based their decision were correct.
(5) The Tribunal are not entitled to consider the lawfulness of the seizure, or to determine the underlying facts relating to the seizure when deciding the reasonableness of the Commissioners 'decision to refuse restoration except when the Tribunal is satisfied that it would not be an abuse of process to take into account the facts surrounding the seizure.
(6) Where the goods have been condemned as forfeited by the magistrates, there is no further room for fact finding by the Tribunal on the circumstances surrounding the seizure.
(7) Where there has been a deemed forfeiture of the goods, the Tribunal should apply the principle of proportionality to the particular facts of the case having in mind the considerations of abuse of process when deciding whether to re-open the issue about the lawfulness of the original seizure.
(8) The Appellant's failure to institute condemnation proceedings will, in most cases, preclude subsequent challenge to the lawfulness of the seizure in the restoration proceedings. In such circumstances the Tribunal should consider the Appellant's response to two questions in deciding whether to re-open the facts of the original seizure. The first question is: could the Appellant have raised the question of the lawfulness of the forfeiture in other proceedings and if yes, why did he not do so?

35. In this appeal the Appellant had the opportunity to raise the matter of own use in the condemnation proceedings before the magistrate's court. The Appellant decided not to proceed with the condemnation proceedings and withdrew his appeal. He

gave no reason for the fact that the appeal was withdrawn. By his action the Appellant demonstrated that he was aware of the two avenues available to him, he could challenge the legality of the seizure before the magistrates' court, in condemnation proceedings', and seek restoration of the Goods, by making a request to the Director to exercise his discretionary power .

36. In *Commissioners for Revenue & Customs v Mills* [2007]EWHD 2419 (Ch) Mr Justice Mann held that a forfeiture following a withdrawal of condemnation proceedings fell into the category of a deemed forfeiture. In which case the Tribunal had to be satisfied that the Appellants had good reasons why they withdrew their appeal to the magistrates' court before the Tribunal could entertain their evidence of own use.

37. Before us there was no evidence from the Appellant to explain the reason as to why he withdrew his appeal before the magistrates' court in the condemnation proceedings. The Appellant's Notice of Appeal before us raised one issue only and that was that the Goods were for his own use. We decided that we could not consider the Appellants evidence that the Goods were for his own use because the Appellant had withdrawn his Appeal before the magistrates' court, in the condemnation proceedings, and accordingly denied himself the opportunity of having the issue determined by that court. Furthermore, the Appellant had put forward no reason, of which we were aware, to explain why he had withdrawn his appeal in the magistrates' court.

38. There was no evidence before us that the Appellant had withdrawn his appeal in the magistrates' court on the grounds of the costs. If that was the reason the decision in *Her Majesty's Revenue & Customs v Dawkin* [2008] EWHC 1972 would have applied where Mr Justice David Richards held that reasons of costs were not sufficient for a tribunal to admit evidence of own use.

39. We now turn to whether Ms Wiggs decision on restoration was reasonable. Ms Wiggs decided that non-restoration of the Goods was fair, reasonable and proportionate. In reaching she had regard to the following matters:

(1) The Appellant had told the Officer, at Leeds-Bradford airport on 30 January 2009, when questioned about his possession of the Goods that he was travelling alone. This was not true. The Appellant was travelling with Jud Heathcoat and Clifford Prescot and the Appellant had booked the trip for himself and his travelling companions.
(2) The Appellant failed to disclose all his previous travel to the Officer, which were numerous.
(3) The Appellant told the officer that he had no future trips planned which was untrue. The Appellant had a trip booked with Ryanair for 23 March 2009 from Leeds- Bradford airport to Gerona travelling with Jud Heathcoat and Jerard Law.
(4) The Appellant claimed not to have brought back tobacco goods for over one year which was highly improbable for someone who smoked.

(5) The Appellant had no idea how many cigarettes can be obtained from one 50g pouch of tobacco. He had told the Officer that 30 cigarettes could be had from a 50g pouch. Any genuine smoker of the Goods would be fully aware that more than 30 cigarettes can be made form one 50g pouch and that the average number of cigarettes from a 50g pouch is 90.

(6) The Appellant failed to answer directly the Officer's questions when asked how long the Goods would last. The appellant told the Officer that he last imported tobacco goods "2007 maybe". If the Appellant had brought back tobacco goods in 2007 that had lasted until his importation of the Goods , he would have a good idea about how long they would last.

(7) The Appellant had no open smoking materials in his possession which was unusual for a genuine smoker.

40. There was no claim by the Appellant that the Goods were to be passed on to others on a not for profit reimbursement basis.

41. There was no evidence that there were any exceptional circumstances which should result in a restoration of the Goods to the Appellant.

42. Ms Wiggs decided that the importation of the Goods by the Appellant was a commercial transaction and refused to restore the Goods the Appellant.

43. We accept that the decision of Ms Wiggs was based on sound principles.

44. Ms Wiggs, like us, was bound by the legal consequence of the deemed forfeiture that the Goods were lawfully seized. In those circumstances Ms Wiggs was obliged to conduct a review on the basis that it was a commercial importation by the Appellant. We were satisfied that Ms Wiggs took account of relevant considerations and disregarded irrelevant considerations in reaching her decision to confirm the non-restoration of the Goods.

45. The Appellant's defence, that he purchased the Goods for his own use, was a matter for the magistrates' court and not us. Our jurisdiction is limited. We are not entitled to admit evidence of own use unless it would be an abuse of process following a deemed forfeiture. There was no evidence before us that the Appellant had a good reason, or reasons, for withdrawing his appeal before the magistrates' court which would permit us to consider the issue of own use. We are unable to substitute our own decision for that of Ms Wiggs. Our powers are restricted to considering whether Ms Wiggs decision is reasonable.

Decision

46. We are satisfied that the Director's decision on review, dated 29 April 2009, refusing restoration of the Goods was reasonably arrived at within the meaning of section 16(4) of the Finance act 1994. We, therefore, dismiss the Appeal.

47. 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.

TRIBUNAL JUDGE

RELEASE DATE: 14 October 2011