



Neutral Citation Number: [2024] EWHC 265 (Admin)

Case No: CO/1342/2023

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
DIVISIONAL COURT
(On Appeal from Ipswich Magistrates’ Court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 February 2024

Before:

LORD JUSTICE COULSON
MRS JUSTICE YIP

Between:

Director of Border Revenue
- and -
OM Cash and Carry Limited

Appellant

Respondent

Michael Newbold (instructed by **Government Legal Department**) for the **Appellant**
Rajiv Sharma (instructed by **Callistes Solicitors**) for the **Respondent**

Hearing Date: 8 February 2024

Approved Judgment

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LORD JUSTICE COULSON

LORD JUSTICE COULSON:

Introduction

1. This is an appeal by way of case stated from a decision of Ipswich Magistrates' Court dated 30 November 2022, in which they accepted the respondent's submission that the appellant had failed to prove that a notice of seizure had been properly served, and that therefore the goods had been unlawfully seized and could not be condemned. Although the Magistrates' Court accepted that there had been reasonable grounds for the initial seizure of the goods, they awarded costs to the respondent because, in consequence of the service point, the respondent had successfully challenged the condemnation.

The Background Facts

2. On about 16 December 2021, 3,969 kgs of Gutka, a product containing tobacco ("the goods") were imported into the UK at the port of Harwich. The consignee of the goods was the respondent. When the goods were inspected, Border Force officers considered that VAT and Excise duty on the goods had been significantly underpaid. The goods were seized on 20 December 2021. The respondent was informed of the seizure, and immediately instructed a City firm of solicitors, RPC. RPC first wrote to the appellant in connection with the seizure the following day, 21 December 2021.
3. The Case prepared by the Magistrates' Court referred to a notice of seizure provided by the appellant on 6 January 2022. Other documents indicate that this notice was served on the respondent's solicitors, but was not separately served on the respondent. The notice of seizure was not included in our bundles, and we requested a copy. It was addressed to the respondent in these terms:

"Notice of Seizure

Dear Sir / Madam

Pursuant to Section 139(6) of the Customs and Excise Management Act 1979 and paragraph 1 of the Schedule thereto, the Directors of the Border Force hereby give notice that by virtue of the powers contained in the Customs and Excise Acts, certain goods, namely:

3969 Kg Vimal Gutkha Chewing Tobacco New, unsealed

have been seized as liable to forfeiture by force of the following provisions, namely:

Section 49(1) of the Customs and Excise Management Act 1979 because the appropriate paperwork was not produced at the time of importation:-

Please read the accompanying 'Notice 12A' which explains your legal rights in respect of the seizure of the aforementioned goods and the appeals procedures in accordance with paragraphs 3 and 4 of Schedule 3 to the Customs and Excise Management Act 1979."

4. The respondent objected to the seizure. RPC served a notice of claim on their behalf on 21 January 2022. This was again provided to us at our request. It is an extremely long

document, running to 9 closely typed pages. Its contents are dealt with in greater detail below. Subsequently, condemnation proceedings were commenced by the appellant before the Magistrates' Court in accordance with the relevant legislation. The matter came before the Magistrates' Court for hearing on 30 November 2022.

5. Attached at Appendix 1 is the Case Stated, summarising the findings of the Magistrates' Court and the four questions arising out of them. As noted at paragraph 7a, the Magistrates' Court was of the opinion that the appellant had "failed at the first hurdle - on a balance of probability and that it was more likely than not, that the notice [of seizure] had not been served properly in accordance with schedule 3 part 2 of Customs and Excise Management Act 1979" ("CEMA"). There is no further explanation of this finding: no indication as to *why* the notice of 6 January was found not to have been properly served. We return to that point below.
6. We propose to identify the relevant law, and then set out the questions asked by the court and our answers to them.

The Law

7. Section 139 of CEMA provides:

"(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...

(6) Schedule 3 to the Act shall have effect for the purpose of forfeitures, and proceedings for the condemnation of anything as being forfeited, under the Customs and Excise Act."

Goods are "liable to forfeiture" where, amongst other things, they are imported without the proper payment of duty (see s.49 of CEMA).

8. Schedule 3 of CEMA is entitled "Provisions relating to forfeiture". Paragraph 1 deals with the notice of seizure:

"(1) The Commissioners shall, except as provided in sub-paragraph (2) below, give notice of the seizure of anything 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 a person who has (or appears to have) possession or control of the thing being seized; or
- (c) in the case of anything seized [on or from] 2 any ship or aircraft, the master or commander [; or]
- (d) in the case of anything seized on or from a vehicle, the driver of the vehicle."

9. Paragraph 2 deals with service of the notice of seizure in the following terms:

“Notice under paragraph 1 above shall be given in writing and shall be deemed to have been duly served on the person concerned—

- (a) if delivered to him personally; or
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at their registered or principal office; or
- (c) where he has no address within the United Kingdom [or the Isle of Man], or his address is unknown, by publication of notice of the seizure in the London, Edinburgh or Belfast Gazette.”

10. A challenge to the seizure is made by way of a notice of claim, as set out in paragraph 3 of Schedule 3:

“Any person claiming that anything 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.”

11. Where a notice of claim is not given within the month, the goods are “deemed to have been duly condemned as forfeited” (paragraph 5 of Schedule 3). Where a notice of claim is given, the commissioners (now the appellant) “shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture the court shall condemn it as forfeited” (paragraph 6 of Schedule 3). Paragraph 8 onwards of Schedule 3 deals with the condemnation proceedings themselves.

12. The authorities have focused principally on the meaning of the term “liable to forfeiture” in s.139 and paragraph 1(1) of Schedule 3. Thus, in *Eastenders Cash and Carry PLC & Ors v The Commissioners of Her Majesty’s Revenue and Customs* [2012] EWCA Civ 15; [2012] 1 WLR 2067 (“*Eastenders*”), the Court of Appeal found, by a majority, that whether goods “were liable to forfeiture” was to be assessed objectively and with the benefit of hindsight. As Elias LJ said at [92]:

“I accept that the effect of this analysis is that the Revenue will not know for sure until a determination by the court whether the seizure or detention was lawful or not. Legality is determined with hindsight. On the face of it, it is a surprising way to draft the legislation. But the potential difficulties are largely catered for by s.144.”

13. In the same case, Davis LJ put the same conclusion slightly differently at [108], saying that HMRC could invoke any ground for forfeiture “whether or not suspected at the time”. The majority view in *Eastenders* was subsequently approved by the Supreme Court ([2015] UKSC 34, [2015] AC 1101) at [49].

14. In *Commissioners for Her Majesty’s Revenue and Customs v First Stop Wholesale Ltd* [2013] EWCA Civ 183 (“*First Stop*”), the status and effect of a notice of seizure was central to the reasoning of the Court of Appeal when resolving one of three related appeals. At [27], Beatson LJ concluded that there was no requirement that, when detaining goods, the reason for the detention had to be given. Furthermore, as to seizure, he said:

“28. Secondly, during the course of the hearing, Lewison LJ observed that it was not necessary for the notice required by paragraph 1(1) of Schedule 3 to be given at the time of the seizure. It might be given later. Mr Jones accepted that this was so. That, however, is consistent with Mr Swift’s submission that the purpose of notice was not as a pre-condition to legality, but as part of the process by which a decision to seize may be challenged.

...

30. There is a more fundamental difficulty. Despite the general public law arguments which persuaded the judge and to which I have referred, requiring such reasons at the time the goods are detained cuts directly across and is inconsistent with the reasoning in *Eastenders No 1* that goods could be liable to forfeiture on grounds which were not advanced or even known at the point of seizure or detention. I reject the submission that the statements by Elias and Davis LJJ at [93] and [108] were *obiter*. This court is bound by them...”

15. Beatson LJ went on to find that the requirements of paragraph 1 of Schedule 3 had been met in that case. He made plain that a notice of seizure was a procedural requirement, not a substantive one:

“37. Secondly, for the reasons I have given, a notice under paragraph 1 of Schedule 3 is not a requirement for the exercise of the power to seize. Paragraph 1(2) of Schedule 3, to which I have referred, identifies circumstances in which there is no need to serve any notice at all. Even where a notice is required, there is no requirement that the notice be given at the time of the seizure or decision to seize the goods. The lawfulness of the decision is a matter that will be decided in condemnation proceedings. The consequence of not serving a notice or serving one at a later stage relates to the time from which the goods’ owner will have to serve a notice under paragraph 3 of Schedule 3 claiming that the goods are not liable to forfeiture.”

First Stop also went to the Supreme Court, where it was dealt with along with *Eastenders*, in the judgment that I have already cited at paragraph 13 above. However, in the Supreme Court, the notice points decided by Beatson LJ were not in issue.

16. In *R (on the application of Blackside Ltd) v The Secretary of State for the Home Department* [2013] EWHC 2087 (Admin), Edwards-Stuart J applied the two decisions in the Court of Appeal noted above, and concluded at [35] that “it is not a precondition of a lawful seizure that the reasons for it must be given at the time”. But he said that that “does not affect the obligation to serve a notice on an owner who is not present (either by himself or his agent) at the time when the goods are seized.” In that case he concluded, amongst other things, that an email sent 6 days after the seizure was sufficient to constitute a notice of seizure, and so too was a letter sent a month after the seizure, even though that letter bore the words “This is not a Notice of Seizure”.
17. In short, the authorities establish that:
- (a) Whether goods are liable to forfeiture is to be decided by the court with hindsight, on the basis of all the evidence available at the time of the hearing: see *Eastenders* and *First Stop*.

(b) Accordingly, a notice of seizure does not need to contain the eventual reason that the court decides that the goods are liable to forfeiture: see *Eastenders*.

(c) A notice of seizure is not a requirement for the valid exercise of the power to seize, and it does not have to be served at the time of the seizure or decision to seize: see *First Stop* and *Blackside*.

(d) That said, there is an obligation to serve a notice of seizure where an owner was not present (either by himself or his agent) at the time when the goods were seized, in order that the owner can challenge the seizure by serving a notice of claim: see paragraphs 1 and 3 of Schedule 3, and *Blackside*.

(e) The principal consequence of not serving a notice or serving a notice at a later stage is also procedural, in that it extends the time from which the owner of the goods can serve his notice of claim: see *First Stop*.

The Questions for the Court

18. The four questions for the court are as follows:

“1. Were we correct to conclude that a Notice of Seizure had not been served on the Claimant, OM Cash & Carry Ltd?

2. If the seizure was unlawful because of the failure of Director of Border Revenue to serve a Notice of Seizure, were we correct to conclude that the unlawful seizure did prevent the seized goods being condemned as forfeit?

3. Were we therefore correct to dismiss the complaint for condemnation on the basis that the Director of Border Revenue had not proved service of a Notice of Seizure on OM Cash & Carry?

4. Were we correct to award costs in favour of OM Cash & Carry, considering the principles in *Regina (Perinpanathan) v City of Westminster Magistrates’ Court* [2010] 1 WLR 1508, in particular in circumstances where we had granted a ‘certificate of reasonableness’ in accordance with section 144 Customs and Excise Management Act 1979 as the court was satisfied that the initial seizure was reasonable but not the condemnation of goods and that the amount in costs being sought, were of a reasonable value?”

Answer to Question 1: Proper Service of the Notice of Seizure

19. The answer to Question 1 is No.

20. Although it is not identified in Question 1, it appears that the Magistrates’ Court’s ruling was based on the fact that the notice of seizure was served on the respondent’s then solicitors, RPC, and not on the respondent itself. The respondent’s successful argument appears to have been that, because there is no reference to the solicitors of “the person concerned” in paragraph 2 of Schedule 3, service of the notice on that person’s solicitors was invalid. That was certainly the thrust of Mr Sharma’s skeleton argument: paragraph 25 submits that the appellant was “required to issue a Notice of Seizure and serve it on **the Respondent (emphasis added)**”. This is backed up by paragraph 27, which

submits that the paragraph “does not provide for the Notice of Seizure to be served on anybody else but the Respondent...the Court merely stuck to the clear language of the 1979 Act and could not be considered to have erred in law”. In his oral submissions at the outset today, Mr Sharma confirmed that that was the primary point in the appeal.

21. In my view, the argument that service on RPC and not the respondent was improper service, which somehow invalidated the original seizure, is misconceived. There are six separate reasons why I have concluded that service on RPC was proper service.
22. First, RPC were the solicitors who had been instructed by the respondent in connection with the seizure. They had been writing to the appellant from the day after the seizure. As a matter of common sense, they were therefore the appropriate people on whom to serve the notice of seizure.
23. Secondly, I consider that, as the respondent’s solicitors, RPC, were acting as the respondent’s agents. At paragraph 1-004 of *Bowstead & Reynolds on Agency* (23rd edition, 2024), the learned editors offer a solicitor as the paradigm example of the authority of an agent to alter legal relations, noting that when merely giving advice to the client the solicitor is not an agent, “but while acting for the client in communicating with outside parties would be an agent”. There is plenty of authority that supports that proposition, including those cases which conclude that it is a matter of fact whether the solicitor in question has *implied* authority to accept a notice on behalf of a client: see, for example, *Re Munro ex parte Singer* [1981] WLR 1358 and *Von Essen Hotels 5 Limited v Vaughan* [2007] EWCA Civ 1349.
24. On reading the papers before the hearing, I was in little doubt that, from the detailed history of their involvement set out by RPC themselves in the notice of claim of 21 January 2022, they had any necessary implied authority. But this morning, we were shown an official form completed by the respondent on 4 January 2022, in which the respondent expressly notified the appellant that RPC were their agents, and that the appellant was authorised to disclose information to them. That document appears to constitute *express* authority that RPC would act as the respondent’s agent and receive information from the appellant. That would include the notice of seizure, which was served two days after the completion of this form, on 6 January 2022.
25. Thirdly, I consider that the role of an agent is expressly envisaged in Schedule 3. Paragraph 1(2) makes plain that a notice of seizure is not required if the seizure takes place in the presence of the owner, “or any servant or agent of his”. That suggests that, if the owner or his agent were not present, notice to them was required. If a notice need not be given if the owner’s agent is present, it must follow that, if the agent is absent, notice of seizure can be given to the agent.
26. Fourthly, I turn to the critical question of the construction of paragraph 2 of Schedule 3. On the face of the words used, I do not consider that service on the respondent’s solicitors was in some way prevented or prohibited by paragraph 2, simply because it is not expressly identified there. Paragraph 2 identifies ways in which service will be “deemed” to have occurred. But it does not say that service in a different form is necessarily improper or invalid. Contrary to the approach taken by the Magistrates’ Court, the words in paragraph 2 do not limit the methods of service available to the appellant. An example can be found in *Blackside*, where the first notice was sent by email. That is not a deemed method of service in paragraph 2 either, but it was not

suggested that that made the notice invalid. It did not matter anyway, because in *Blackside* the notice was seen, read, understood and acted upon.

27. That brings me on to the fifth reason for rejecting the approach of the Magistrates' Court. There can be no doubt that the notice of seizure in the present case was seen, read, and understood by the respondent to be a notice of seizure, because the respondent acted upon it by replying via RPC. In this way, the validity and effectiveness of the notice of seizure was confirmed by what happened next. As envisaged by the procedure laid down in paragraph 3 of Schedule 3, the notice of seizure generated the respondent's notice of claim on 21 January. That in turn led to the condemnation proceedings. So the notice of seizure did precisely what it was intended to do: it led to valid condemnation proceedings that were contested by the parties.
28. Just pausing there, I note that the notice of claim was sent by RPC, not the respondent. Paragraph 3 of Schedule 3 makes no mention of such a notice being sent by anyone other than the person concerned (in this case, the respondent). On my non-prescriptive construction of the Schedule, that would not matter. But if the respondent's approach is correct, the notice of claim would be invalid too, because it was not sent by the respondent. That would either mean that the goods were deemed to be forfeit under paragraph 5, or that the entire condemnation proceedings were a nullity and would have to start again. Is that really a sensible and pragmatic approach to this sort of dispute? I would respectfully suggest not.
29. Finally, although the 9 page notice of claim takes various points about the validity of the notice of seizure (including some which might indicate the author's lack of familiarity with the authorities referred to above), at no point does the notice of claim say, in clear terms, that the service was improper because it was effected on RPC, not the respondent. With some reluctance, Mr Sharma conceded that. By reason of the other points, it is perhaps unnecessary to get too deeply immersed in questions of waiver and estoppel here. But it seems to me that the subsequent events demonstrate that any point about the service of the notice of seizure being upon RPC, not the respondent, was simply not open to the respondent at the hearing on 30 November. If this point had been taken fair and square in the notice of claim of 21 January, it could have been easily rectified, particularly since there was no time limit or bar. The appellant should not be penalised because of the respondent's failure to take this point plainly at the outset. That leads on to the related topic of the timing of the notice.
30. Although it is unclear from Question 1, it appears that the Magistrates' Court may also have concluded that the notice of seizure was in some way invalid because it was not served at the time of the seizure, and was not served until 16 days after the seizure. To the extent that that was the reason for their objection, I reject it. No date or time limit is identified in Schedule 3, paragraphs 1 or 2. As a matter of law, the authorities to which I have referred make plain that a notice of seizure is not required to be served at the time of the seizure itself. *Blackside* not only supports that proposition but makes plain that a notice served a month later was in any event sufficient. Before us, Mr Sharma accepted that, in the light of the authorities, there was nothing in the timing point.
31. For all those reasons, therefore, the answer to Question 1 is No. I am afraid to say that, in my view, no other conclusion is even arguable.

Answer to Question 2: Unlawful Seizure

32. The answer to Question 2 is No. Even assuming that there had been a failure properly to serve a notice of seizure, that could not render the seizure itself unlawful.
33. The starting point is that, as a matter of law, no notice of seizure is required to validate the seizure itself. That is apparent from the authorities which I have already set out. It is also apparent from paragraph 3 of Schedule 3, which expressly contemplates what happens “where no such notice has been served on him [the owner of the goods]”. That is because (for example) no notice is required if the owner was present at the seizure.
34. Furthermore, that is consistent with the underlying principle in the authorities, which is that what matters is whether the goods are “liable to forfeiture”. That is decided by the court with hindsight, on the basis of all the information available at the time of the hearing. Whether or not there was a notice, and whether or not the notice accurately identified the reasons which the court concluded rendered the goods liable to forfeiture, are both immaterial to the issue of whether the goods are “liable to forfeiture”. There is nothing in s.139 or within Schedule 3 that makes the validity of the seizure conditional on the service of a notice of seizure.
35. The authorities make clear that the service of the notice is a procedural obligation, which sets time running for the owner of the goods to serve a notice of claim under paragraph 3 of Schedule 3, in order that he can challenge the seizure. That notice of claim then leads to condemnation proceedings under paragraph 6. The principal reason that a timetable is necessary is because, if there is no notice of claim within the time limit set out in paragraph 3 of Schedule 3, the goods are deemed to have been condemned as forfeit under paragraph 5.
36. So the notice of seizure is irrelevant to the lawfulness of the seizure itself. Such a notice must be served in certain circumstances, but that is a procedural requirement to allow the owner properly to challenge the seizure in condemnation proceedings. That is exactly what happened here.
37. For all those reasons, the answer to Question 2 is No.

Answer to Question 3: The Condemnation Proceedings

38. The answer to Question 3 is No.
39. The same reasoning applies again. There was a notice of seizure which was properly served. Even if it had not been properly served, the complaint for condemnation had to be decided by the Magistrates’ Court in any event, because – irrespective of the nature of the service – the respondent’s service of a notice of claim had triggered condemnation proceedings under paragraph 6 of Schedule 3. It was not suggested that the notice of claim or the condemnation proceedings were somehow a nullity because the notice of seizure had been served on the respondent’s solicitors, rather than the respondent. Nor could it have been. So it remained a matter for the Magistrates’ Court to decide whether or not the goods were “liable to forfeiture”.

Answer to Question 4: Costs

40. Question 4 is concerned with costs. The Magistrates’ Court awarded the costs to the respondent because, on their findings, the respondent was the successful party. For the

reasons I have set out, the Magistrates' Court was wrong to reach that conclusion. It follows that the costs order should also be quashed. The matter must be returned to a different constitution of the Ipswich Magistrates' Court for them to decide whether or not the goods in question were "liable to forfeiture".

MRS JUSTICE YIP

41. I agree.

Appendix 1

**IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
BETWEEN:**

**Director of Border Revenue (APPLICANT)
And OM Cash and Carry Ltd (RESPONDENT)**

Case stated by Director of Border Revenue (the applicant), for the court to state an opinion of the High Court on an appeal on a question of law or jurisdiction made by the Justices acting in respect of their adjudication as a Magistrates' Court sitting at Ipswich on 30th November 2022

CASE

1. On the 30th November 2022, the applicant made a complaint against OM Cash and Carry relating to a quantity of chewing tobacco ('the goods') seized on 20th December 2021 at Harwich, having been imported into the UK on or about 16th December 2021 – seeking a condemnation of the goods in accordance with *Schedule 3 Customs and Excise Management Act 1979 (CEMA)*

2. On hearing evidence from both parties, the court concluded that the Director of Border Revenue had not proved that a notice of Seizure had been served on OM Cash and Carry and therefore the requirements of schedule 3 part 2 of Customs and Excise Management Act 1979 had not been complied with. Furthermore, having dismissed the complaint the court concluded that there had been reasonable grounds for the initial seizure of the goods by Border Force at Harwich, in that they needed to inspect the goods to establish noncompliance. On considering costs, court did not decline any party from making submissions and concluded that the costs would be awarded to the successful party (OM Cash and Carry), in the sum of £8,460

3. We on the 30th day of November 2022, heard the complaint and found the following facts:
a. Director of Border Revenue seized goods and weighed them. Evidence was provided as to the weight of the goods in the witness statement of Emma FALCONER BUCKLITSCH, but the Director of Border Revenue did not call a witness who weighed the goods or was there while the goods were being weighed. Their witness (Emma FALCONER BUCKLITSCH) could not tell the court how many boxes were inside or that the wrappers were or were not removed before the goods were weighed. No statements were produced by the witness that took photographs of the goods (Annalise KERLEY) at the time of seizure, and that the phone that she used was no longer in use. Photographs of the goods were produced to a statement of Jacqueline PERKS, taken on 17th December 2021.

b. OM Cash and Carry asserted that the calculations were incorrect and that they paid the customs revenue in accordance with the invoice provided which they knew or thought to be correct.

c. OM Cash and Carry's agent had received a phone call and an email that the goods had been seized as they were trying to establish net or gross weight, however no official notice received.

d. It was conceded by the Director of Border Revenue that the BOR 162 and BOR 156 were not served at the time of seizure, and actual notice was not served at that time.

e. The respondent relied in evidence on the witness statement of its director, Hirenbhai Prafull Chandra PATEL. That witness statement stated that RPC Solicitors had been instructed to act for the respondent on 4th January 2022. It further stated that:

“After numerous enquiries by CLL and RPC, a Notice of Seizure was provided by the Applicant on 6th January 2022. The Notice of Seizure was not served on the Respondent at all. Copy of the Notice of Seizure is attached and shown to me marked “HP4”. The exhibit HP4 was in evidence before us.

4. On behalf of the applicant, it was contended/asserted that

- a. Not enough customs and excise duty was paid on the goods
- b. And so, the goods were seized and were to be condemned

5. On behalf of the respondent, it was contended/asserted that a. The correct duty was paid for the goods, that at point of seizure the notice was subsequently served incorrectly and that the relevant information about the seizure was not defined in any correspondence that was received by them

b. And so, the goods should not be condemned

6. We were referred to HMRC v First Stop Wholesale [2013] EWCA Civ 183 per Beatson LJ, however were not given a hard copy of the authority/case

7. Having read the legislation in great detail, the court were of the opinion that:

a. The applicant failed at the first hurdle – on a balance of probability and that it was more likely than not, that the notice had not been served properly in accordance with: schedule 3 part 2 of Customs and Excise Management Act 1979, where it says:

Notice under paragraph 1 above shall be given in writing and shall be deemed to have been duly served on the person concerned—

(a) if delivered to him personally; or

(b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at their registered or principal office; or
(c) where he has no address within the United Kingdom [F4or the Isle of Man], or his address is unknown, by publication of notice of the seizure in the London, Edinburgh or Belfast Gazette.

b. and so the court found in favour of OM Cash and Carry and dismissed the complaint.

8. Consequently, the court found that: costs be awarded to OM Cash and Carry as the amount was reasonable under all the circumstances and were made to the successful party.

9. We were satisfied that there were reasonable grounds for the seizure however, and therefore issued a certificate to that effect in accordance with section 144(1) Customs and Excise Management Act 1979.

QUESTION

10. The question(s) of the High Court is/are:

1. Were we correct to conclude that a Notice of Seizure had not been served on the Claimant, OM Cash & Carry Ltd?

2. If the seizure was unlawful because of the failure of Director of Border Revenue to serve a Notice of Seizure, were we correct to conclude that the unlawful seizure did prevent the seized goods being condemned as forfeit?

3. Were we therefore correct to dismiss the complaint for condemnation on the basis that the Director of Border Revenue had not proved service of a Notice of Seizure on OM Cash & Carry?

4. Were we correct to award costs in favour of OM Cash & Carry, considering the principles in Regina (Perinpanathan) v City of Westminster Magistrates' Court [2010] 1 WLR 1508, in particular in circumstances where we had granted a 'certificate of reasonableness' in accordance with section 144 Customs and Excise Management Act 1979 as the court was satisfied that the initial seizure was reasonable but not the condemnation of goods and that the amount in costs being sought, were of a reasonable value?

Dated the day 9th January 2023

Signed: Cynthia Glinos (Presiding Justice) and;
Ayesha Manto (Legal Adviser)