TC04032

Appeal number: TC/2013/05889

Excise duty – non-restoration of vehicle – smuggling of tobacco – whether appellant genuine third party – appellant without any knowledge of use of car for smuggling purposes and denying any involvement – review officer's approach flawed – failed to consider relevant facts which indicated that the vehicle would not be further used for smuggling – disregarded information about hardship caused to the appellant – whether the decision not to restore the vehicle was reasonable – appeal allowed and further review directed

FIRST-TIER TRIBUNAL
TAX CHAMBER

CHRISTOPHER FINCH **Appellant**

- and -

THE DIRECTOR OF BORDER REVENUE **Respondents**

TRIBUNAL: JUDGE WDF COVERDALE
MR M ATKINSON

Sitting in public at Manchester on 23rd July 2014

The Appellant did not attend and was not represented

Mr R Davies, Counsel, instructed by the Director of Border Revenue, for the Respondents

DECISION

The Appeal.

1. This is an appeal against the Respondents' decision contained in a letter dated 15.05.2013, confirmed in a letter dated 13.06.2013, refusing restoration of a Seat Ibiza car Registration number DK60 VEF (hereinafter referred to as "the vehicle"). The vehicle had been used to carry 20 kilograms of hand rolling tobacco ("the excise goods") attracting unpaid excise duty of £3,938.64.

2. The Tribunal is aware that on 06.01.2014 Tribunal Judge Staker granted permission to extend time to the Appellant to pursue his appeal against the Review Decisions.

3. The Appellant has not attended the Tribunal and is not represented. He did, however, write to the Respondents in some detail by replying to a questionnaire, issued by the Respondents, on 31.03.2013 and by sending lengthy letters that were received by the Respondents on 25.04.2013 and 10.06.2013. The Tribunal has noted the contents of his Notice of Appeal dated 16.08.2013 and a Witness Statement by Anita Punpher (this Statement dealing largely with the issue of leave to appeal out of time but also enclosing a volume of correspondence and documentation)

4. The Respondents have submitted a Statement of Case settled by Rupert Jones of Counsel and are represented today by Rupert Davies of Counsel. The Review Officer David Harris has given evidence to the Tribunal on oath.

The Background

5. On 08.10.2012 the Appellant's mother Mrs Finch was intercepted at the port of Dover by UK Border Force (BF) while driving the vehicle. During initial questioning it was established that she had travelled to Belgium, the purpose of her visit being to visit her sister and she had been away for the day.

6. The Officer directed Mrs Finch into the examination bay where another officer requested that she produce her passport and ticket. She was questioned and confirmed that she had been away overnight and that morning she had gone to Belgium and was now travelling back.

7. The Officer asked Mrs Finch "Is this your car?" to which she replied "Yes". The Officer asked "Is it registered in your name?" to which she replied "Yes". She said that the purpose of the trip to Belgium was to buy tobacco and she had purchased 400 pouches (20kg) that had cost about £2,800. She complied with a request to open the boot. She said that she was self-employed.

8. The Officer read Mrs Finch a formal 'commerciality statement' and continued with the interview. At the conclusion of the interview the Officer was satisfied that the excise goods were held for a commercial purpose but none of the proper methods of removing excise goods to the UK were used and therefore seized them under Section 139(1) of the Customs and Excise Management Act 1979 ("CEMA") as being

liable to forfeiture under both Regulation 88 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 and Section 49(1)(a)(i) of CEMA. The vehicle was seized under Section 139(1) as being liable to forfeiture under Section 141(1)(a) because it was used for the carriage of goods liable to forfeiture.

9. When the things were seized Mrs Finch was given form BOR156 "Seizure Information Notice" and Notice 12A: "What you can do if things are seized by HM Revenue & Customs. Notice 12A explained that one can challenge the legality of the seizure in a Magistrates Court by sending a Notice of Claim to BF within one month of the date of seizure.

10. Mr Finch senior (the Appellant's father Raymond Finch) and Mrs Finch initially challenged the legality of the seizure but before the first hearing at the Magistrates Court on 13.02.2014 Rainer Hughes, their Solicitors, wrote on behalf of their clients saying that they were no longer contesting the matter. A condemnation order for the goods and vehicle was signed on 13.02.2014 and costs were awarded against Mr Finch senior and Mrs Finch of £1,000 each. Title to the goods accordingly passed to the Crown and the things (goods and vehicle) were duly condemned as liable to forfeiture under Paragraph 6 of Schedule 3 of CEMA and the excise goods were confirmed as improperly imported.

11. The Respondents' review decision was premised on the assumption that the Court would find that the seizure was lawful and that any excise goods were imported improperly and held in the UK for a commercial purpose and that the Court would indeed condemn the things as forfeit to the Crown under Paragraph 6 of Schedule 3 of CEMA.

The Correspondence

12. The correspondence between the Appellant, his parents and the Respondents is significant and the Tribunal has carefully scrutinised it.

13. In a letter dated 09.10.2012 Mrs Finch wrote requesting restoration of both the vehicle and the excise goods. She made repeated references to the vehicle being 'my car' and stated that 'the car is also still on finance so it is not mine until I have finished paying for it'.

14. In another letter dated 09.10.2012 Mr Finch senior said 'our car is a very important part of our life'. He enclosed a V5 Registration Certificate for the vehicle which disclosed the Registered Keeper to be Mrs Finch.

15. The essence of the correspondence was that the excise goods were being brought into the country for use by the Finch family.

16. On 03.12.2012 an Officer of the National Post Seizure Unit wrote to Mr Finch senior and Mrs Finch refusing to restore the excise goods and vehicle. On 07.12.2012 Mr Finch senior and Mrs Finch wrote a letter requesting that this decision be reviewed; their letter made reference to 'our car' and that 'the situation is that the car is on finance to my son Christopher Finch who is in the Army'. They produced a copy

of a Seat Finance document showing payments for the vehicle on a Hire Purchase basis.

17. On 21.01.2013 a Review Officer replied refusing to restore the excise goods to Mr Finch senior and Mrs Finch and refusing to restore the vehicle to them 'because you are not the legal owners'.

18. On 24.01.2013 the National Post Seizure Unit (NPSU) received a letter from the Appellant asking for the vehicle to be restored to him – the first intimation of any claim by the Appellant. In full, it said:

> "I am writing to you to request that you return my car to me. As in your letter dated 21 January 2013 Paragraph 3 Page 2.
>
> I wish to have my Seat Ibiza VRN DK60 VEF RETURNED to me I do not know what I must do or if this letter is enough. But can you please let me know what I must do what I must produce for you to give me my car and have it restored to me.
>
> Thanks"

19. An Officer of the NPSU sent the Appellant a questionnaire which he duly completed on 31.03.2013. The NPSU Officer's reply was dated 11.04.2013 and said that the seized vehicle would not be restored. It was said that the Appellant was not considered to be a genuine third party owner; it was noted that Mrs Finch was the registered keeper of the vehicle who has unrestricted access to the vehicle and it was probable that she would continue to do so if it was restored to the Appellant; it was said that such restoration was tantamount to restoring the vehicle to Mrs Finch, the person involved in the offence.

20. By letter received by the Respondents on 25.04.2013 the Appellant requested a review of the above decision. He raised specific issues namely

1.) The vehicle was owned by a third party namely himself.

2.) He was not present at the time of the seizure, being on exercise with the Army in Canada.

3.) He was innocent, having no knowledge of the [smuggling] trip.

4.) By way of taking reasonable steps to prevent smuggling in the vehicle, he only allowed his parents to use the vehicle and he trusted them.

The letter also went into some detail about the Appellant's family life, his residence in Germany, his Army postings abroad and the justification for his mother being the Registered Keeper of the vehicle.

21. In the absence of any further representations at that time the Review Officer David Harris wrote to the Appellant on 15.05.2013 saying that the original decision

had been reviewed and it was confirmed: the vehicle would not be restored. It was repeated that the Appellant was not considered to be a genuine third party and reference was made to comments by Mrs Finch to the effect that the car was truly hers: she had said "I also need my car to be able to look after my husband properly the car is also still on finance so it is not mine until I have finished paying for it". It was said that no plausible explanation had been given for the vehicle being in Mrs Finch's name on the Registration document. it was observed that the Appellant had two other vehicles registered in his name at his parents' address namely a Suzuki motorcycle and a BMW 116i car; there was an inability to understand why the Appellant was paying for a vehicle but not registering it. The question of hardship was addressed and it was said that neither the inconvenience nor expense in this case were exceptional hardships over and above what one would expect from the loss of a car. The appellant plainly had access to other vehicles.

22. At the end of the letter dated 15.05.2013 it was stated:

> "If you have *fresh* information that you would like me to consider then please write to me: however please note that I will not enter into further correspondence about evidence that has *already* been provided".

It was implicit, therefore, that Mr Harris was still open to argument in the context of any additional evidence.

23. The Appellant wrote to the Review Officer in reply and his letter was received by the Respondents on 10.06.2013.The letter and enclosures ran to seventeen pages. It is clear that the Appellant went to considerable trouble to compose it. The following points were made, not having previously been made by the Appellant:

1.) The Appellant's mother used his car for her work and to run his father around. The absence of the vehicle had caused his mother to purchase a new van.

2.) He emphasised that the Vehicle Registration document (a copy of which had previously been supplied to the Respondents by his mother) is not proof of ownership and indeed this is plainly stated on the face of the document. The document also plainly states that 'It shows who is responsible for registering and taxing the vehicle'.

3.) He explained the rationale behind keeping the vehicle registered in his mother's name so that he could have the use of it on the road on the occasions when he visited his parents from his home in Germany.

4.) He produced the New Vehicle Order as evidence of his purchase of the vehicle.

5.) He provided a copy of the Hire Purchase Agreement with Seat Finance (previously supplied to the Respondents with a letter from Mr and Mrs Finch dated 02.01.2013). The Hire Purchase Agreement discloses that on the date of seizure, 08.10.2012, there was £10,234.60 owing on the Agreement which is in the name of the Appellant.

6.) The Appellant had himself been making all of the payments under the Hire Purchase Agreement, evidenced by his Bank Statements.

7.) The Appellant acknowledged that, strictly speaking, the vehicle is owned by the finance company until the loan is paid off; nevertheless he has paid so much that they cannot lawfully repossess it.

8.) He observed that Review Officer HB Perkins, in a letter to Mr Finch senior and Mrs Finch dated 21.01.2013, conceded that

> "Legal title of the vehicle is not held by you, but rather your son, Mr Christopher Finch ... I am unable to restore the vehicle to you as you are not considered to be the legal owners".

9.) He produced evidence in the form of Bank Statements to prove that he was in Canada at the time of the seizure (although this may not be in dispute).

10.) The Appellant addresses the question of whether it would be appropriate for restoration to be effected with or without the payment of a fee.

11.) The Appellant says that he proposes to export the vehicle to Germany.

12.) The Appellant says that his mother has bought a minivan so will have no use for the vehicle.

13.) The Appellant maintains that he has taken suitable steps to ensure that the vehicle is not being restored to the person responsible for the smuggling attempt.

24. It has to be said that the contention by Mr Finch senior, repeated by the Appellant in his letter dated 10.06.2013, that the intention was to send the smuggled tobacco in Red Cross parcels to the troops in Afghanistan, lacks credibility; this suggestion was made in correspondence long after the seizure and previous correspondence. The contention does nothing to assist the Appellant in this appeal.

The Review Decision of 13.06.2013

25. The Respondent's reply to the Appellant's letter was the final review that is the subject of this appeal namely a letter dated 13.06.2013 from Mr D Harris, the same Review Officer who had written the previous letter to the Appellant dated 15.05.2013.

26. Mr Harris's letter dated 13.06.2013 was short. He "noted" the contents of the Appellant's letter of 10.06.2013 and said:

"I have not found within your submissions reason for me to depart from the decision as outlined in my letter to you dated 15th May 2013.

Conclusion
I have decided to uphold the original decision in that:
the vehicle should not be restored".

27. Mr Harris made no attempt, in the letter, to address any of the thirteen points listed in paragraph 23 above.

The Jurisdiction of the Tribunal

28. The Respondents' power regarding restoration of vehicles which have been forfeited or seized is set out in Section 152(b) of CEMA. Once the power is exercised, whether in the form of a positive decision to restore on terms or a refusal to restore, the person affected has a right of appeal to the Tribunal. The powers of the Tribunal are limited in the terms set out in Section 16(4) of the Finance Act 1994 which 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 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 further review of the original decision;
>
> (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 Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

28. The precondition to the Tribunal's exercise of one or more of its three powers is that the person making the decision could not reasonably have arrived at it. The test for reasonableness was set out by Lord Lane in *Customs & Excise v JH Corbitt (Numismatics) Ltd* [1980] STC 231 at page 239:

> " ... if it were shown the Commissioners had acted in a way in which no reasonable panel of Commissioners could have acted; if they had taken into account some irrelevant matter or had disregarded something to which they should have given weight".

29. In *Gora and others v Customs and Excise Commissioners* [2003] EWCA Civ 525 the Court of Appeal decided that the Tribunal had a comprehensive fact finding jurisdiction in restoration appeals:

> " ... [the Tribunal] satisfies itself that the primary facts upon which the Commissioners have based their decision are correct. The rules of the Tribunal and procedures are designed to enable it to make a comprehensive fact-finding exercise in all appeals.
>
> Strictly speaking, it appears that under S 16(4) of the 1994 Act the Tribunal would be limited to considering whether there was sufficient evidence to support the

> Commissioners' finding of blameworthiness. However, in practice, given the power of the Tribunal to carry out a fact finding exercise, the Tribunal could decide for itself this primary fact. The Tribunal should then go on to decide whether, in the light of its findings of fact, the decision on restoration was reasonable. The Commissioners would not challenge such an approach and would conduct a further review in accordance with the findings of the Tribunal" (paragraph 39).

30. In so far as it is appropriate to consider whether the non-restoration of the vehicle was reasonable and proportionate the Tribunal is aware of the decision in *Lindsay v Customs & Excise Commissioners* (2002) 1 WLR 1766. At paragraph 64 Lord Phillips said:

> "64. Having regard to these considerations, I would not have been prepared to condemn the Commissioners' policy had it been one that was applied to those who were using their cars for commercial smuggling, giving that phrase the meaning that it naturally bears of smuggling goods in order to sell them at a profit. Those who deliberately use their cars to further fraudulent commercial ventures in the knowledge that if they are caught their cars will be rendered liable to forfeiture cannot reasonably be heard to complain if they lose those vehicles. Nor does it seem to me that, in such circumstances, the value of the car used need be taken into consideration. Those circumstances will normally take the case beyond the threshold where that factor can carry significant weight in the balance. Cases of exceptional hardship must always, of course, be given due consideration. There is usually a marked distinction between those who smuggle alcohol, cigarettes and tobacco for profit and those who, without profit, smuggle amounts in excess of the permitted limits for their personal use and occasional distribution to family members and friends. The vehicles used by those whose activity falls into either category are liable to be seized".

31. In the same case Judge LJ said, at paragraph 72:

> "Given the extent of the damage caused to the public interest, it is, in my judgment, acceptable and proportionate that, subject to exceptional individual considerations, whatever they are worth, the vehicles of those who smuggle for profit, even for a small profit, should be seized as a matter of policy".

32. In their Statement of Case the Respondents have drawn the Tribunal's attention to the case of Mrs Amanda McLarnon in which Judge Devlin said:

> "We can readily see and understand why it should be the case that where a smuggler has either a legal or equitable interest in a seized vehicle, there should be no restoration of that vehicle even though another innocent party may also have property rights in that same vehicle. We accept that for such a vehicle to be restored would simply amount to the vehicle being handed back to the perpetrator of the crime which had lead directly to its seizure in the first instance".

33. In summary the Tribunal's jurisdiction in restoration proceedings incorporates the following principles:

(1) The Tribunal's jurisdiction is limited to determining whether the Respondents' decision to refuse restoration or to offer restoration on terms was reasonable.

(2) The Tribunal is not entitled to substitute its own view about whether the vehicle should be restored.

(3) In deciding the reasonableness of the Respondents' decision the Tribunal has a comprehensive fact-finding jurisdiction to establish whether the primary facts upon which the Respondents have based their decision were correct.

(4) The Tribunal is not entitled to consider the lawfulness of the seizure or determine the underlying facts relating to the seizure when deciding the reasonableness of the Respondents' decision to refuse restoration except when the Tribunal is satisfied that it would not be an abuse of process to take into account the facts surrounding the seizure of the goods.

Reasons for the Decision

34. As stated above the Appellant has not attended this Tribunal hearing. He is understood to be a serving soldier who lives in Germany and may be posted to another country. It is quite understandable that he should not attend today. He has written comprehensive letters to the Respondents which adequately summarise his arguments. Although he is not present to hear the Respondents' case argued by Counsel and by the witness Mr Harris he was nevertheless entitled to have his own case addressed fully by the Review Officer in correspondence and in the Decision which he has appealed. His case and his arguments were not addressed adequately or at all in the decision letter dated 13.06.2013.

35. The Review Officer Mr Harris has given evidence on oath to the Tribunal. That evidence was brief; it was confined to making a bald statement that the decision dated 15.05.2013 was correct. Mr Harris did not address the contents of the Appellant's letter received by the Respondents on 10.06.2013 at all. Even if he had done so the Appellant would not have heard the oral evidence. The issue before the Tribunal is the Appellant's challenge to the Respondents' decision as finally set out in the decision letter dated 13.06.2013.

36. Mr Harris's letter of 13.06.2013 was a summary dismissal of the Appellant's case. It made no attempt to address any of the thirteen points in paragraph 23 above. It was an inadequate response. Its refusal to restore the vehicle or to offer restoration on terms was therefore unreasonable

37. The Tribunal does not purport to substitute its own view about whether the vehicle should be restored but has carried out a fact-finding exercise to establish whether the primary facts upon which the Respondents have based their decision were correct.

38. It is unnecessary and inappropriate to consider the lawfulness of the seizure of the excise goods and the vehicle. No appeal has been pursued in the Magistrates Court by Mr Finch Senior or Mrs Finch.

39. On behalf of the Respondents, Counsel has today argued that the vehicle belonged to the Appellant's mother and father and that the Appellant is not a genuine third party. This is in clear contradiction of the Respondents' position set out in their letter to Mr and Mrs Finch dated 21.01.2013 which said that "the vehicle should not be restored because you are not the legal owners".

40. The matter of hardship to the Appellant in the event of the forfeiture of the vehicle being confirmed, with particular reference to the Hire Purchase debt, has not been addressed by Mr Harris.

Findings of Fact

41. The Tribunal makes the following findings of fact:

(1) Mrs Finch travelled to Belgium on 08.10.2012 by car with the specific intention of purchasing tobacco. She purchased 20kg for approximately £2,800.

(2) She travelled by car, namely the vehicle.

(3) Mrs Finch initially failed to declare her purchase of tobacco but admitted it when challenged.

(4) Being more than could reasonably be consumed by Mrs Finch and her family, the tobacco was purchased for resale in the UK and duty would have been evaded.

(5) The Registered Keeper of the vehicle, as recorded on the form V5, was Mrs Finch at her home address in Chorley.

(6) The legal owner of the vehicle was the appellant who is a genuine third party owner.

(7) Upon purchasing the vehicle the Appellant had entered into a Hire Purchase agreement with Seat Finance. On the date of seizure there was £10,234.60 owing under the agreement. The Appellant had made all payments due under the agreement until that date. He will remain liable for payment of the whole sum even if the vehicle is forfeit.

(8) Mrs Finch insured the vehicle.

(9) The Appellant kept the vehicle at his parents' address in Chorley and permitted his mother to use it at will.

(10) The Appellant resided in Germany, being a serving soldier. He had lengthy absences from his home on Army service. Family commitments caused him to return to the UK on occasions and he would then visit his parents and use the vehicle.

(11) A number of vehicles were available to the Appellants' parents at the date of seizure and were kept at their home in Chorley namely:

a) The vehicle
b) A Ford Mustang car belonging to Mr Finch senior and not in regular use.
c) A Harley Davidson motor cycle belonging to Mr Finch senior and not in regular use.

Mr Finch's disabilities prevented him from having full use or enjoyment of the Ford Mustang and the Harley Davidson.

(12) The Appellant had another car, A BMW 116i, and a Suzuki motor cycle GSXR600, both of which he kept and used in Germany (although the Suzuki was, at one time, kept at his parents' address in Chorley).

(13) After the seizure Mr and Mrs Finch purchased another vehicle namely a minivan.

(14) The Appellant has stated his intention to export the vehicle to Germany upon its being restored to him.

(15) The Appellant had no actual knowledge of the use of the vehicle by Mrs Finch for the purpose of smuggling tobacco, he had not conspired with his mother for this purpose and was in no way complicit with his mother's unlawful importation of excise goods.

(16) The Appellant was in Canada on the date of seizure.

(17) The Appellant has suffered exceptional hardship from the loss of his vehicle. His ability to visit his daughter, when on leave in the UK, has been hampered and this is a severe interference with his family life. He is liable to pay £10,234.60 in respect of outstanding finance on the vehicle whether he gets it back or not.

Was the Decision of Mr Harris Reasonable?

42. Mr Harris's failure, in his letter dated 13.06.2013, to entertain the Appellant's written submissions is fundamental to this appeal. He did not weigh up all aspects of the Appellant's submissions and evidence. He has focused upon the perceived mischief of restoring the vehicle to a third party in a situation where that would be tantamount to restoring it to the person responsible for the smuggling attempt. The Appellant argues that this is an inappropriate view of the situation.

43. Under Section 141 of the Customs and Excise Management Act 1979 the Respondents were entitled to seize the vehicle which was carrying the excise goods intended for commercial purposes. However the Tribunal is not considering the lawfulness of the seizure but whether Mr Harris was reasonable in refusing restoration of the vehicle. The Court of Appeal in *Lindsay v Customs & Excise Commissioners* held that in restoration decisions a fair balance needs to be struck between the rights of the individual and the public interest. The striking of a fair balance involves a realistic assessment of all the circumstances of an individual case, including the alternative sanctions available to the Respondents rather than the automatic imposition of an oppressive penalty which could amount to an unconscionable interference with the rights of an individual.

44. The Tribunal is not entitled to substitute its own decision for that of Mr Harris. Furthermore it is not at liberty to hold Mr Harris's decision unreasonable because it might disagree with it. The Tribunal has to decide whether Mr Harris's decision was reasonable in that he considered all relevant matters and disregarded irrelevant

matters. The Tribunal finds that Mr Harris failed to give proper consideration to the Appellant's correspondence which contained relevant information for the restoration decision. The Tribunal further finds that Mr Harris did not make a realistic assessment of the Appellant's individual circumstances which resulted in Mr Harris making an uninformed decision. Thus Mr Harris applied the Respondents' restoration policy to an incomplete evaluation of the appellant's circumstances. It is, therefore, concluded that Mr Harris's decision of 13.06.2013 was unreasonably arrived at within the meaning of Section 16(4) of the Finance Act 1994.

The Tribunal's Decision

45. In view of the finding that the Respondents' decision on 13.06.2013 was unreasonably arrived at, the appeal is allowed.

Orders

46. The Tribunal is not entitled to order the Respondents to restore the vehicle to the Appellant with or without conditions. In exercise of the Tribunal's powers on appeal under Section 16(4) the following orders are made:

1. The decision to refuse restoration of the vehicle shall cease to have effect from the date of release of the short form of this decision dated 23.06.2014.

2. The Respondents shall conduct, in accordance with the directions below, a further review of the original decision dated 15.05.2013 which was reviewed on 13.06.2013 and in particular shall address the following questions:

1.) Whether the Appellant was a genuine third party and if not identify any evidence and give reasons why not.

2.) Whether the appellant was innocent and blameless and if not identify any reasons why not.

3.) Whether the Appellant had taken reasonable steps to prevent the smuggling, and if not identify any evidence and give reasons why not, the Appellant himself being (according to his statement), at the time of the smuggling, out of the country and there being no evidence of his knowledge of smuggling activity.

4.) With regard to the question of whether restoration of the vehicle to the appellant would be tantamount to restoring it to the person responsible for the smuggling attempt, address the fact that the appellant has expressed the intention to export the vehicle and his mother now has access to another vehicle that is available to her.

5.) Whether the Appellant's continuing to maintain the HP repayments from the date of seizure on 08.10.2012 until 2016 (as he is legally obliged to do) on a car that he may never see again amounts to exceptional hardship.

47. The Tribunal recommends that an Officer not previously involved in the case shall conduct the further review.

48. The further review shall be on the basis of the Tribunal's findings of fact set out in paragraph 41of this decision.

49. This appeal has been allowed, in the terms set out above, but the Appellant should not assume that the eventual outcome of this matter is that the vehicle shall be returned to him. The Respondents will revisit the issues and make a further decision. If the Appellant disagrees with such further decision he will have new rights of appeal.

50. 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.

WDF COVERDALE
TRIBUNAL JUDGE

RELEASE DATE: 25 September 2014