



TC05200

Appeal number: TC/2016/0006

Excise duty – seizure of tobacco and vehicle – vehicle restored – appellant’s claim for compensation and complaints about the respondent – application for strike out on the basis of no jurisdiction - granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WOJCIECH STOLAT

Appellant

- and -

THE DIRECTOR OF BORDER FORCE

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

**Sitting in public at George House, 126 George Street, Edinburgh on Monday
20 June 2016**

The appellant was not represented and did not appear in person

**Gillian Jamieson, instructed by the Director of Border Force, for the
Respondents**

DECISION

Preliminary issue

1. The appellant did not attend and was not represented. The Clerk to the Tribunal attempted to telephone him on the mobile telephone number included in the papers but there was no answer. I am satisfied that the appellant was notified of the hearing by letter dated 23 May 2016 addressed to the address utilised by him in the Notice of Appeal and subsequent correspondence. I had due regard to Rules 2 and 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) which read as follows:-

“2.—Overriding objective and parties’ obligations to co-operate with the Tribunal

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

33.— Hearings in a party’s absence

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.”

2. I am satisfied that it was in the interests of justice to proceed with the hearing.

Background

5 3. On 23 December 2015 the appellant lodged a Notice of Appeal seeking restoration
of his vehicle which had been seized under Section 139 Customs and Excise
Management Act 1979 at Dover on 24 October 2015. The review decision dated
10 10 December 2015 had confirmed the non-restoration decision. On 7 March 2016 the
respondents wrote to the Tribunal intimating that the respondent had varied the non-
restoration decision and offered restoration for a fee, which was paid by the appellant.
The respondent invited the appellant to withdraw his appeal.

4. On receipt of that letter the appellant wrote to the Tribunal on 23 March 2016
stating that he wished to insist on the appeal on the basis that he sought “monetary
15 compensation (damages) for an amount of money to be fixed by the Tribunal ... or the reduction of the
penalty to the amount adequate to the offence”. He went on to make complaints about the
conduct of the Border Force officers.

5. On 14 April 2016 the respondent lodged a Notice of Application seeking strike
out of the appeal in terms of Rule 8(2)(a) of the Rules and that reads as follows:-

“Rule 8

20 (2) The Tribunal must strike out the whole or a part of the proceedings if the
Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of
them;”.

The Law

25 6. The Tribunal’s jurisdiction in this matter is limited by Section 16(4) Finance
Act 1994 which is headed “Appeals to a Tribunal”. The Tribunal’s jurisdiction is solely
to decide whether or not the decision of the respondent not to restore the vehicle was
unreasonable. As the vehicle has in fact been restored in this matter, the Tribunal has
no other jurisdiction. That is made crystal clear by Lord Justice Mummery at
30 paragraph 73 in *HMRC v Jones & Jones*¹ where he stated:-

“... the FTT only had jurisdiction to hear an appeal against a review decision made by HMRC
... and the appellate jurisdiction of the FTT was confined to the correctness or otherwise of the
discretionary review decision.”

7. The Tribunal has no jurisdiction whatsoever in regard to any other matters
35 currently in issue between the parties relating to the seizure.

¹ 2011 EWCA Civ 824

8. In all these circumstances the appeal must be, and is, struck out.

9. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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ANNE SCOTT

TRIBUNAL JUDGE

RELEASE DATE: 22 JUNE 2016

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