TC04337

Appeal number: TC/2014/05279

PROCEDURE – Restoration appeal – Claim by appellant for restoration of suitcase and contents – Whether Tribunal has jurisdiction to hear appeal – No evidence of seizure that could engage Customs and Excise Management Act 1979 and/or Finance Act 1994 – Not within jurisdiction of Tribunal – Appeal struck out under rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

FIRST-TIER TRIBUNAL
TAX CHAMBER

WILLIAM YOUNG **Appellant**

- and -

THE HOME OFFICE **Respondents**

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in public at the Royal Courts of Justice, London on 12 March 2015

The Appellant did not appear and was not represented

David Sawtell, counsel, instructed by the Home Office, for the Respondents

DECISION

Background

1. In his Notice of Appeal, dated 28 July 2014, Mr William Young states that on 27 August 2013 the UK Border Force "unlawfully removed a suitcase" from an Iberia Airlines flight arriving into Terminal 5 at London Heathrow Airport. The grounds of appeal continue:

> No notification was given to the appellant in connection with the removal of this suitcase. When the appellant became aware of the Border Force actions in or around 26 May 2014 he made a restoration request dated 16 June 2014.
>
> As of today's date Border Force has not dealt with the review request nor made any attempt to restore the goods.
>
> The seizure of the suitcase was clearly unlawful and in contravention of the appellant's rights under Article 1 of the First Protocol ECHR.

In the circumstances he seeks a declaration from the Tribunal that the seizure of the suitcase was "unlawful" and an order that the Border Force "restores the suitcase and contents." However, Mr Young does not specify or describe the "contents" he wishes to be restored to him

2. Attached to the Notice of Appeal, which requested a hearing in London, was a letter dated 20 June 2014 from the Border Force. Although this stated that the Border Force have no record of a seizure of goods at Terminal 5 at Heathrow on 17 August 2013 it was silent as to whether there had been any seizure on 27 August 2013, the date on which Mr Young says his suitcase was seized.

3. Following receipt of the Notice of Appeal the case was allocated to proceed under the 'standard' category and, in an email dated 29 October 2014, the Tribunal requested the Home Office to provide a Statement of Case within 60 days. Having received that email the Home Office wrote to the Tribunal, on 13 November 2014, in the following terms:

> I am not clear what this appeal is against. Although there appears to be a request for restoration of 1 suitcase and various items, it is clear from correspondence that Border Force have no record of this seizure. Border Force have written to Mr Young on 20 June and 17 July seeking confirmation that there is no record of a seizure on the date in question. They are therefore unable to consider restoration.
>
> This is not a valid appeal as you appeared to have accepted in your letters to Mr Young dated 12 August and 17 September last.
>
> Please clarify why you have accepted this invalid appeal and confirm what jurisdiction the Tribunal has to list this matter.
>
> I look forward to hearing from you as a matter of urgency.

4. On 5 January 2015 Mr Young applied to the Tribunal to "mark judgment" on the grounds that the respondents had failed to serve a Statement of Case within 60 days from 29 October 2014. He also sought an order for costs against the respondents for "unreasonable behaviour."

5. Following this application, on 15 January 2015, the Tribunal wrote to the parties to inform them that the appeal would be listed for a "jurisdictional hearing." The Tribunal wrote again to the parties on 27 January 2015 to notify them that the jurisdictional hearing was to be held at the Royal Courts of Justice in London on 12 March 2015.

6. Having considered the case papers in this matter, on 10 February 2015, Judge Poole refused Mr Young's application to "mark judgment" and, as he was satisfied that "it is appropriate that the jurisdiction of the Tribunal in relation to this appeal should be decided before the respondent should be required to deliver its statement of case", directed that the time for delivery of the respondents statement of case be extended generally pending the outcome of the jurisdictional hearing on 12 March 2015

7. Judge Poole's directions were sent to the parties by email and later that same day Mr Young submitted, by email, an appeal against the directions on the grounds that they were "irrational", created an appearance of bias and were in breach of his rights to a fair hearing under Article 6 of the European Convention on Human Rights.

8. Under rule 35(4) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (the "Procedure Rules") a party wishing to appeal against a decision of the Tribunal must request full written findings of fact and reasons for the decision before an application for permission to appeal can be made. As Mr Young had not requested full written findings of fact and reasons for the directions Judge Poole provided such a decision which was released to the parties on 25 February 2015.

9. In that decision, at [19], Judge Poole refers to the obligation of the parties to help the Tribunal to deal with cases fairly and justly, under rule 2 of the Procedure Rules, and as such would:

> "… expect the appellant to provide to the respondent and the Tribunal, in writing and well in advance of the hearing on 12 March 2015, all information in his possession which may assist the Tribunal in establishing whether there was indeed a seizure which engages the Tribunal's jurisdiction. In particular … the fullest possible description of the suitcase which is supposed to have been seized (including place of origin) and how, in the absence of any documentation supplied to the Tribunal, the appellant has reached the view that the item was seized rather than simply lost by the relevant carrier or at the airport. If the appellant does not supply this information sufficiently in advance of the hearing fixed for 12 March for the respondents to have an opportunity of using it to make more detailed enquires by that time, the Tribunal may consider the appellant to have acted unreasonably."

He continued:

> "20. On the basis of the same obligation, I would expect the respondent to check its records of seizures on 27 August 2013 (rather than 17 August 2013, as it has apparently done) and then carry out any further investigations that it can to establish the facts once it as received the relevant further information from the appellant.
>
> 21. I would also make the general point to both parties that procedural manoeuvring rather than making a bona fide attempt to elucidate the facts and then progress matters in a positive way may well lead a Tribunal to the conclusion that a party is acting unreasonably in the conduct of its appeal, with possible consequences in costs."

10. On 26 February 2015 Mr Young sent an email to the Tribunal in which he made it clear that he did not consider that the full findings of fact and reasons were in relation to the 10 February 2015 directions but rather further determinations and direction against which he would be seeking permission to appeal.

11. However, in that email Mr Young did respond to Judge Poole's comments at [19] of the decision and provided the following details:

> On 27 August the Appellant was travelling on Flight IB 3176 from Madrid to London Heathrow. He had one piece of checked baggage which was checked through to Belfast City Airport.
>
> Border Force had organised a planned interception of Flight IB 3176 at T5 LHR and was specifically targeting the Appellant. The flight was met at T5 by a large number of Border Force Officers, armed members of the Metropolitan Police and special canine units. Every passenger was checked disembarking the aircraft on the Jet Bridge. Whilst this operation was occurring other Border Officers could be clearly be seen on the tarmac whilst the hold baggage was being removed. Border Force checked every single passenger passport at the aircraft door and examined all hand baggage. All hold baggage was inspected and x-rayed prior to being loaded onto the delivery system. All of this was witnessed by the airline staff and their baggage handling agents.
>
> The Appellant had his passport and hand baggage checked on the air bridge and was then followed and monitored as he passed through passport control and on through customs. He was not stopped at the customs area by any Border Force Officer.
>
> The Appellant completed the final leg of his journey and on arrival at Belfast City Airport his hold baggage did not arrive.
>
> The Appellant asked Iberia Airlines to track and attempt to trace his suitcase. Iberia conducted a very thorough investigation and confirmed that the suitcase had been placed onto the flight at Madrid airport and that computerised records showed this to be the case. Iberia further confirmed that the luggage arrived at LHR but was missing when their baggage handling agents went to retrieve the luggage to transfer it to the Belfast flight. It is quite reasonable to assume that it was removed by Border Force Officers in this very short time frame.
>
> It is noted that the Respondent have never denied removing the suitcase but rather have evaded answering some very basic questions.

> There were two other unrelated issues brought before the courts, on in London in March 2014 and one in Edinburgh in 2014. In both instances the courts found the actions of Border Force unlawful. Interestingly, two different counsel appeared on behalf of the Respondent at these hearings and both referred to a seizure of goods in connection with the appellant at LHR on 27 August 2013. Presumably both sets of counsel could only have had this information if it was supplied to them by the Respondent.
>
> The Appellant objects to being directed to supply "evidence" to the Tribunal prior to any hearing whilst at the same time the Respondent has repeatedly defied ant Tribunal instructions.
>
> Having supplied the above information as per paragraph 19 of the Tribunal Directions dated 25 February [ie the decision of Judge Poole with full written findings of fact and reasons], the Appellant now awaits a full response from the Respondent in respect of paragraph 20 of the same directions.

12. No further information was provided to the Tribunal by either the Home Office or Border Force before the hearing on 12 March.

13. At the hearing counsel for the Home Office, Mr David Sawtell, said that as a result of the information included in Mr Young's email further enquiries were made with Border Force which has ascertained that on 27 August 2013 around 400 Marlboro Gold cigarettes were seized from Lost Property at Heathrow Airport having been found on a carousel in the baggage reclaim hall in Terminal 5. The cigarettes were not in a suitcase and were the only items seized at Terminal 5 that day.

Absence of Appellant

14. Although he had requested that the hearing be in London Mr Young was not present for the hearing at the Royal Courts of Justice on 12 March 2015. However, as the Notice of Hearing was sent to the same address as that stated on the Notice of Appeal and in his email to the Tribunal of 26 February 2015, I was satisfied that Mr Young had been notified of the hearing. I also considered that it was in the interests of justice to proceed with the hearing in his absence and therefore did so in accordance with rule 33 of the Procedure Rules.

Discussion and Conclusion

15. Clearly the jurisdiction of the Tribunal cannot be engaged in the absence of any seizure. As Mr Sawtell submits, Mr Young's description of events, as stated in his Notice of Appeal and his email of 26 February 2015, does not establish that his suitcase was seized by Border Force Officers. However, even it is assumed for the sake of argument that it was, would this be sufficient to engage the Tribunal's jurisdiction?

16. It is trite law that this Tribunal, the Tax Chamber of the First-tier Tribunal, was created by statute and, unlike the High Court, its jurisdiction is not inherent but defined and limited by legislation. This is clear from the decision, which is binding on

me, of the Tax and Chancery Chamber of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TC).

17. The legislation relevant to the present case is the Customs and Excise Management Act 1979 ("CEMA") and the Finance Act 1994 ("FA").

18. Section 139(1) CEMA provides that:

> Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable, or any member of Her Majesty's armed forces or coastguard.

If something is seized s 152 CEMA establishes that:

> The Commissioners may, as they see fit –
>
> (a) …
>
> (b) restore, subject to such conditions (if any) as they think proper, anything forfeited or seized under the customs and excise Acts."

19. In the event that a decision is made not to restore the "thing liable to forfeiture under the customs and excise Acts" a person who is affected by that decision may require a review under s 14 FA. The Commissioners have a duty to carry out a review, by virtue of s 15 FA, following which the decision may either be confirmed, withdrawn or varied. If a review is not undertaken within 45 days s 15(2) provides that the Commissioners shall be "assumed" to have confirmed the original decision. Section 16 FA sets out the jurisdiction of the Tribunal on an appeal against a review.

20. However, for this jurisdiction to be engaged it is first necessary for there to have been a seizure "under the customs and excise Acts". These are defined by s 1(1) CEMA as CEMA itself, the Customs and Excise Duties (General Reliefs) Act 1979, the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979 and the Tobacco Products Duty Act 1979.

21. In the present case, even if it were accepted that Mr Young's suitcase and contents were seized (and as I have noted above this is not established by Mr Young's account of events) there is no evidence to suggest that such a seizure was made under the customs and excise Acts. As such it must follow that the Tribunal cannot have jurisdiction under CEMA or the FA to consider the alleged seizure. It is also clear from the decision of the Court of Appeal in *HMRC v Jones & Jones* [2012] Ch 414 that the Tribunal does not have the jurisdiction to consider the lawfulness of a seizure.

22. Therefore, in the circumstances, I can only conclude that the Tribunal does not have jurisdiction to consider the matters raised by Mr Young or provide the remedies he seeks.

23. Under Rule 8(2) of the Procedure Rules the "Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

> (a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

24. I therefore no alternative but to strike out Mr Young's appeal.

Costs

25. Mr Sawtell made an application for costs under rule 10(1) of the Procedure Rues on the basis that Mr Young has acted unreasonably in bringing, defending or conducting the proceedings relying in particular Mr Young's failure to provide further information referring to Judge Poole's decision at [19] (see paragraph 9, above) sufficiently in advance of the hearing for the respondent to have an opportunity to make further enquiries. I would note that Judge Poole's decision was released on 25 February 2015 and Mr Young's email containing that information was sent the day after, on 26 February 2015. Mr Sawtell also sought costs in respect of another appeal which was not before me as it had been withdrawn.

26. No doubt if Mr Young had attended the hearing he too would have applied for costs on the basis given that in their letter of 20 June 2014 the Border Force had referred to the wrong date, 17 rather than 27 August 2013, and also the information resulting from checks undertaken by the respondents as to whether there had been a seizure on 27 August 2013 were not provided until the hearing.

27. In such circumstances I do not consider a costs order to be appropriate.

Right to apply for Permission to Appeal

28. 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.

JOHN BROOKS

TRIBUNAL JUDGE
RELEASE DATE: 23 March 2015