



**TC01939**

**Appeal number: TC 2011/04847**

**EXCISE DUTY – NON-RESTORATION OF VEHICLE – *the Appellant’s vehicle seized for carrying 12 kilograms of hand rolling tobacco – no challenge to the magistrates on seizure – importation for commercial purposes – was the decision not to restore the vehicle reasonable? – Yes – Appeal dismissed.***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**STEPHEN HAWLEY**

**Appellant**

**- and -**

**DIRECTOR OF BORDER REVENUE**

**Respondents**

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE  
BEVERLEY TANNER**

**Sitting in public at Tribunals Service, Phoenix House, 1-3 Newhall Street,  
Birmingham on 14 February 2012**

**Richard Adams counsel for the Appellant**

**Davinia Riley counsel for the Respondents**

## DECISION

### The Appeal

1. The Appellant appealed against the Respondents' decision on review dated 7 June 2011 refusing restoration of a Mitsubishi L200, registration number L2 SGH (hereinafter known as the vehicle).
2. On 28 April 2011 at the UK Control Zone at Coquelles, France, Border Officers stopped the Appellant who was driving the vehicle. The Appellant was accompanied by his daughter, Miss Nicola Hawley, and her fiancé, Mr Christopher Evans. The Appellant and his passengers informed the Officers that they had purchased 12 kilograms of tobacco in Belgium. The Officers after interviewing the Appellant and his passengers concluded that the tobacco had been bought for commercial purposes. The Officers seized the tobacco and the vehicle.
3. The Appellant has not challenged the lawfulness of the seizure of the vehicle. On 16 May 2011 he withdrew his Appeal to the magistrates' court. The Appellant contended that the seizure was disproportionate and that the loss of the vehicle had caused him exceptional hardship. The Appellant argued that the review decision was fundamentally flawed. The Respondents disagreed and maintained that the decision of Mr Crouch, the review officer, not to restore the vehicle was fair, reasonable and proportionate.
4. The issue for the Tribunal is whether Mr Crouch's refusal to restore the vehicle was a decision which no reasonable body of Commissioners could have arrived at. In order for the decision to have been reasonable Mr Crouch must have considered all relevant matters and must not have taken into consideration irrelevant matters.
5. The Tribunal heard evidence from the Appellant and Miss Hawley. Mr Crouch, the review officer, gave evidence for the Respondents. An agreed bundle of documents was admitted in evidence.

### The Jurisdiction of the Tribunal

6. The Respondents' power regarding restoration of goods and vehicles which have been forfeited or seized is set out under section 152(b) of the Customs and Management Act 1979. 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 the Tribunal. The powers of the Tribunal are limited in the terms set out in section 16(4) of Finance Act 1994 which provides that:

“confined to a power, where the Tribunal are satisfied that the Commissioners or 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;

5 c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare that 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 future”.

7. The precondition to the Tribunal’s exercise of one or more of its three powers, namely, that the person making a decision could not reasonably have arrived at it, falls within the guidance given by Lord Lane in the decision in *Customs and Excise v JH Corbitt (Numismatists) Ltd* [1980] STC 231 at page 239:

15 “.....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 had disregarded something to which they should have given weight”.

8. The Tribunal is entitled to make its own findings on the primary facts which are to be taken into account by the Respondents when exercising their powers regarding restoration of goods. The findings of fact include blameworthiness and the proportionality of the penalty imposed to the policy aims pursued having full regard to the individual circumstances of the case. The Tribunal, however, has no fact finding jurisdiction for the purpose of challenging the legality of the seizure and forfeiture of the goods. The Tribunal will then apply its findings of fact to determine whether the Respondents acted reasonably in refusing restoration.

9. The Court of Appeal in *Revenue and Customs Commissioners v Jones and another* [2011] EWCA Civ 824 confirmed the scope of the Tribunal’s jurisdiction when a person does not contest the seizure before the magistrates’ court.

10. Mummery LJ at paragraphs 71(4) & (5) stated

30 “The stipulated statutory effect of the respondents<sup>1</sup> withdrawal of their notice of claim under para 3 of Sch 3 was that the goods were deemed by the express language of para 5 to have been condemned and to have been 'duly' condemned as forfeited as illegally imported goods. The tribunal must give effect to the clear deeming provisions in the 1979 Act: it is impossible to read them in any other way than as requiring the goods to be taken as 'duly condemned' if the owner does not challenge the legality of the seizure in the allocated court by invoking and pursuing the appropriate procedure.

40 The deeming process limited the scope of the issues that the respondents were entitled to ventilate in the FTT on their restoration appeal. The FTT had to take it that the goods had been 'duly' condemned as illegal imports. It was not open to it to conclude that the

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<sup>1</sup> The Respondents in the case before the Court of Appeal were the individual importers, Mr & Mrs Jones not the Director of Border Revenue who was the Appellant in the Court of Appeal.

5 goods were legal imports illegally seized by HMRC by finding as a  
fact that they were being imported for own use. The role of the  
tribunal, as defined in the 1979 Act, does not extend to deciding as a  
fact that the goods were, as the respondents argued in the tribunal,  
being imported legally for personal use. That issue could only be  
decided by the court. The FTT's jurisdiction is limited to hearing an  
appeal against a discretionary decision by HMRC not to restore the  
seized goods to the respondents. In brief, the deemed effect of the  
respondents' failure to contest condemnation of the goods by the court  
10 was that the goods were being illegally imported by the respondents  
for commercial use”.

### **The Facts**

11. The Appellant submitted that the Tribunal should proceed on the basis that just  
three kilograms of the tobacco were illegally imported. According to the Appellant, he  
15 was entitled to claim three kilograms of tobacco for his own use, whilst six kilograms  
were brought in by Miss Hawley and Mr Evans. The Appellant's proposition is  
flawed in law. The Appellant and his passengers did not complain to the magistrates'  
court opposing the condemnation of the tobacco. In those circumstances the Tribunal  
is obliged as a matter of law to treat the entire 12 kilograms of tobacco as duly  
20 condemned as an illegal import. The legal consequences of so treating the 12  
kilograms are that the Tribunal must regard the 12 kilograms of tobacco as being  
imported for a commercial purpose, and that the vehicle had been used for the  
carriage of an illegal import of 12 kilograms of tobacco.

12. In this respect Mr Crouch's starting point for his review was correct when he  
25 stated that the seizure of the vehicle was legal and the excise goods involved were  
commercial (not for own use).

13. The Appellant, however, sought to undermine Mr Crouch's conclusion that the  
tobacco had been held for profit and the vehicle should not normally be restored by  
identifying seven purported flaws with his reasoning. The Tribunal intends to examine  
30 the purported flaws in turn by reference to the facts available to Mr Crouch at the time  
he made the decision and the evidence before the Tribunal. The Tribunal considers  
that some of the purported flaws should be grouped together under single headings.

### ***Misleading the Officer about the Quantity of Tobacco (Flaws 1, 2 and 3)***

14. Mr Crouch found that the Appellant knowingly misled the Border Officer about  
35 the true quantity of the excise goods that was his. Mr Crouch decided that the  
Appellant was the owner of the 12 kilograms of hand rolling tobacco, not six  
kilograms. In Mr Crouch's view, it was evident from the interviews of Miss Hawley  
and Mr Evans that the tobacco they claimed to be theirs clearly belonged to the  
Appellant. Mr Crouch was satisfied that Miss Hawley and Mr Evans did not smoke  
40 hand rolling tobacco, and that it made no sense for each of them to spend £252 on  
goods they did not use. Mr Crouch believed that Miss Hawley and Mr Evans claimed  
that they each had three kilograms of tobacco in an abortive attempt to legitimise the

Appellant's illegal import of 12 kilograms of tobacco. Finally Mr Crouch asserted that the Appellant had with him the receipts for the 12 kilograms.

15. The Appellant contended that if his evidence and that of Miss Hawley's about the events on 28 April 2011 were believed the Tribunal would have no hesitation in holding Mr Crouch's reasoning flawed. Further Mr Crouch had no evidential basis for his assertion that the Appellant possessed the receipts for the full 12 kilograms of tobacco.

16. Mr Crouch considered that the interviews of Miss Hawley and Mr Evans supported his conclusion that the 12 kilograms of tobacco belonged to the Appellant. In his view Miss Hawley's replies to the questions of the Border Officer revealed that she had no understanding of smoking hand rolled tobacco. Miss Hawley did not know how many roll ups a pouch of tobacco would produce, and whether it would be cheaper to smoke than ordinary cigarettes. Miss Hawley accepted that she had never smoked had rolled tobacco before, although later in the interview she stated that she had tried out her father's roll-ups. Miss Hawley's explanation for purchasing so much tobacco when she did not know it would work out cheaper was that she had been thinking about using hand rolling tobacco for a while and would not know when she would go overseas again.

17. Mr Evans initially in interview asserted that he purchased the tobacco for his own use but was unable to explain the mechanics of hand rolling tobacco. Finally Mr Evans apologised to the Officer and stated that the tobacco was for the Appellant, and requested the Officer to keep his fiancée out of trouble.

18. The Appellant stated in evidence that he had travelled several times to France in connection with finding a site for his caravan which was being stored there. The Appellant explained that he and his wife had decided to site their caravan in France because it was easier to travel to Spain from there for their main three weeks holiday in August/September. It would also enable them to have long weekends in France when he could also do some fishing.

19. On the day in question he left home very early in the morning so that he could return in the afternoon to enable him to have some sleep before he started work at midnight. The Appellant's intention was to get some things from the caravan which was being stored in France. He also decided to go first to Adinkerke in Belgium to purchase some tobacco for him and his wife. The Appellant's daughter had asked to go with him as she was off work that week. He only learnt that Mr Evans was joining him on the trip on the day in question. When he arrived at Adinkerke his daughter and Mr Evans were asleep in the vehicle. The Appellant decided to go to a shop to buy *Cutters Choice* hand rolling tobacco. At the shop the Appellant purchased one three kilograms consignment of *Cutters Choice*. He then returned to the same shop to buy another three kilograms consignment. The Appellant took this course of action because he knew that the shop would not sell him six kilograms of tobacco in one transaction.

20. When the Appellant returned to the vehicle he met Mr Evans and his daughter who had been to a shop where they each bought three kilograms of *Golden Virginia* hand rolling tobacco. According to the Appellant, Mr Evans informed him that he had purchased the tobacco for the Appellant as gratitude for the jobs that the Appellant had done for them on their house. The Appellant told Mr Evans that he could not accept the tobacco as it would represent payment in kind. The Appellant and Mr Evans took the tobacco back to the shop but they were unable to obtain a refund. The Appellant stated that he told Mr Evans to take the tobacco back to the UK and if stopped to tell Customs that he smoked but they may take it off him.

21. The Appellant was not surprised that his daughter had purchased tobacco. Miss Hawley confirmed the Appellant's account of the events on 28 April 2011. She stated in evidence that the Appellant had no inkling beforehand of Mr Evan's intention to buy tobacco as a gift. Miss Hawley repeated that the tobacco she purchased was for her own use. She acknowledged in view of her limited knowledge on hand rolling tobacco that it may have been more sensible to have purchased one pouch of tobacco.

22. After visiting Adinkerke they went to pick up some things from the caravan and bought alcohol from Calais before making their way home via the Eurotunnel. The Appellant considered that the Officers who stopped them were arrogant and not prepared to listen to him. The Appellant believed that the Officers had not given Mr Evans sufficient time to explain the correct version of events. The Appellant was of the view that Mr Evans had wrongly put the blame on him with the result that they have fallen out and were no longer speaking with each other. Mr Evans did not attend the hearing to give evidence.

23. The Appellant asserted that he only had in his possession the two receipts for the *Cutters Choice* tobacco. Mr Evans and Miss Hawley retained the individual receipts for their tobacco purchases. Mr Crouch was unable to point to the specific reference in the evidence about the Appellant carrying receipts for the entire 12 kilograms of tobacco.

24. The Tribunal considers that Mr Crouch at the time he made the decision had solid grounds for his conclusion that the Appellant had misled the Officer about the ownership of the 12 kilograms of tobacco. The Tribunal agrees with Mr Crouch's assessment of Miss Hawley's interview that in view of her answers it was highly improbable for her to spend £252 on hand rolling tobacco for her own use. Mr Evans in interview confirmed that the tobacco had been purchased for the Appellant. Although Mr Crouch was unable to substantiate his assertion regarding the receipts, the Tribunal is satisfied that the weight of the evidence from the interviews of Miss Hawley and Mr Evans constituted persuasive grounds for his conclusion that the Appellant was the owner of the 12 kilograms of tobacco.

25. The Tribunal considers the evidence given by the Appellant and Miss Hawley did not undermine the reasonableness of Mr Crouch's conclusion on ownership. Miss Hawley essentially restated what she said in interview which presented an unconvincing explanation for why she purchased the tobacco for her own use. The Tribunal was not impressed with the Appellant's ruse of queuing twice to buy

separate consignments of *Cutters Choice* hand rolling tobacco. His knowledge of the particular shop and its restrictions suggested that the Appellant was an experienced purchaser of hand rolling tobacco in Adinkerke. Also the Appellant on his own account advised Mr Evans that he should mislead Border Officers about smoking  
5 hand rolling tobacco. The Tribunal considers the Appellant's denial of ownership of the 12 kilograms of tobacco was damaged by the identified inconsistencies in his testimony.

26. The Tribunal is, therefore, satisfied of the reasonableness of Mr Crouch's  
10 conclusion that the Appellant misled the Officers on the ownership of the 12 kilograms of tobacco

***Sole Purpose of the Day Trips to Purchase Tobacco for resale at Profit (Flaws 4, 5, & 6)***

27. Mr Crouch took into account several factors in arriving at his conclusion that the Appellant's trips to the continent were for the purpose of purchasing tobacco. Mr  
15 Crouch relied on what he saw as a contradictory account given by the Appellant about whether he purchased tobacco when he last travelled overseas with his brother. Mr Crouch considered that the Appellant was somewhat vague in his answer about the number of trips made since December. Mr Crouch brought into his reasoning the record of trips overseas made by the Appellant, which showed 13 trips in a 14 month  
20 period equating to approximately one trip a month. Next Mr Crouch referred to the cost of such trips which the Appellant had said was £130 for a round trip which did not include the price of the Eurotunnel ticket. Finally on the one occasion that the Appellant was stopped he was found to be in possession of 12 kilograms of tobacco.

28. The Appellant's approach to this part of Mr Crouch's review was to select  
25 specific reasons and argue that they were not justified on the evidence before Mr Crouch when he undertook his review. The Appellant contended that Mr Crouch had misinterpreted his answer regarding the goods brought in with his brother. The Appellant stated that it was unsurprising given the circumstances that he did not remember the precise number of trips made since December. Finally Mr Crouch's  
30 conclusion that the Appellant purchased tobacco on the other trips was extraordinary and without any evidential foundation.

29. The Tribunal was not persuaded by the Appellant's challenges. The Tribunal considered that Mr Crouch's interpretation of the facts surrounding the selected reasons was feasible. In the Tribunal's view, the Appellant did not appreciate the  
35 cumulative nature of Mr Crouch's reasoning which built up a picture justifying the reasonableness of his inference that the sole purpose of the day trips was to purchase tobacco for resale at a profit.

30. The real weakness with the Appellant's case was the absence of a plausible  
40 alternative explanation for the regular day trips. The Appellant asserted in his correspondence and in evidence that his primary purpose for the frequent day trips was to find sites for his caravan which was stored in France. The Appellant, however, failed to produce evidence to corroborate his stated purpose regarding the caravan.

31. The Tribunal is, therefore, satisfied of the reasonableness of Mr Crouch's conclusion that the Appellant's sole purpose in carrying out the day trips to France was to purchase tobacco for resale at a profit.

5 ***The Remaining Parts of Mr Crouch's Review Regarding the Circumstances of the Importation***

32. Mr Crouch incorporated as part of his grounds for refusing restoration: the large quantity of tobacco imported, the fact that the tobacco was paid for in cash, the preparedness of the Appellant to write off the money spent (£1,100) on the tobacco by not challenging the seizure and that the Appellant had not claimed that the tobacco was to be passed onto others on a not for profit basis.

33. The Appellant contested the validity of Mr Crouch's inference from the cash payments (flaw 7). Mr Crouch stated that cash payments were a common feature of purchasing excise goods for commercial purposes. He pointed out that most purchasers used credit or debit cards but smugglers paid by cash instead so there was no evidence of the transaction in their bank statements. Further payments by cash indicated that they had been paid cash in advance by their customers.

34. The Appellant argued that Mr Crouch went a step too far by alleging that he was doing something dishonest. The Tribunal is not convinced with the strength of the Appellant's challenge on cash payments. The Tribunal considers that Mr Crouch was entitled to draw on his experience when making inferences from the facts, particularly as the Appellant offered no reason for the cash payments. The Tribunal noted that the Appellant had two credit cards and one bank card in his possession when he was interviewed by the Border Officers.

35. Mr Crouch acknowledged that he made an error in his witness statement about the date of the review which he put at 28 April 2011 instead of the correct date of 7 June 2011. Mr Crouch, however, did not accept that he was mistaken when he stated at page 7 of his written decision that an Officer had written to the Appellant on the 7 June 2011 explaining the review process. The letter shared the same date as Mr Crouch's review. Mr Crouch pointed out that the Respondents gave priority to a request for a review from a Member of Parliament which had pre-empted the usual procedure of sending a letter acknowledging the request and giving a date for completion of the review. On 16 June 2011 the Appellant through his solicitor put forward a separate request for review which Mr Crouch considered and decided on 21 June 2011 that it did not change his decision of 7 June 2011.

35 ***Overall Conclusion of the Tobacco being held for a Profit***

36. Mr Crouch decided that the Appellant had purchased tobacco for resale at profit. The Appellant's commercial purpose was aggravated by his findings that the Appellant misled the Border Officer over the ownership of the 12 kilograms of tobacco, the frequency of his trips overseas to buy tobacco, and the quantity of the tobacco imported which was four times the guide level of three kilograms. The



Appellant sought to undermine Mr Crouch's rationale by giving fresh evidence and challenging the evidential foundation for some of his reasons.

37. The Tribunal was not persuaded by the Appellant's challenges. The Appellant's case was constrained by his failure to challenge the seizure of the tobacco before the magistrates which meant that the starting point of Mr Crouch's review was that the tobacco had been imported for commercial purposes. The Appellant did not proffer an explanation that the tobacco had been imported for a not for profit reimbursement basis. Instead the Appellant persisted with his assertion that the tobacco had been brought in for own use and gifts which as a matter of law had to be disregarded by the Tribunal. The consequence of the way that the Appellant presented his case was that the Tribunal had to treat the importation as one for resale at a profit.

38. The Tribunal examined each of the Appellant's challenges to the aggravating circumstances identified by Mr Crouch. The Tribunal was satisfied that the substance of Mr Crouch's findings was reasonably arrived at on the facts before him at the time he made the review. There was no evidence that he had regard to irrelevant factors and disregarded relevant ones. Mr Crouch's mistake on the correct review date in his witness statement was careless but did not go to the subject matter of the review. The Appellant's fresh evidence was insufficient to displace the merit of Mr Crouch's findings on aggravating circumstances, and in some respects was deficient particularly the omission to supply corroboration of the purported visits to caravan sites.

39. Given the above findings the Tribunal is satisfied of the reasonableness of Mr Crouch's conclusion that the Appellant was holding the 12 kilograms for resale at a profit, and that his illegal importation was aggravated by his frequent trips to Belgium to buy tobacco, his attempt to mislead the Officer and the large quantity of tobacco imported.

### ***Proportionality***

40. The Appellant purchased the vehicle in 2006 for £26,818. The Appellant believed the present value of the vehicle to be £12,102 plus extras and low mileage. Mr Crouch stated that the trade value of the vehicle was about £8,700. The value of the duty evaded by the Appellant's illegal importation was £1,822.80.

41. The parties had different starting points for arriving at the value of the vehicle. The variation in value was not significant in respect of the question of proportionality. The Respondents accepted that the vehicle was of high value which substantially exceeded the value of the duty evaded. Proportionality, however, is not primarily concerned with the value relationship between that of the vehicle and the duty evaded. Proportionality in the context of non-restoration is assessed against the seriousness of the contravention in the context of the policy objective to protect legitimate UK trade and revenue and prevent illicit trade in excise goods. In this respect Mr Crouch properly addressed his mind to the law on proportionality as articulated in the Court of Appeal decision in *Lindsay v. Customs and Excise Commissioners* [2002] EWCA Civ 267

42. Lord Phillips in *Lindsay* at paragraph 63 said

5 “Having regard to these considerations, I would not have been prepared to condemn the commissioner's policy had it been one that was applied to those who were using their cars for commercial smuggling, giving that phrase the meaning that it naturally bears of smuggling goods in order to sell them at a profit. Those who deliberately use their cars to further fraudulent commercial ventures in the knowledge that if they are caught their cars will be rendered liable to forfeiture cannot reasonably be heard to complain if they lose those vehicles. Nor does it seem to me that, in such circumstances, the value of the car used need be taken into consideration. Those circumstances will normally take the case beyond the threshold where that factor can carry significant weight in the balance. Cases of exceptional hardship must always, of course, be given due consideration”.

15 43. Lord Justice Judge in *Lindsay* at paragraph 72 said

20 “Given the extent of the damage caused to the public interest, it is, in my judgment, acceptable and proportionate that, subject to exceptional individual considerations, whatever they are worth, the vehicles of those who smuggle for profit, even for a small profit, should be seized as a matter of policy. However, the equal application of the same stringent policy to those who are not importing for profit fails adequately to recognise the distinction between them and those who are trading in smuggled goods. Accordingly the policy is flawed”.

25 44. Mr Crouch’s finding that the non-restoration of the vehicle was proportionate even if there were no aggravating circumstances was consistent with the judgment in *Lindsay* in that a commercial importation would normally take the case beyond the threshold when non-restoration can be considered.

30 45. Mr Crouch, however, did not restrict his enquiry on proportionality to the stated law on the subject. He went onto consider the particular circumstances of the Appellant’s importation and whether the exceptions to the Respondent’s general policy on non-restoration for improper importation or transportation of excise goods applied. Mr Crouch decided that the exception of small quantity of excise goods and first occurrence did not apply to the Appellant’s importation. Further he considered that the aggravated circumstances identified reinforced his view that non-restoration was proportionate.

40 46. The Tribunal finds no fault with Mr Crouch’s approach to the issue of proportionality which was consistent with the stated law and took account of the individual circumstances of the Appellant’s importation. The Tribunal found Mr Crouch’s judgments on the individual circumstances reasonable in the preceding sections dealing with the purported flaws in Mr Crouch’s decision making.

### ***Hardship***

47. The Appellant contended that he has suffered exceptional hardship arising from the non-restoration of the vehicle. He stated that he was unable to purchase a suitable

replacement vehicle which he required to care for his elderly mother and travel to work which was a thirty mile round trip. The Appellant's mother was 82 years old and in remission from bowel cancer. His mother had sadly suffered three strokes and was currently on 16 different forms of medication. The Appellant took his mother to  
5 Chesterfield Hospital for regular checks and he was the first contact in the case of an emergency with his mother.

48. Mr Crouch decided that the Appellant had not made out a case for exceptional hardship. In his view the Appellant must expect some hardship from his illegal act and that the circumstances relied upon by the Appellant were not sufficient to justify a  
10 departure from the normal policy of non-restoration for commercial importations. Mr Crouch pointed out that the Appellant had not identified alternatives that his mother might use to travel to hospital, and that there was another vehicle (Ford Fiesta) registered at the Appellant's address which the Appellant had used in travelling to France.

49. The evidence given at the Tribunal revealed that the Appellant was the  
15 registered keeper from 29 May 2011 of a Mitsubishi Shogun Warrior which was of similar age and specification to the vehicle seized. The Appellant accepted that this vehicle had his personal registration plates and that he was insured as the principal driver for the vehicle. The Appellant, however, denied that the vehicle was his to use,  
20 saying that it effectively belonged to his son who worked away in Bolton. The Appellant explained that he insured the vehicle in his name because the premium was considerably less than the one quoted to his son. The Appellant saw nothing wrong in insuring the vehicle in his name as principal driver rather than in his son's name.

50. The Appellant told the Tribunal that his mother lived alone in her own home in  
25 Langwith which was some five miles away from the Appellant's home. He had a brother and sister who lived close to the Appellant's mother. The Appellant acknowledged that his sister at odd times cared for his mother. The Appellant's employment as an HGV driver took him all over the UK. He often worked a six day week and long hours starting at midnight.

51. The Tribunal held strong reservations about the strength of the Appellant's pleas  
30 of exceptional hardship. The evidence given at the Tribunal cast considerable doubt on the Appellant's assertions that he did not have access to a vehicle and that he was the principal carer for his mother. The evidence disclosed that there were two vehicles registered at the Appellant's address. In the case of his mother the evidence showed  
35 that there were other family members living close to her, and that the nature of his employment prevented him from acting as the principal carer in person.

52. The Tribunal, therefore, agrees with Mr Crouch's finding that there was no  
40 exceptional hardship in this case to justify non-restoration of the vehicle. The Tribunal is satisfied that Mr Crouch gave proper consideration to the hardship issues raised by the Appellant, and that the evidence at the hearing confirmed the reasonableness of Mr Crouch's assessment.

### ***The Referees***

53. The Appellant submitted two referees which testified to his good character and the Appellant's dependence on a vehicle for his employment. The references were dated 30 April 2011 and 8 June 2011. Mr Crouch mentioned the 30 April 2011 reference in his review, and in the Tribunal's view had regard to it when he considered the question of hardship. The Tribunal does not consider the reference dated 8 June 2011 added a new perspective to the circumstances of the Appellant's illegal importation. The Appellant's good character is not relevant because of the Tribunal's starting point of an illegal importation in cases where seizure has not been challenged before the magistrates. The question of the Appellant's dependence on a vehicle has been fully aired under hardship.

### **Decision**

54. The Tribunal recognizes that the Appellant was extremely distressed by his dispute with the Respondents, and that regretfully it has caused a rift between the Appellant and his prospective son-in-law. The Tribunal's jurisdiction in non-restoration Appeals, however, is strictly circumscribed by the law. The Tribunal has no power to consider the legality of the seizure and is obliged to commence its enquiry on the basis that the Appellant's importation was for commercial purposes. The Appellant strongly feels that he has done nothing wrong which is a matter for the magistrates not the Tribunal. The Tribunal's authority is further circumscribed by the wording of section 16(4) of the Finance Act 1994 which limits the Tribunal's jurisdiction to assessing the reasonableness of Mr Crouch's review decision. The Tribunal cannot substitute its own decision for that of Mr Crouch.

55. The Tribunal has carried out in the preceding paragraphs an extensive examination of Mr Crouch's review. On the basis of its findings, the Tribunal is satisfied that Mr Crouch applied the law correctly and took account of relevant considerations and disregarded irrelevant matters in reaching his decision. The Tribunal, therefore, holds that the Respondents' decision on review dated 7 June 2011 refusing restoration of the vehicle was reasonably arrived at within the meaning of section 16(4) of the Finance Act 1994. The Tribunal, therefore, dismisses the Appeal.

56. The Appellant raised the possibility of an application for costs if he was successful. In view of the Tribunal's decision, the Tribunal considers there are no grounds to make an order for costs in favour of the Appellant.

57. 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: 4 April 2012**

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