Neutral Citation: [2023] UKFTT 00647 (TC)

Case Number: TC08868

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC//2022/04122

Importation of herbal cannabis – seizure of vehicle – whether to restore - no

Heard on: 13 February 2023
Judgment date: 11 July 2023

Before

TRIBUNAL JUDGE IAN HYDE
IAN PERRY

Between

PAUL KERBEY

Appellant

and

DIRECTOR OF BORDER FORCE

Respondent

Representation:

For the Appellant: the appellant appeared in person

For the Respondent: Daisy Kell-Jones, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The form of the hearing was V (video) on the Tribunal video hearing system. A face-to-face hearing was not held because it was considered that a remote hearing was appropriate. The documents to which we were referred are the hearing bundle of 128 pages, an authorities bundle of 52 pages and the Border Force's statement of case being 14 pages.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. This appeal concerns whether the Border Force should restore to the Appellant his lorry previously seized upon the discovery by Border Force officers of a quantity of cannabis in the lorry on arrival at the Portsmouth ferry terminal.

4. The Appendix to this decision includes the relevant provisions in The Customs and Excise Management Act 1979 ("CEMA") and the Finance Act 1994 ("FA 94").

THE FACTS

5. In addition to the bundles, oral witness evidence was given by the Appellant. A witness statement and oral evidence was given by Mr Raymond Brenton, the Border Force review officer who issued the review letter of 20 October 2020. Oral evidence also given by Ms Megan Koolonavich, a Border Force officer who was involved in the relevant seizure.

6. Finally, two witness statements from Ms Joanne Kemp, a fingerprint enhancement technician employed by Forensic Access Limited, were included in the hearing bundles.

7. We find the witnesses to be credible and reliable although their views on issues differed. We find the facts in this appeal as set out below.

The Appellant's business

8. The Appellant at the relevant time lived in Spain and ran a business transporting customers' goods between the United Kingdom and Spain, making on average one trip a month in his lorry, an Iveco Eurocargo 120E22 Dropwell, registration number NX60 WBL with a carrying capacity being some 68 cubic metres ("the Vehicle"). The goods mainly but not exclusively consisted of household items being transported for private individuals and typically there would be goods from multiple customers on the same trip.

9. The Appellant, having lived in Spain for some 20 years, had a contact network and would advertise on social media that he was making a trip to the UK. Anyone who needed anything take to the UK would get in touch and a price would be agreed. Many of the customers were people not previously known to the Appellant. The Appellant did not have terms and conditions for any delivery, nor did he have any standard checks or due diligence processes that he applied to the identity of the customer. The Appellant would not carry out any checks on the destination of the goods, save to ensure he could obtain access to the address with the Vehicle.

10. The goods to be delivered were often but not always packed by the customer and were either delivered to the Appellant's warehouse or collected by the Appellant. The Appellant did not inspect the goods. The Appellant was very flexible as to taking loads. As the Appellant said in evidence, if a new customer approached him an hour before he set off then, if he had space and could agree terms, he would take the goods.

The seizure

11. The load on the trip to the UK that was seized on 12 June 2020 consisted of deliveries including boxes and furniture for 18 separate customers going to a range of destinations across the UK.

12. Prior to the trip, the Appellant was contacted by WhatsApp message by a Mr Tanner, a man he had never met. The Appellant had been recommended to Mr Tanner by a former customer. Mr Tanner asked if he would take a delivery to Venue Cymru, The Promenade, Penryhn Gres, Llandudno. The price was agreed and 12 boxes labelled 'theatre costumes' delivered to the Appellant before departure ("the Costume Boxes"). The boxes were already sealed when delivered to the Appellant and he did not carry out any inspection or question Mr Tanner about their contents. The 12 boxes represented in volume terms some 2% of the Vehicle's capacity.

13. On the morning of 12 June 2020, the Appellant arrived at Portsmouth ferry terminal in the Vehicle on a crossing from Santander, Spain. A Mr Leslie Walton accompanied him as a passenger. Border Force officers stopped and inspected the Vehicle and its load. Upon examination the Costume Boxes were found to contain 84.849 Kilogrammes of material which, upon later testing, was determined to be herbal cannabis.

14. At some point during the day the Appellant and Mr Walton were arrested and cautioned on suspicion of the importation of a controlled drug and taken to Portsmouth police station.

15. Ms Koolonavich started a night shift at Portsmouth ferry terminal at 18:00 or 18.30 and was told by a Higher Officer to seize the Vehicle under s.139 CEMA as being liable to forfeiture under s.141 CEMA. Ms Koolonavich was aware that herbal cannabis had been found and she saw multiple evidence bags being used. Ms Koolonavich did not question the decision and it was not a surprise to her.

16. Ms Koolonavich completed forms BOR156 (seizure information notice), BOR162 (warning letter about seized goods) and BOR78 (vehicle condition). According to her notebook she completed these forms at 19:19 on 12 June 2020. Upon being questioned by the Appellant in the hearing, Ms Koolonavich said that as she could not at the time find the Appellant to countersign the forms, she returned the forms to the paper file.

17. The Appellant's signatures on BOR156 and BOR162 were dated 14 June 2020 but the Appellant claimed that he did not sign the forms as he was in Portsmouth police station. The Appellant did not suggest his signature was forged but put it to Ms Koolonavich that it was odd. Ms Koolonavich agreed it was odd.

18. The Appellant argued that he was never issued with Notice 12A ('What you can do if things are seized by H. M. Revenue & Customs') which explains a taxpayer's right to challenge the legality of the seizure in a Magistrates Court by sending a notice of claim to the Border Force within one month. Form BOR156 provides for 'yes' or 'no' to be circled if Notice 12A had been issued but this had not been done. Ms Koolonavich could not recall and her notebook makes no mention of Notice 12A.

Subsequent correspondence

19. On 6 July 2020 the Appellant emailed the NCA requesting restoration of the Vehicle. The Appellant forwarded an email from Mr Sam Pearce, an officer in the NCA, in which he said "I am looking to restore this vehicle restored to Mr KERBEY".

20. On 6 and 8 July 2020 the Appellant emailed the Border Force National Post Seizure Unit requesting restoration and describing how his customers were obtained from social media.

21. On 14 July 2020 the Border Force wrote to the Appellant acknowledging the restoration request and requesting further information about how the Appellant was contracted to carry the goods, checks made on customers, arrangements for collection of goods, physical checks carried on loads, checks on consignee, arrangements for delivery and details of any other measures taken to prevent smuggling.

22. On 14 July 2020 the Appellant provided further information in response to the Border Force request, describing his business, the checks carried out on customers, the goods and the delivery destination.

23. On 15 July 2020 the Appellant provided further information including new checks he intended to carry out in the future.

24. On 20 July 2020 the Appellant provided customer testimonials.

25. On 28 July 2020 the Border Force wrote to the Appellant refusing restoration of the Vehicle and advising the Appellant of his right to request a review of the decision.

26. On 7 September 2020 the Appellant requested an internal review of the refusal to restore, arguing that there were exceptional circumstances including the restrictions imposed by the Covid pandemic limiting handling of goods, the lack of guidelines on movement of goods between Spain and the UK, the lack of any legal obligation to have written terms of carriage, the fact that the driver's window had been left open allowing birds to defecate in the cab and the battery being left to go flat.

27. On 7 September 2020 the Border Force wrote the Appellant inviting the Appellant to provide further information supporting the request, but none was provided.

28. On 20 October 2020 Mr Brenton on behalf of the Border Force wrote to the Appellant notifying him of the outcome of the internal review, upholding the decision of 28 July 2020.

29. On 27 October 2020 to 4 March 2021 the Appellant made a number of requests under the Freedom of Information Act 2000 relating to seizures of commercial vehicles by the Border Force and ultimately the duty of care to be exercised over an impounded vehicle. The data requests were refused on the basis of the excessive cost of collating the data which was not held centrally.

30. On 5 November 2020 the Appellant wrote to Border Force notifying them that he was appealing to the Tribunal.

31. On 11 November 2020 the Border Force wrote to the Appellant clarifying the Tribunal's lack of jurisdiction to consider the seizure of goods on a restoration appeal.

32. The Appellant appealed to the Tribunal.

The internal review and the Border Force policy on restoration

33. Mr Brenton is a Border Force review officer and conducted the review in accordance with s.14 and 15 of the Finance Act 1994, resulting in the letter to the Appellant of 28 July 2020. Mr Brenton had no prior knowledge of the matter and conducted the review entirely on the correspondence and other information provided to him, which included:

(1) A case summary from the NCA summarising the initial interception

(2) E mails dated between 6 and 20 July 2020 between the Border Force and the Appellant as summarised above and concerning the restoration

34. In conducting the review Mr Brenton applied the standing Border Force policy on restoration of vehicles ("the Restoration Policy"). Under the Restoration Policy restoration of vehicles may be considered where the total quantity of drugs involved does not exceed, in the

case of herbal cannabis and other Class B or C drugs, 2 kg. In those circumstances restoration might be considered on payment of a sum equal to 20% of the retail value of the vehicle, subject to a minimum of £100. Where vehicles have been adapted to conceal prohibited or restricted goods, an additional sum would be payable equal to the cost of removing the adaptation. Where the amount of drugs exceeded the stipulated amount, being 2kg in the case of herbal cannabis, restoration would normally be refused unless there exceptional circumstances where it is considered appropriate to offer restoration, for example where considerable assistance has been rendered in enabling further arrests.

35. Mr Brenton considered himself guided but not bound by the Restoration Policy. In applying the policy, Mr Brenton applied the civil standard of the burden of proof to his review to determine whether in his view on the balance of probabilities who was responsible for the smuggling activity.

36. Mr Brenton in his review considered all the circumstances including the points and arguments put forward in correspondence from the Appellant. Mr Brenton determined that the Appellant failed to make sufficient reasonable basic checks and so was reckless and proportionately culpable in the smuggling of the herbal cannabis. Further, the Appellant had not supplied any evidence to him to vary or withdraw the original decision. Mr Brenton applied the principles as set out in Restoration Policy, that is, there being in excess of 2 Kg of herbal cannabis found, the presumption must be not to restore unless there were exceptional circumstances. There were no exceptional circumstances and accordingly the Vehicle should not be restored.

37. Mr Brenton made his decision for the following reasons:

(1) He did not take into account the legality or correctness of the seizure itself on the basis that the Appellant's route to challenge the seizure was by sending a notice of claim to the Border Force within one month for the appeal to be heard by the Magistrates Court. The Appellant did not do so and there was no jurisdiction for the Border Force to consider the matter on an internal review or for the Tribunal to do so.

(2) The Appellant had minimal documentation relating to the consignments other than a list of where each consignment needed to be delivered.

(3) Notwithstanding being bound by the Convention for the International Carriage of Goods by Road ("the CMR Convention"), the Appellant could not produce the consignment note compliant with the CMR Convention.

(4) The Appellant felt under no obligation to check the identity of either the consignee or consignor.

(5) A simple internet check would have shown that the destination was a closed theatre which at the time was operating as a Covid field hospital. The Border Force had confirmed that the theatre was not expecting any costumes, did not produce their own shows and would not receive costumes this way.

(6) When the Costume Boxes were brought to the Appellant this would have been an opportunity to request a sample inspection.

(7) The Appellant had a cavalier attitude to how he conducted his business.

(8) If a vehicle is seized it is to be expected that there would be hardship but the Appellant was not suffering exceptional hardship.

The criminal prosecution and associated evidence

38. Following their arrest Border Force Criminal Investigation and National Crime Agency interviewed the Appellant and Mr Walton under caution. The Appellant was charged with importation of a controlled drug and prosecuted. The trial took place in Portsmouth Crown Court between 11 and 21 April 2022 and the Appellant was acquitted.

39. We assume that the trial covered the same factual grounds as this appeal but for reasons set out below the issues are different. Nevertheless, with the exception of the witness statements of Ms Kemp, we were not provided with any material from the trial.

40. Ms Kemp's evidence as a fingerprint identification specialist was used in the trial to identify the fingerprints on the Costume Boxes. In her witness statements Ms Kemp identifies the Appellant's fingerprints on the boxes and adhesive tape used to seal them. In particular Ms Kemp identified the Appellant's fingerprints both on the adhesive and the non-adhesive side of the tape. As regards the clear tape Ms Kemp accepted that it was impossible to tell from the photograph taken as part of the analysis whether the fingerprint was on the adhesive or non-adhesive side of the tape as the tape was transparent.

41. In this hearing Ms Kell-Jones submitted that the presence of the Appellant's fingerprints on the adhesive side of the yellow and black non-transparent tape showed he was involved in packing the boxes. The Appellant explained the fingerprints in general resulted from having to handle the boxes to load the Vehicle (something that needed to be done several times to work out how to pack the load and make the efficient use of the load space), unload when Border Force were inspecting the Vehicle and then move the boxes to the Border Force storage facility. Further, tape tended to come loose especially at the end of a strip in warm temperatures so the Appellant would have to reseal. If he pressed down on the adhesive side his fingerprints would be left there.

THE TRIBUNAL'S JURISDICTION

seizure

42. Under s.141(1) CEMA any vehicle used for the carriage of anything liable for forfeiture shall also be liable for forfeiture. The Border Force did so seize the Vehicle and the Appellant's recourse to challenge the legality of that seizure is by appealing to the Magistrates Court, paragraph 3 of Schedule 3 to CEMA.

43. A failure to challenge the legality of the seizure in the Magistrates Court means that, under paragraph 5 of Schedule 3 to CEMA, the seized goods are deemed to have been duly condemned as forfeited.

44. In the current appeal the Appellant did not appeal the forfeiture of the Vehicle. The Appellant argued that this was because he never received Notice 12A and in any event was in police custody and prison during this period without access to documents and so could do nothing. As noted above there is some doubt as to whether the Appellant was issued a Notice 12A but in our view we do not have jurisdiction on the point. That point was addressed in clear terms in *Gora v Customs and Excise Commissioners* [2003] EWCA Civ 525 by Pill LJ:

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

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

45. We must therefore treat the seizure as lawful. The circumstances of the seizure, including whether the appellant was served a Notice 12A and whether he had the opportunity to appeal, are irrelevant to this appeal.

Restoration

46. Section 152 CEMA gives the Respondents a power to restore things lawfully seized “subject to such conditions (if any) as they think proper”.

47. A decision under s.152 CEMA not to restore is an “ancillary matter” for the purposes of s.16(4) FA 1994 which limits the powers of the Tribunal on appeal to a consideration of whether “the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it”.

48. The Tribunal’s jurisdiction is therefore supervisory: the Tribunal can only review the decision if it is shown that the Border Force have acted in a way which no reasonable officer could have acted, if they have taken into account some irrelevant matter or have disregarded something to which they should have given weight (*Customs & Excise Commissioners v JH Corbitt (Numismatists) Ltd* [1981] AC 22 at 60 per Lord Lane).

49. The burden of proof in this appeal is on the Appellant to show on a balance of probabilities that in refusing restoration the Border Force have acted in a way which no reasonable officer could have acted, effectively Mr Brenton was so unreasonable in his review notification of 28 July 2020. In doing so we can take into account matters that were not before the decision maker.

THE APPELLANT’S ARGUMENTS

50. The Appellant has raised a number of arguments in correspondence and in the hearing as to why the Vehicle should be restored which are in summary:

(1) The Vehicle should not have been seized.

(2) Mr Pearce, NCA officer, wanted the Vehicle restored to the Appellant.

(3) The Appellant has cooperated fully.

(4) It was not proved that all of the 84Kg of seized material was herbal cannabis as only four boxes were tested.

(5) The Costume Boxes were not deliberately hidden at the front of the Vehicle.

(6) The Appellant was not involved in smuggling and would not have risked his work in the removal industry.

(7) There is no obligation on carriers to check the identity of customers or the destination of goods.

(8) There is no obligation on carriers to inspect goods and no guidance from the UK authorities as to what inspections to carry out.

(9) This importation happened during the height of Covid and everyone was being encouraged not to handle goods.

(10) There is no obligation to have written contracts with customers and the CMR Convention does not apply to the movement of household goods.

(11) The loss of the Vehicle caused the Appellant exceptional hardship.

(12) The Appellant was acquitted in the criminal trial.

(13) The Appellant as a small business is being penalised when large transport companies are not being stopped.

(14) There were a number of exceptional circumstances including the state of the Vehicle whilst being held.

DISCUSSION

51. As described above the Tribunal has to consider whether in refusing to restore the Vehicle, Mr Brenton acted in a way which no reasonable officer could have acted.

52. The Appellant did not challenge the Restoration Policy itself and we do not find the existence or application of it to the seizure of the Vehicle in this appeal to be unreasonable.

53. As the Restoration Policy is not in issue, the issue in this appeal is whether Mr Brenton in applying the policy acted unreasonably in determining that the Appellant failed to make sufficient reasonable basic checks and so was culpable in the smuggling of the herbal cannabis and, further, in refusing restoration.

54. We are not persuaded that Mr Brenton was so unreasonable. On the evidence before us we agree with Mr Brenton that the Appellant did not take reasonable steps to prevent smuggling and, applying the Restoration Policy, there were no exceptional circumstances justifying restoration.

55. In considering this issue we have taken all of the Appellant's arguments into account but looked at the matter in the round. Accordingly, each specific argument need not be decisive. Nevertheless, we have set out our observations on the main points raised by the Appellant.

The Vehicle should not have been seized

56. As we have already summarised, we are bound by the Appellant's failure to appeal the seizure, however that occurred, and must treat the Vehicle as validly seized for the purposes of this appeal.

An NCA officer suggested requested that the Vehicle should be restored to the Appellant

57. In our view whether the Vehicle should or should not be restored was not a matter for the relevant NCA officer and Mr Brenton was entitled to disregard it.

The Appellant has cooperated fully

58. The Restoration Policy provides that where quantity of goods exceeds the stipulated amounts, in this instance, 2Kg of herbal cannabis, restoration would be considered where there were exceptional circumstances. The policy provides as an example "where considerable assistance has been rendered in enabling further arrests etc".

59. Mr Brenton's decision did not include any consideration of the level of cooperation provided by the Appellant but we do not consider there is any evidence of the considerable assistance envisaged in the Restoration Policy.

Inadequate sampling of material in the Costume Boxes

60. The Appellant argued that samples from only four boxes were taken and so it was not proved that all of the 84Kg of seized material was herbal cannabis.

61. There was no evidence before either Mr Brenton or this Tribunal as to the true contents of the Costume Boxes. However, we do not find the sampling of one third of the Costume Boxes to be unreasonable. In any event, even if the other 8 boxes did not contain herbal cannabis, four still did. On the assumption the sampling was true of the contents of all four tested boxes and each box had the same amount of material, the Appellant would still have imported some 28Kg of herbal cannabis, significantly in excess of the Restoration Policy's 2Kg threshold for the presumption of non-restoration. We are aware there are assumptions in this analysis but we do not find it credible that sampling inaccuracy makes any difference to the position.

The Costume Boxes were not deliberately hidden at the front of the Vehicle

62. We do not consider the position of the Costume Boxes to be a significant issue either way.

The Appellant was not involved in smuggling and would not have risked his work in the removal industry

63. This argument is merely an assertion by the Appellant and we do not see this argument as adding anything to the argument that Mr Brenton was unreasonable.

There is no obligation on carriers to carry out checks

64. The Appellant made a number of points directed to whether he had a duty to carry out checks, specifically:

(1) There is no obligation on carriers to carry out checks on customers.

(2) There is no obligation on carriers to inspect goods.

(3) This importation happened during the height of Covid and everyone was being encouraged not to handle goods.

(4) There is no guidance from the UK authorities as to what inspections to carry out.

65. In our view the level of checks to be carried out, whether on the identities of parties and on the goods being carried, must depend on the facts but we do not accept the Appellant's position that no inspection or check needs to be done. The lack of guidance on the specific checks to be done does not absolve the Appellant from having to carry out reasonable checks (*Jacek Szymanski t/a Everpol Director of Border Force* [2019] UKUT 0343(TCC) at [55]).

66. The need for checks must be more important whre, as was the case here, Mr Tanner was a new customer who had simply contacted the Appellant by WhatsApp (*Jacek Szymanski* at [82]).

67. Covid concerns may have restricted the ability to inspect loads but we do not accept that justified no inspection of the goods being transported. We note that the Appellant handled the Costume Boxes anyway in loading the Vehicle and in our view the Appellant could have asked Mr Taner to open them.

The CMR Convention does not apply to the movement of household goods

68. The point was not argued before us with any thoroughness, but we accept that the CMR Convention was introduced to standardise the terms and conditions for the international carriage of goods by road (*Jacek Szymanski* at [53] –[58]).

69. A point made by the Appellant in this appeal was that the Convention did not apply to the movement of household goods. We note that the Appellant as told that the Costume Boxes contained theatre costumes which, without having had any detailed submissions on the point, appear to us not to be household goods. In any event, noting the comments of the Upper Tribunal in *Jacek Szymanski,* we take the CMR Convention as an international standard for terms and conditions which is not the same as the standard that may be required by hauliers to prevent smuggling. Nevertheless, we accept HMRC are entitled to take the absence of CMR complaint terms of carriage as indicative of failure by the Appellant to take reasonable care.

The loss of the Vehicle caused the Appellant exceptional hardship

70. Mr Brenton rejected the Appellant's argument that his hardship was exceptional. The test under the Restoration Policy. Mr Brenton rejected the argument on the basis that hardship was to be expected in the circumstances and the Appellant could have bought a cheaper vehicle.

71. We do not find Mr Brenton's approach to hardship to be unreasonable.

The Appellant was acquitted in the criminal trial

72. We have limited information on the criminal trial but note it occurred after Mr Brenton's decision and so was a future event rather than extant evidence not before Mr Brenton. In any event, the standard of proof on criminal matters is beyond reasonable doubt, as opposed to the balance of probabilities which applies in this civil matter.

73. We therefore do not take the acquittal to be a relevant factor.

DECISION

74. For the reasons set out above, we do not find that HMRC and specifically Mr Brenton acted unreasonably in refusing restore the Vehicle.

75. The appeal is therefore dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

76. 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.

IAN HYDE
TRIBUNAL JUDGE

Release date: 11 JULY 2023

APPENDIX

RELEVANT LEGISLATION

1. Customs and Excise Management Act 1979 ("CEMA") provides insofar as relevant:

> "**139 Provisions as to detention, seizure and condemnation of goods, etc.**
>
> (1) 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…
>
> **141 Forfeiture of ships, etc. used in connection with goods liable to forfeiture.**
>
> (1) Without prejudice to any other provision of the Customs and Excise Acts 1979, where any thing has become liable to forfeiture under the customs and excise Acts—
>
> (a) any ... 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 became so liable; and
>
> (b) any other thing mixed, packed or found with the thing so liable,
>
> shall also be liable to forfeiture.
>
> …
>
> **152 Powers of Commissioners to mitigate penalties, etc.**
>
> The Commissioners may, as they see fit—
>
> (a) compound an offence (whether or not proceedings have been instituted in respect of it) and compound proceedings or for the condemnation of any thing as being forfeited under the customs and excise Acts; or
>
> (b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts; or
>
> (c) after judgment, mitigate or remit any pecuniary penalty imposed under those Acts; or
>
> (d) order any person who has been imprisoned to be discharged before the expiration of his term of imprisonment, being a person imprisoned for any offence under those Acts or in respect of the non-payment of a penalty or other sum adjudged to be paid or awarded in relation to such an offence or in respect of the default of a sufficient distress to satisfy such a sum;
>
> but paragraph (a) above shall not apply to proceedings on indictment in Scotland.
>
> …
>
> **170 Penalty for fraudulent evasion of duty, etc.**
>
> (1) Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person—
>
> (a) knowingly acquires possession of any of the following goods, that is to say—
>
> (i) goods which have been unlawfully removed from a warehouse or Queen's warehouse;

(ii) goods which are chargeable with a duty which has not been paid;

(iii) goods with respect to the importation or exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment; or

(b) is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods,

and does so with intent to defraud Her Majesty of any duty payable on the goods or to evade any such prohibition or restriction with respect to the goods he shall be guilty of an offence under this section and may be detained.

(2) Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion—

(a) of any duty chargeable on the goods;

(b) of any prohibition or restriction for the time being in force with respect to the goods under or by virtue of any enactment; or

(c) of any provision of the Customs and Excise Acts 1979, or Part 1 or section 40A or 40B of the Taxation (Cross-border Trade) Act 2018, applicable to the goods,

he shall be guilty of an offence under this section and may be detained.

…

Schedule 3

Provisions Relating to Forfeiture

Notice of seizure

1(1) The Commissioners shall, except as provided in sub-paragraph (2) below, give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to their knowledge was at the time of the seizure the owner or one of the owners thereof.

(2) Notice need not be given under this paragraph if the seizure was made in the presence of—

(a) the person whose offence or suspected offence occasioned the seizure; or

(b) the owner or any of the owners of the thing seized or any servant or agent of his; or

(ba) a person who has (or appears to have) possession or control of the thing being seized; or

(c) in the case of any thing seized on or from any ship or aircraft, the master or commander, or

(d) in the case of any thing seized on or from a vehicle, the driver of the vehicle

…

Notice of claim

3 Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the

seizure, give notice of his claim in writing to the Commissioners at any office of customs and excise.

…

Condemnation

5 If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited."

2. The Finance Act 1994 provides insofar as relevant:

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

(1) This section applies to the following decisions by HMRC, not being decisions under this section or section 15 below, that is to say—

(a) any decision under section 152(b) of the Management Act as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;

(b) any relevant decision which is linked by its subject matter to such a decision under section 152(b) of the Management Act.

(2) Any person who is—

(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,

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

(2A) But in the case of a relevant decision that falls within subsection (1)(b), a person may require HMRC to review the decision under this section only if HMRC are also required to review the decision within subsection (1)(a) to which it is linked.

(3) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.

(4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—

(a) requests such a notification;

(b) has not previously been given written notification of that decision; and

(c) if given such a notification, will be entitled to require a review of the decision under this section.

(5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—

(a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and

(b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

15 Review procedure

(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—

(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.

(2) Where—

(a) it is the duty of the Commissioners in pursuance of a requirement by any person under section 14 or 14A above to review any decision; and

(b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to that person of their determination on the review,

they shall be assumed for the purposes of section 14 or 14A to have confirmed the decision.

(3) The Commissioners shall not by virtue of any requirement under this Chapter to review a decision have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

16 Appeals to a tribunal

(1) An appeal against a decision on a review under section 15 (not including a deemed confirmation under section 15(2)) may be made to an appeal tribunal within the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates.

…

(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;

(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 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.

…

(8) Subject to subsection (9) below references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 13A(2)(a) to (h) above."