TC02004

Appeal number TC/2011/00122

Excise Duty – Seizure of forfeit goods (prohibited substances) – Non-restoration of motor vehicle – Reasonableness of decision – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Mrs PAULA OMRAN **Appellant**

- and -

UNITED KINGDOM BORDER AGENCY **Respondent**

TRIBUNAL: JUDGE R J MANUELL

Sitting in public at 45 Bedford Square, London WC1B 3DN on 9 March 2012

No appearance for the Appellant

Mr J Loades, Counsel, for the Respondent

DECISION

1. The Appellant is a British Citizen resident in Spain. The Appellant appealed against the Respondent's decision contained in a letter dated 22 November 2010 which notified the Appellant that the Respondent would not restore to her a private motor car seized because it had been used for the carriage of goods liable to forfeiture. The motor car, a Mercedes C200 registered in Spain with the registration number 8041BJN, was seized at Dover Eastern Docks on 23 July 2010, while the Appellant and her husband were in the motor car waiting to enter the United Kingdom. The goods found in the motor car liable to forfeiture were 2.5kg of herbal cannabis, a prohibited substance: see Misuse of Drugs Act 1971, section 3(1).

2. The Appellant was a passenger in the motor car which was being driven by the Appellant's husband. The Appellant failed to pursue an appeal against the seizure and the motor car was thus deemed forfeit to the Crown by the passage of time and under paragraph 5 of schedule 3 of the Customs and Excise Management Act 1979.

3. By virtue of section 14(2) of the Finance Act 1994, any 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 the section applies, may require the Respondent to review the relevant decision. Section 16(4) of the same act provides that

"(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 Respondent] 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 case to have effect from such time as the tribunal may direct;

(b) to require [the Respondent] to conduct, in accordance with the direction of the tribunal, a further review 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 further review, to declare the decision to have been unreasonable and to give directions to [the Respondent] as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in the future."

Section 16(6) of the same act provides that (apart from specified matters which are not in dispute in this appeal) it shall be for the Appellant to show that the grounds on which the appeal is brought have been established.

4. When the appeal was called on for hearing there was no appearance by or on behalf of the Appellant. The tribunal satisfied itself from the file that proper notice of the time, date and place of the appeal hearing had been given to the Appellant at the address for service last nominated by her. As that address was in Spain, the tribunal's clerk was unable to make enquiries by telephone as the tribunal telephones have no international dialling facility. The tribunal file showed that the Appellant had been dilatory in the pursuit of her appeal. She had been recently been subject to an "unless" order, with which she had complied late in the day, indicating that she wished to continue the appeal. Nevertheless, the tribunal noted that no new documents had been filed by the Appellant, there had been no application for an adjournment or any other communication from her. Given the history of the appeal, the tribunal decided that it was in accordance with the tribunal's overriding objective and the interests of justice to proceed with the appeal hearing in the Appellant's absence, applying paragraphs 2 and 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (as amended).

5. There had been correspondence between the Appellant and the Respondent, full copies of which were included in the Respondent's bundle. That correspondence indicated the Appellant's case. In summary, the Appellant contended that the motor car was her personal property, although she was unable to produce the Spanish equivalent of the V5 log book as evidence of her title. She maintained that the only such document was the bill of sale dated 15 January 2010. This document, issued by Auto Viva SL in Spain, named her as the purchaser and showed the (second hand) sale price as €9,000.

6. In her letter to the Respondent dated 13 December 2010, the Appellant maintained that she was unaware of the cannabis found in the motor car at Dover Eastern Docks until just before the motor car was inspected. She said at that point her husband told her to say that it had been given to him in France to bring over. After taking legal advice, the Appellant had said "no comment" when interviewed with a view to prosecution. She explained that the absence of the Spanish registration document was accordance with procedure which was followed in Spain where a previous owner had not paid the tax due. This was all about to be dealt with. Her husband had smoked cannabis for 20 years and grew his own cannabis in Spain, but (she said) that did not mean she would have known that he was bringing cannabis with him to the United Kingdom. Her husband had only been driving the car because it was her turn to rest. The refusal to restore the car had caused the Appellant hardship as she had had to purchase a cheap runabout. She and her husband had since separated.

7. Mr Loades for the Respondent opened the Respondent's case, with reference to the Respondent's statement of case. Records indicated that the Appellant's husband had been convicted of possession of cannabis and had been sentenced to 6 months' imprisonment on his own plea of guilty. The Appellant had not been charged. There

had been no challenge made by her to the lawfulness of the seizure of the drugs or the motor car. No weight could be given to any of the Appellant's documents and her explanation of her inability to produce a registration document some six months after the alleged date of purchase of the motor car was wholly implausible, not least because of the absence of simple secondary evidence such as the compulsory motor insurance policy. The Respondent's decision was plainly reasonable in all the circumstances.

8. Mr Jonathan David Evan Aston ("Mr Aston") gave formal evidence on the Respondent's behalf. Mr Aston is a Higher Officer of the United Kingdom Border Agency. He confirmed the truth of his witness statement dated 15 March 2011, where he set out his understanding of the relevant facts, in essence as Mr Loades for the Respondent had summarised. Mr Aston stated that he had only had regard to relevant matters and stood by the reasonableness of his decision.

9. The Tribunal reserved its determination, which now follows.

10. The Tribunal is satisfied that the evidence given to it by Mr Aston at the hearing was truthful and can be relied on. The Tribunal finds that the Appellant has signally failed to prove that the motor car was her property or that she had any legal interest in it. The Tribunal accepts Mr Loades's submissions. It is obvious that the Spanish authorities would have required compulsory insurance for the motor car and the issue of the equivalent of a V5 log book within a short time. The bill of sale attracted no weight at all, being a mere photocopy, with few identifying details for the motor car in question. Neither the colour or kilometrage were stated. There was no evidence that the Appellant had even applied for the motor car to be registered in her name. The Appellant failed to challenge the seizure in accordance with the procedures open to her, which is not what would be expected from an innocent owner claiming to face hardship without the motor car. That is sufficient in itself to dispose of the appeal.

11. If for any reason that finding of fact were mistaken, the Tribunal finds in any event that the Respondent's decision was reasonable, proportionate and lawful, and in accordance with the Respondent's published policies and guidelines applicable to motor vehicles used for the importation of drugs, i.e., that exceptional circumstances would need to be shown, being no more than 2kg of herbal cannabis and vehicle proprietorship by an innocent third party. The Appellant's admission that she knew that her husband was an habitual daily user of cannabis renders her claim to have been ignorant of the large quantity of cannabis he was carrying unlikely, since it was probable that he would carry a supply of cannabis with him. It follows that she failed to show that she was not reckless, careless or otherwise complicit in his criminal actions, regardless of the fact that she was not prosecuted personally for any criminal offence. The deterrent power of seizure was thus properly exercised and the decision to refuse to restore was a reasonable one on the facts, whether or not the Appellant was the owner of the car. The Tribunal so finds.

12. The appeal accordingly fails and is dismissed.

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 (as amended). 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.

R J MANUELL
TRIBUNAL JUDGE

RELEASE DATE: 30 April 2012