



**TC03897**

**Appeal numbers: TC/2013/07979**

*Customs and excise - seizure and sale of two vans - Application to strike out appeal by the Respondents - Application to postpone the hearing by the Appellant - Decision and Directions*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WILLIAM HEDLEY GRAHAM**

**Appellants**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE HOWARD M. NOWLAN**

**Sitting in public at 45 Bedford Square on 1 August 2014**

**The Appellant was represented solely for the purpose of applying for a postponement**

**Will Hays, counsel, on behalf of the Respondents**

## DECISION

### *Introduction*

- 5 1. This was an Appeal for compensation for the fact that HMRC had auctioned two Mercedes vans, presumably owned by the Appellant, following the detention and seizure of those vans in which substantial amounts of non-duty-paid tobacco had been found.
- 10 2. The hearing before me raised three issues. The first, raised by the Respondents, was a request that the case be struck out on account of the fact that I had no jurisdiction to hear any appeal as at the date of the hearing, on account of procedural issues that I will summarise below. The second issue raised by the Respondents was that the case stood no chance of success so that the Tribunal ought to refuse any application to appeal out of time, particularly in the light of the very long delays that have occurred to date, and before a valid appeal has  
15 been commenced in respect of either non-restoration decision.
- 20 3. The third issue was an application made on behalf of the Appellant that the hearing be adjourned until September, because the Appellant's appointed counsel, Mr. Finch, was currently completing proceedings in the Supreme Court of Gibraltar, in which he had been engaged for the last six months, such that he was unable to represent the Appellant.
- 25 4. In the light of the fact that another judge had provisionally rejected the application to postpone the hearing (as requested by the Respondents), I decided to hear the contentions on behalf of the Respondents, at least with a view to trying to progress the case in a constructive manner. I am not seeking to preclude the Appellant from arranging for a listing of the Appeal, or a re-hearing of this present strike out Application, once the Appellant's counsel is available. Since however the case appears to have proceeded in a rather ignorant, and procedurally improper, manner if the contentions on the part of the Respondents' counsel before me were correct, the hearing and this preliminary decision might at least assist in  
30 ensuring that the case proceeds on the correct lines.

### *General background*

- 35 5. The first van (that I will refer to by using part of its registration number, namely "JGV") was seized on 12 November 2010. No proceedings were brought to challenge the legality of the seizure, but a request was made for restoration of JGV on 26 November 2010 and this was refused on 4 January 2011. Coincidentally that was the date when the second van ("DZE") was seized.
- 40 6. A request was made for a review of the decision in relation to van JGV, and the decision refusing to amend the decision not to restore was notified to the Appellant on 29 March 2011. In that decision the Appellant was notified that he had 30 days in which to appeal to this Tribunal, whereupon the limit of our jurisdiction would have been to consider the circumstances of the review and, if we thought it appropriate, declare that there should be a  
45 further review in which either further matters should be considered, some might be ignored, or other regard should be paid to other observations that we might make in relation to the initial review. We would not have had jurisdiction in such an appeal to substitute our own decision for that of HMRC, and to order restoration.

7. Ignoring at this stage the process in relation to van DZE, the subsequent events that have a bearing on van JGV were as follows. First, although the Appellant was notified that any Appeal to this Tribunal against the conduct and findings of the review decision should be commenced within 30 days of the notification of the review decision, no appeal was  
5 commenced and, well after the relevant 30-day period, van JGV was sent to auction. Criminal proceedings were brought against the Appellant in the Crown Court and the Appellant was acquitted on two counts. On the third on which the jury failed to reach a decision, the Crown chose not to request a re-trial and the judge therefore acquitted the Appellant. He then wrongly ordered the restoration, presumably of both vans. This was  
10 on 20 April 2012. HMRC contended that it was plain that the Crown Court judge had no jurisdiction to make such an order and, on 4 March 2013, the Crown Court rescinded the restoration decision that should never have been made.

8. Thereafter, but not until 15 November 2013, Notice of Appeal to this Tribunal was  
15 served.

9. The position in relation to van DZE was rather simpler. Following its seizure on 4 February 2011, a request for restoration was made on 11 February and refused on 25 February 2011. There was never a request for a review of that decision.  
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### ***The Crown's current contentions***

10. Although a Notice of Appeal was served on this Tribunal on 15 November 2013, the Crown has observed that it was plainly deficient insofar as it appeared to request this  
25 Tribunal to overturn the Crown Court's decision. We have no such jurisdiction, and in any event, now that the wrong order for restoration has been properly revoked by the Crown Court, it is unclear what decision of that Court the Appellant could possibly wish to overturn.

11. Adopting HMRC's notion of being ready to treat the Notice of Appeal of 15 November  
30 2013 broadly and generously, HMRC still points out that the Appellant needs to surmount the following hurdles before this Tribunal can hear any Appeal on behalf of the Appellant.

12. Dealing first with any appeal in relation to the van JGV, there has at least been a  
35 review of the non-restoration decision in that case, but for an appeal to lie against the conduct and findings of the review decision, when no appeal was brought within the 30-day period that expired at the end of April 2011, the Appellant needs leave of the Tribunal to bring a late, and indeed a very late, appeal in respect of the relevant review decision. Two and a half years had elapsed before any Notice of Appeal was actually served, and nine months elapsed after the decision by the Crown court to revoke their wrong order for restoration.  
40 The van in question had indeed been auctioned on 20 January 2012, one year and 10 months before the Notice of Appeal.

13. HMRC's contention in relation to any application for a late Appeal is that the delays  
45 are so long, particularly in the light of the fact that the relevant van was auctioned well after the date for giving notice of appeal, and now a very long time ago, that no leave to bring a late appeal should be given. Whilst I obviously had no opportunity to hear representations on the part of the Appellant, it was also suggested by HMRC's counsel that the circumstances of the seizure, and the feature that the Appellant was collecting unidentified goods from some lay-by near Dover, indicated that the prospects of now disturbing the conclusions of the  
50 review decision were remote. Accordingly I should strike out the appeal.

14. The circumstances in relation to van DZE were even more extreme. Unless the Respondents were wrong in the following contention, it was contended that an appeal could only be made after a review decision, and in the case of van DZE no review had ever been requested. Accordingly there could only now be an appeal if either HMRC conceded, on request, to conduct a late review in relation to the decision not to restore van DZE or, failing that, the Tribunal itself instructed HMRC to conduct such a review. Were the review then to uphold the original decision, there could then be a valid appeal to this Tribunal in relation to that review decision.

15. I understand that when this appeal came on for hearing (possibly in the Manchester Tribunal) on 30 May 2014, it was suggested that some correspondence that was not before the Tribunal was alleged to have requested a review. The Tribunal adjourned the hearing, and required the relevant correspondence to be served on the Respondents and the Tribunal at least 14 days before the next hearing set down, but to date no such correspondence has been produced.

### *My decision*

16. In the interests of progressing this case in a constructive manner, but without precluding the Appellant from advancing any contentions that it can sensibly advance, my decision is that the Appeal commenced by Notice on 15 November 2013 be struck out automatically on 1 October 2014 unless:

1. as regards its application to the review process in relation to van JGV, an Application is made to the Tribunal by the end of September 2014 requesting leave to bring the Appeal in relation to the review of the decision in relation to van JGV out of time, giving reasons and explanation for the extreme delay in bringing the Appeal, and indicating, as part of that process, grounds that suggest that the appeal would have some prospect of success;
2. as regards its application to any appeal in relation to van DZE, the Appellant indicates to the Tribunal by the end of September 2014, either that it has correspondence that supports its case that a review was in fact requested in relation to the non-restoration decision made in relation to van DZE, or alternatively that the Appellant has requested HMRC to conduct a late review in relation to the said non-restoration decision and that the Appellant's intention will, in due course, be to request the Tribunal to order HMRC to conduct such a late review in the event that HMRC refuses itself to do so; or
3. the Appellant notifies the Tribunal by the end of September 2014 that it considers the assumptions made by me in dealing with the procedural matters relevant to the Appellant's appeal to be wrong in some respect.

17. At present, it seems to me that if the Appellant pursues the course offered in either paragraph 16.1 or 16.3 above, the Tribunal should list the substantive issues to be considered at the hearing. In the event that the Appellant pursues the course offered in paragraph 16.2. above, it would appear to follow that no substantive appeal could be considered until HMRC had actually conducted the review in relation to the non-restoration decision in relation to van DZE whether the Appellant was correct to suggest that correspondence demonstrated that a review had been requested in the required time limit or not. This is because, even if that were so, clearly no review has actually been conducted, to date, in relation to the non-

restoration decision in relation to van DZE, and until there has been such a review there can be no appeal against any review decision.

5 ***Right of Appeal***

18. This document contains full findings of fact and the reasons for our decision in relation to each appeal. Any party dissatisfied with the decision relevant to it 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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**HOWARD M. NOWLAN  
TRIBUNAL JUDGE**

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**RELEASED: 8 August 2014**

