



TC04948

Appeal number: TC/2015/04921

Restoration of seized cab and trailer innocently used in connection with unlawful import of tobacco- condition of restoration payment of fee equal to trade value of the cab and trailer- appeal against Review Officer's decision confirming imposition of fee- Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SC INTER IMPLEX

Appellant

- and -

DIRECTOR OF BORDER FORCE

Respondents

**TRIBUNAL: JUDGE GETHING
Member Sheila Cheesman**

Sitting in public at Fox Court, Court 13, 5th Floor, 30 Brooke Street, London EC1N 7RS on Thursday 18 February 2016 at 2pm

The Appellant was not represented and did not appear in person,

Mr M Newbold, instructed by the Director of Border Force, for the Respondents

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DECISION

1. This case concerns a cab and covered trailer owned by SC Inter Impex, a company
5 based in Romania. The cab and trailer were used to import unlawful uncut tobacco
and were seized by the Border force at Dover in 2015.

2. The legality of the seizure was not challenged in Magistrates Court. An
application for restoration was made by Wendt & Company on behalf of SC Inter
Impex by letter on 23 March 2015 on the basis that SC Inter Impex had no knowledge
10 that the tobacco had been loaded onto the trailer. On 14th May 2015 UK Border Force
agreed to restore the cab and covered trailer in accordance with the Border Force
policy upon the payment of a fee of £23,475 which according to Glass's Guide
equated to the trade value of a cab and covered trailer of that make and age.

3. SC Inter Impex appealed against the decision to impose a fee and asked for the
15 decision to be reviewed on 15th June 2015. The decision was reviewed by Mr
Raymond Brenton a Reviewing Officer of HMRC who had no involvement in the
case prior to undertaking the review. Mr Brenton upheld the decision in a letter to SC
Inter Impex of 21 July, 2015.

4. SC Inter Impex appeals against the decision of Border Force review officer in so
20 far as concerns the imposition of the fee.

5. The jurisdiction of this Tribunal in this case is confined to considering whether the
decision was properly made and if not require the Border force to remake the
decision. This Tribunal may give guidance on facts and issues to be considered by
Border Force in remaking the decision. This Tribunal may set aside the decision if it
25 considers that no reasonable officer would have come to that decision. This Tribunal
may not question the policy of the Border Force only consider whether the policy has
been applied in accordance with its terms to the facts of this case.

6. We set out below the legislation relating to the liability to pay excise duty on
tobacco on import, the due diligence obligations on an importer of goods into the
30 United Kingdom, the liability to seizure and confiscation of any item for any item in
which goods are smuggled and the possibility of restoration on terms.

The legislation

Tobacco Products Act 1979

1 Tobacco Products

35 (1) In this Act "tobacco products" means any of the following products,
namely,-

(c) hand-rolling tobacco;

- (2) Subject to subsection (3) below, in this Act "hand-rolling tobacco" means tobacco-
- (aa) which is of a kind used for making into cigarettes: or

2 Charge and remission or repayment of tobacco products duty

- 5 (1) There shall be charged on tobacco products imported into or manufactured in the United Kingdom a duty of excise at the rates show in the Table in Schedule 1 to this Act

Schedule 1

Table of Rates of Tobacco Products Duty

- 10 3. Hand-rolling tobacco £98.66 per kilogram

The Carriage of Goods by Road Act 1965 States:

Article 3

15 For the purposes of this Convention the carrier shall be responsible for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

Article 4

20 The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.

Article 6

1 The consignment note shall contain the following particulars:

- 25 (a) the date of the consignment note and the place at which it is made out;
- (b) the name and address of the sender;
- (c) the name and address of the carrier;
- (d) the place and the date of taking over of the goods and the place designated for delivery;
- 30 (e) the name and address of the consignee;
- (f) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description;

- (g) the number of packages and their special marks and numbers;
- (h) the gross weight of the goods or their quantity otherwise expressed;
- (i) charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);
- (j) the requisite instructions for Customs and other formalities;
- (k) a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention

Article 8

- 10 1 On taking over the goods, the carrier shall check:
- (a) the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and
 - (b) the apparent condition of the goods and their packaging.
- 15 2 Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1(a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservation which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment
- 20 note.

Customs and Excise Acts 1979

49 Forfeiture of goods improperly imported

Where—

- (a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being goods chargeable on their importation with customs or excise duty, are, without payment of that duty—
 - (i) unshipped in any port,
 - (ii) unloaded from any aircraft in the United Kingdom,
 - (iii) unloaded from any vehicle in, or otherwise brought across the boundary into, Northern Ireland, or
 - (iv) removed from their place of importation or from any approved wharf, examination station or transit shed; or

(b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment; or

5 (c) any goods, being goods chargeable with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship or aircraft or, while in Northern Ireland, in any vehicle; or

(d) any goods are imported concealed in a container holding goods of a different description; or

10 (e) any imported goods are found, whether before or after delivery, not to correspond with the entry made thereof; or

(f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,

those goods shall, subject to subsection (2) below, be liable to forfeiture

15 **139 Provisions as to detention, seizure and condemnation of goods, etc**

(1) Anything 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.

141 Forfeiture of ships, etc used in connection with goods liable to forfeiture

20 Where anything has become liable to forfeiture under the customs and excise Acts—

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

(b) any other thing mixed, packed or found with the thing so liable,

shall also be liable to forfeiture.

152 Power of Commissioners to mitigate penalties, etc

The Commissioners may, as they see fit—

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

Excise Goods (Holding, Movement and Duty Point) Regulations 2010

Regulation 88 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 provides that:

"If in relation to any excise goods that are liable to duty that has not been paid there is-

- 5 (a) A contravention of any provision of these Regulations, or
(b) a contravention of any condition or restrictions imposed by or under these regulations,

Those goods shall be liable for forfeiture."

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Finance Act 1994

Requirement for review of decision under section 152(b) of the Management Act etc Section 14(2)

7 Any person who is—

- 15 (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,
(b) a person in relation to whom, or on whose application, such a decision has been made, or
(c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,
- 20

may by notice in writing to the Commissioners require them to review that decision.

Review Procedure – Section 15(1)

(1) Where the Commissioners are required in accordance with [section 14 or 14A] to review any decision, it shall be their duty to do so and they may, on that review, either—

25

- (a) confirm the decision; or
(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate

30 Appeals to a Tribunal – Section 16 (4) to (6)

(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the

Commissioners or other person making that 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;
- 5 (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, [a review or further review as appropriate] of the original decision; and
- (c) in the case of a decision which has already been acted on or taken effect
10 and cannot be remedied by [a review or further review as appropriate], 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 the unreasonableness do not occur when comparable circumstances arise in future.
- 15 (5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.
- (6) On an appeal under this section the burden of proof as to—
 - 20 (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,
shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.

The evidence

7. SC Inter Impex was not represented at the hearing. We did not therefore have the benefit of hearing oral evidence of the driver of the cab and trailer or a director of SC
25 Inter Impex. SC Inter Impex sent to this Tribunal a letter which was received on 9 December, 2015 indicating that no witnesses will be required as the case can be determined by reference to the documents which were annexed to that letter.

8. The documents are listed as follows in the letter:

- 30 (1) "Transport order (loading order) received from the carrier LKW WALTER.
- (2) The detailed control by French customs.
- (3) The email conversations between the sending company Inter-Impex and the carrier LKW WALTER in which we informed the latter the the goods loaded corresponds completely to the CMR documentation.
- 35 (4) Our driver's declaration, Meacsu Mihai who, unfortunately does not know English, except for a few words, completely irrelevant in an investigation.
- (5) The decision of the British custom officers to detain and seize the vehicle,

(6) The decision to reject our appeal to return the unit and trailer."

9. The letter then sets out the facts on which SC Inter-Impex base their claim that the fee imposed is excessive or unfair.

5 "The driver was not aware of the existence of the goods and he could not even detect them because the goods were well hidden in non-transparent film, even though he witnessed the loading of the pallets onto the vehicle.

10 After being informed that the French customs unpacked the pallets and that other goods have been found, the driver immediately informed SC Inter-Impex and the carrier LKW WALTER of the situation, waiting new orders, but unfortunately LKW WALTER preferred to continue the transport. It is very clear that the driver did not hide anything, but on the contrary he presented the goods at the British customs with the unpacked bales and residues of tobacco on the floor. This is what the British customs indicates in their investigation.

15 The continuation of the transport was decided, made and understood by LKW WALTER from the time the French customs detected this violation."

10. The letter goes on and states:

20 (1) SC Inter-Impex was not involved and the driver was not involved in the violation.

(2) Neither SC Inter-Impex nor the driver was able to take the decision to return the goods to the British consignor Solstor Ltd because that was a decision for LKW WALTER who was related Solstor Ltd.

25 (3) SC Inter-Impex claims it was not guilty of any violation of the law and did everything in its power to inform the persons responsible.

30 11. Mr Raymond Brenton the reviewing officer gave evidence on oath. He adopted the content of his witness statement made on 9 September 2015. He identified that the date is shown on the witness statement to be 9 June 2015 which, is incorrect. He is based in Plymouth. There are a number of exhibits attached to the witness statement to which Mr Brenton referred during his review. They include the Review Decision letter dated 21 July 2015 and the letters and emails from SC Inter-Impex or their appointed representatives sections of which are recited in Mr Brenton's review decision. In completing his review Mr Brenton had access to Customs files.

35 12. Mr Brenton explained to the Tribunal that the quantity of raw tobacco found in the trailer of SC Inter-Impex was 2,940 Kilos. He considered therefore this tobacco was for commercial use. It was concealed in small packages of hay/straw (20 inches by 9 inches by 14 inches). The French customs had been observing a tobacco smuggling operation for some time. When the cab and trailer arrived at Dunkerque the French customs inspected some of the bales but did not open them nor inform the driver that
40 the bales contained tobacco. Instead they informed the British customs that the trailer contained packages of raw tobacco. The Bulletin de Controle issued by French

Customs shows no indication that the vehicle was carrying excise goods or that duty had been paid.

13. As a result of the tip-off from French customs and not as a result of the voluntary action of the driver, the SC Inter-Impex cab and trailer were stopped at Dover. The driver was questioned and the trailer inspected. The officer noted that the driver had very little English but when questioned with the assistance of the form CMR the driver made the following statements which are recorded in The Review Decision stated:

- (1) *He had three small tubs of rolling tobacco for personal use*
- (2) *The load was not sealed and he had seen it loaded*
- (3) *SC Inter Impex was his employer- as shown in Box 16 on the CMR*
- (4) *He had loaded the van in Belgium.*
- (5) *The load was to be delivered to Gateshead- as shown in Box 2.*
- (6) *Box 2 read "Olsen BA Equestrian, IG Storage Place, Brewery Lane, GB NE10 0EY Gateshead)*
- (7) *This was the first time the driver had been required to pick up from and deliver to these addresses.*
- (8) *After the UK customs officer informed the driver of the restrictions on bringing substances into the UK the driver said he understood the restrictions. He had no such goods.*

14. As the prescribed methods of import for excise goods had not been followed, the officer seized the goods under section 139 Customs & Excise Management Act 1979 ("CEMA) and the goods were liable to forfeiture under section 49(1)(a)(i) and Section 170B CEMA. The cab and trailer were seized under section 139 CEMA and were liable to forfeiture under section 141(1)(a) CEMA because they were used for the carriage of goods liable to forfeiture.

15. The driver was given a Seizure Notice and Notice 12A which sets out appeal rights to the Magistrates Court. An appeal notice must be sent to Border Force within 30 days. As no appeal notice was received the goods, the cab and trailer were condemned as forfeit under paragraph 5 of Schedule 3 of CEMA and SC Inter-Impex was notified of the deemed forfeiture under Para 3 of Schedule 5 to CEMA.

16. Correspondence ensued between Border Force and SC Inter-Impex through an agent Wendt & Co. In a letter of 23 March 2015 Wendt & Co asked for restoration of cab and trailer and described the goods imported as "*a consignment of gardening equipment*", from an address in Belgium to Gateshead, in the UK. Wendt & Co confirmed that "*Our clients had no knowledge that the tobacco had been loaded on the loading area of the trailer*".

17. In a letter of 24th March the consignment is described by Wendt as:

"24 pallets of hay/straw (declared as gardening equipment)"

18. In an email of 17 April Wendt &Co state that:

"The driver is not permitted to open any packages and examine the contents. The driver had no reason to suspect any wrong doing or that anything other than a genuine consignment of gardening equipment was being loaded on the trailer..."

5 19. The Border force wrote to Wendt on 17 April and included the following statement:

"To enable us to consider your request [for restoration] using all the available facts, please provide the following:

10 (1) *A copy of the terms and conditions of your client's contract with the driver.*

(2) *Copies of employment references with previous employers.*

(3) *Details of your client's interview with the driver before your client employed him,*

15 (4) *Copies of any instructions or written procedures that your client issues to drivers or other staff, including any steps to be taken to prevent smuggling,*

(5) *Details of how your client obtained the contract to carry the goods.*

(6) *The checks that your client made of the consignor.*

20 (7) *The arrangements to collect the goods from the consignor and load them onto your client's vehicle.*

(8) *Details of any physical checks made of the load and the application of any seals.*

(9) *The checks you made of the consignee.*

(10) *The arrangements to deliver the goods to the consignee.*

25 (11) *Details of any other measures your client takes to prevent vehicles being used for smuggling.*

If we do not receive sufficient information we may be unable to consider your client's restoration request for the vehicle.

20. Wendt replied on 27th April by email.

30 (4) *Drivers are strictly instructed to ensure that the cargo loaded corresponds with the goods loaded and manifested in the documentation...Drivers are instructed to report any suspicion of a smuggling attempt.*

35 (11) *Driver (sic) are instructed to check during loading the consignments loaded to their trailers best possible and to report and (sic) suspicion of smuggling immediately...*

*On this occasion the driver was present during loading and asked the loading staff what was contained in the packages and was informed that the contents were **agricultural products.**"*

5 21. On 14th May the officer made an offer to restore the cab and trailer on payment of a fee of £23,475 based upon the trade value of the cab and trailer.

22. On 15th June SC Inter-Impex asked for a review of that decision to impose a fee and included the order for consignment with LK Walter International Transportorganisation AG. In that order the consignment details show;

"Gardening Equipment- 21.134Kg" .

10 23. Mr Brenton's Review Decision recites all of the letters and emails referred to above and sets out he policy on restoration.

Policy on Restoration

15 24. In his review letter Mr Brenton sets out a summary of the Border Force policy on restoration of commercial vehicles used for smuggling. The policy is intended to tackle cross border smuggling and disrupt the flow of goods to the illicit market in excise goods. "Each case is considered carefully on its individual merits so as to decide whether exceptions should be made and any evidence of hardship is always considered."

20 25. "A vehicle adapted for the purposes of smuggling will not normally be restored. Otherwise the policy depends on who is responsible for the smuggling attempt:

A. Neither the operator nor the driver is responsible; or

B. The driver, but not the operator is responsible, or

C. The operator is responsible.

25 "If the operator provides evidence satisfying Border Force that neither the operator nor the driver were responsible for or complicit for the smuggling attempt then:

30 (1) If the operator also provides evidence satisfying Border Force that both the operator and the driver carried out basic reasonable checks (including confirming with the CMR Convention) to confirm the legitimacy of the load and to detect any illicit load, the vehicle will normally be restored free of charge

(2) Otherwise,

(a) **On the first occasion the vehicle will normally be restored for 20% of the revenue involved in the smuggling attempt (or 100% of the trade value of the vehicle if lower).**

35 (b) On a second or subsequent occasion (within 6 months) the vehicle will not be restored. "

Application of the Policy

26. Mr Brenton applied the policy to the evidence provided by SC Inter–Impex. He concluded that Para A applied as neither the operator nor the driver is responsible or complicit in the smuggling attempt. To consider whether the fee should be imposed
5 Mr Brenton looked for evidence that:

" the operator and driver carried out reasonable checks including conforming with the CMR Convention to confirm the legitimacy of the load and to detect any illicit load enabling the vehicle to be restored free of charge under Paragraph A."

Reasonable Checks

10 Mr Brenton concluded that SC Inter-Impex and the driver had not complied with either (1) the procedures for movement of excise goods from another EU country to the UK in accordance with The Convention on the Contract for the International Carriage of Goods by Road (Convention Maritimes Routiers) 1978 ("CMR"), or (2) the procedures in The Carriage of Goods by Road Act 1965.

15 As set out above Article 8(1) requires that:

"On taking over the goods, the carrier shall check:

- (a) the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and
- (b) the apparent condition of the goods and their packaging".

20 27. Article 8 (2) also requires the carrier to make note of any reservations about the goods.

28. Also as set out above, The Carriage of Goods by Road Act 1965 requires the haulier to carry out basic checks about among other things, the identity and address of the sender, the consignee, the description in common use of the goods, the liability of
25 the goods to customs duty.

29. Mr Brenton concluded that the description of the goods as "gardening equipment" did not coincide with the physical appearance of the goods as shown in photos he had seen. He recites that upon first viewing the goods in the trailer the customs officer at Dover saw loose tobacco on the floor and a single open package. This should have put
30 the driver on notice.

30. Mr Brenton also concluded that basic checks had not been made of consignee and the consignees address. The operator had seemingly absolved itself of responsibility. In consequence not all reasonable steps had been taken by the haulier or the driver.

In evidence to the Tribunal Mr Brenton advised the Tribunal that he had made some
35 cursory enquiries about the identity and place of residence of the consignee. He discovered very readily that the consignee exists but not at the address specified in the consignment note. That address is the address of a self-storage facility not a business

operating a stable. The sender was also a relatively small enterprise sending such a large consignment was improbable.

31. Mr Brenton also gave evidence that he had examined photographs of the pallets and they show the goods are packed in transparent film. Some of the packages are smooth and others crinkly. The packaging crinkles with the tobacco but all the packages contained tobacco and hay. There were 40 packages on each pallet. There were 26 pallets. The packaging one would expect for gardening equipment would be very different from the vacuum sealed bales of hay.

Size of the fee

32. As the value of the tobacco if turned into hand rolling tobacco by being chopped was way in excess of the trade value of the cab and trailer, the appropriate fee would be the trade value of the cab and trailer. Trade value is lower than retail value. Mr Brenton had referred to Glass' Trade Guide an extract of which was available to the Tribunal to determine the figure of £23,475.00. Hardship can be taken into account but it must be exceptional hardship. The normal extra cost of acquiring another vehicle because of the seizure is not exceptional hardship.

SC Inter-Impex Representations

33. In the Notice of Appeal received by the Tribunal in August 2015 SC Inter-Impex state :

(1) They had taken all reasonable steps to comply with their obligations to identify the goods but because the goods were packaged in non-transparent hermetically sealed film and they were not permitted to open the packages to verify the content. They could not have known what was within the trailer on arrival at Dover.

(2) They also point to the clean bill of health given to them by French Customs who failed to identify the goods and they are professionals.

(3) However in the final section of the Appeal Notice headed "In Conclusion", there is a statement which contradicts the statement above at (2). It states that only customs have the right to open the packages which is what happened in France. The driver then telephoned LK Walter to say he was under examination and that there was an amount of tobacco in the trailer, whereas the documents indicate something else. LK Walter is stated to have ordered the driver to continue to the UK. The French Customs are stated not to have taken any measures but left some bales unwrapped after checking. We cannot know if the customs duty was paid or not. The allegation that they found tobacco in the trailer after the French examination confirms the driver and thus the carrier's honesty and correctness.

34. As mentioned in Paragraph 9 above in their letter to the Tribunal which arrived in December SC Inter Impex said that:

(1) "The driver was not aware of the existence of the goods and he could not even detect them because the goods were well hidden in non-transparent film, even though he witnessed the loading of the pallets onto the vehicle.

5 (2) After being informed that the French customs unpacked the pallets and that other goods have been found, the driver immediately informed SC Inter-Impex and the carrier LKW WALTER of the situation, waiting new orders, but unfortunately LKW WALTER preferred to continue the transport. It is very clear that the driver did not hide anything, but on the
10 contrary he presented the goods at the British customs with the unpacked bales and residues of tobacco on the floor. This is what the British customs indicates in their investigation.

(3) The continuation of the transport was decided, made and understood by LKW WALTER from the time the French customs detected this
15 violation."

(4) SC Inter-Impex was not involved and the driver was not involved in the violation.

(5) Neither SC Inter-Impex nor the driver was able to take the decision to return the goods to the British consignor Solstor Ltd because that was a
20 decision for LKW WALTER who was related Solstor Ltd.

(6) SC Inter-Impex claims it was not guilty of any violation of the law and did everything in its power to inform the persons responsible.

Findings of Fact

25 35. We accept that nether the driver nor SC Inter Impex was complicit in the attempt to smuggle.

36. We do not accept that the driver took reasonable steps to verify the goods being transported corresponded with the goods described in the consignment note. Gardening equipment is highly unlikely to be transported packed in bales of hay
30 which are then sealed in film. The packaging should have raised suspicion which should have been recorded in the Consignment Note.

37. We do not accept the packaging was non transparent as that is inconsistent with the photos seen by Mr Brenton.

38. We do not accept that the driver was unaware of the content of the bales by the
35 time he reached Dover in any event because at Dover the Customs officer who first inspected the trailer reported that there was tobacco on the floor of the trailer and some bales were open. The driver also rang LKW Walter for instructions to proceed in light of the discovery of tobacco.

39. The driver did not volunteer the goods at Customs. He was stopped by a British customs officer after a tip-off from the French customs. In interview he said he had no goods to declare other than the three small tubs of tobacco for personal use.

5 40. We do not accept that basic checks as to identity had been followed either of the sender or the consignee of the goods.

41. In view of the above it would not accord with Border Force policy to allow the restoration of the cab and trailer other than on payment of a fee.

42. The policy requires a payment of a fee equal to the lower of 20% of the value of the goods imported or the trade value of the vehicle.

10 43. We accept Glass Trade Guide shows:

(1) 13.6m tri-axle curtainside trailer (2006) has a value of £5,675.

(2) Mercedes Benz tractor unit Mega Space 2007 has a trade value of £17,800

Giving a total trade value of the cab and trailer would be £23, 475.

15 ***Jurisdiction of this Tribunal***

44. As mentioned above, the jurisdiction of this Tribunal in an appeal against the decision of Review officer is confined by section 16 Finance Act 1994. This Tribunal may only set aside the decision of Border force to restore and impose a fee if no reasonable officer could have arrived at the decision.

20 "(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it,

25 45. In circumstances where goods are seized and, because there has been no appeal against seizure has been made, the vehicle becomes liable to forfeiture Border Force may restore the goods on conditions they see fit. Border Force have established a policy of restoration which is set out above and in cases where there has been failure to make reasonable checks the vehicle can be restored upon payment of a fee.

30 46. As discussed above the fee assessed by the officer and confirmed by the Review officer are in accordance with the policy. We are therefore satisfied that the decision of the Review Officer is a decision which a reasonable officer could have come to.

47. We dismiss this appeal.

35 48. 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.

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**HEATHER GETHING
TRIBUNAL JUDGE**

RELEASE DATE: 7 MARCH 2016

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