[2016] UKFTT 105 (TC)

TC04896

Appeal number: TC/2015/03899

Customs and excise- vehicle seizure under s 88 CEMA – restoration appeal under s 16 FA 1994- whether appellant aware of adaptation- decision to require further review

FIRST-TIER TRIBUNAL
TAX CHAMBER

URIM GJANA **Appellant**

- and -

DIRECTOR OF BORDER REVENUE **Respondents**

TRIBUNAL: JUDGE SARAH FALK
SUSAN LOUSADA

Sitting in public at Fox Court, 30 Brooke Street, London EC1N 7RS on 2 February 2016

Yaseen Khan, Counsel, instructed by AMR Solicitors, for the Appellant

Michael Newbold, Counsel, instructed by the Home Office Cash Forfeiture & Condemnation Legal Team, for the Respondents

DECISION

1. This is an appeal under s 16 Finance Act 1994 ("FA 1994") against a review of a decision not to restore a BMW car seized by the Border Force under s 88 Customs and Excise Management Act 1979 ("CEMA") on the basis that it had been adapted for the purpose of concealing goods. We have concluded that the review decision should cease to have effect and that a further review should be conducted which takes account of our findings of fact.

Legal and procedural background

2. There was no dispute about the relevant legal principles. Section 88 CEMA provides:

> "Where …(c) a vehicle is or has been within the limits of any port or at any aerodrome … while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods, that … vehicle shall be liable to forfeiture."

3. Section 139(1) CEMA provides:

> "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."

4. The effect of paragraph 5 of Schedule 3 to CEMA is that, unless a notice of claim that the item seized was not liable to forfeiture is lodged within one month, the seizure is treated as valid and it is not possible to claim subsequently that it was not duly condemned as forfeited: see *HMRC v Jones and another* [2011] STC 2206. No such claim was lodged in this case. This means that it would not be possible for the appellant now to dispute that the vehicle was adapted to conceal goods, and he at no stage sought to do so.

5. However, there is power to grant restoration under s 152 CEMA:

> "The Commissioners may, as they see fit … (b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts."

6. Following a request by the appellant the Border Force decided on 19 March 2015 not to restore the vehicle. A review was requested under s 14 FA 1994, and on 26 May 2015 the decision was upheld on review. The review decision was also reconfirmed on 11 September 2015 following receipt of some additional information from the appellant.

7. The appellant appealed to the Tribunal against the review decision under s 16(1) FA 1994. The appeal was in time. The Tribunal's powers are set out in s 16(4), which provides:

> "(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. The effect of s 16(8) is that the decision not to restore was a decision in relation to an "ancillary matter". In addition, s 16(6) makes it clear that the burden of proof is on the appellant: see *Golobiewska v Commissioners of Customs & Excise* [2005] EWCA Civ 607, which also makes it clear that the civil standard applies, that is the balance of probabilities.

9. The Tribunal's powers under s 16(4) are limited. As noted by Mummery LJ in *Jones* at [71(9)] they are confined to the application of principles of judicial review. This includes questions of reasonableness and, because Article 1 of Protocol 1 to the European Convention on Human Rights is potentially engaged (peaceful enjoyment of possessions), proportionality. The general test of reasonableness in this context is whether the decision was so unreasonable as to be irrational or perverse, such that no reasonable authority could have reached that decision (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223). Grounds for review would include failing to take account of relevant considerations or taking account of irrelevant considerations. Similarly, in determining whether refusal to restore is proportionate the Tribunal should consider all material considerations relating to the facts of the particular case, including the degree of fault: *Lindsay v Commissioners of Customs & Excise* [2002] STC 588 at [55] to [67].

Evidence

10. We heard witness evidence from the appellant and the review officer Mrs Helen Perkins. Both witnesses gave evidence under affirmation, and both were cross examined and answered questions from the Tribunal. Documentary evidence comprised copies of correspondence (including the relevant decisions), documents taken from the vehicle, notes of the interception and search of the vehicle and a short witness statement from Mrs Perkins. Some photographic evidence was also produced by the Border Force at the hearing, and the appellant produced some bank account information. Regrettably neither the Border Force's restoration policy, nor an extract

of it, was available, but it was summarised by Mrs Perkins in evidence and is referred to in the review decision.

11. We accept the oral evidence provided by both the appellant and Mrs Perkins. Whilst Counsel for the Border Force questioned the veracity of the appellant's evidence in cross examination, we are satisfied that his evidence was truthful. In particular we are satisfied that, in relation to the key question in dispute about the state of the appellant's knowledge about the adaptation to the vehicle, the appellant was in fact unaware of it prior to its discovery by the Border Force.

Findings of fact

Background

12. The appellant works as a carpenter and joiner in the construction industry. He is self employed, working mainly on large projects in London. At the time of the seizure he was working on a project near Bank station. When working in London he generally uses public transport to travel from his home in West London to and from work, but when working outside London he might travel to work by car if that is most convenient. The appellant is an Albanian national. Whilst he has been living in the UK for some years his spoken English is not entirely fluent and it is evident that he has some difficulties with the language.

13. The appellant enjoys driving socially. He is afraid of flying and would always choose to travel by car, regularly driving long distances when taking a holiday. Being self employed he has the flexibility to take longer breaks, usually a minimum of two weeks but often a month or more. He takes trips not only to Albania but also elsewhere in Europe such as France, Belgium and Italy. He has a large number of cousins around Europe with whom he stays. He also relies on his car for other non-work related trips, such as shopping.

14. The appellant had previously been married but separated in 2012. His wife moved to Glasgow and took with her both of the couple's cars. The appellant found the period after the separation difficult and also found that he could not live without a car. Over Christmas 2012 he purchased an Audi car, which he still owns and drives.

15. In early January 2013, very shortly after purchasing the Audi, the appellant took out a £22,000 loan from Barclays. Apart from paying a £3,000 tax bill the main purpose of the loan was to replenish depleted finances following the separation and car purchase. At the time the appellant was struggling financially with his mortgage and other bills and, being self employed, he felt he also needed to keep funds available to cover times when he might not have work or was unable to work.

Purchase of the BMW

16. The appellant subsequently concluded that the Audi was too expensive for him, both in terms of price and running costs. He therefore looked for a cheaper alternative with a view to selling the Audi and using the funds to help finance his living expenses

and perhaps take a holiday. From an internet search he tracked down a BMW 3 series for sale by a dealer in North London, Cars 4U No 1. The dealership appeared to be substantial, with around 50 cars for sale. The appellant test drove the car for about half an hour and spent a similar time looking at it inside and out, for example checking for scratches and looking at the state of the tyres. The car appeared clean and smart. The appellant thought it was in good condition. The dealer wanted £5,500 but agreed to take £5,000 in cash.

17. No receipt is available for the car, although the appellant did receive the detachable slip from the V5 registered keeper form and was duly registered as the vehicle's keeper. The V5 indicates an acquisition date of 13 December 2014. It is not clear whether this is the precise date of purchase but it was around that time. The appellant also received details of the most recent MoT, in August 2014. It is clear to us that the appellant became the owner of the car.

18. A friend of the appellant who lives in the same house was also insured to drive the BMW. The appellant was aware that this individual had used the car to make one trip to the continent. The appellant thought this was around three weeks before the car was seized. This appears to tally with information relied on by the Border Force indicating that the car made a trip from Calais to Dover on 23 January 2015. There was no explanation of the fact that Border Force records apparently indicated that the vehicle had also travelled from the UK on 18 December 2014. The appellant did not believe this was correct and thought that no such trip had occurred so soon after his acquisition.

19. During the two months or so that the appellant owned the car he drove it for social purposes. He did on occasion carry a passenger, but only in the front passenger seat. The appellant at no point sat in the back. He used the boot in the normal way for luggage and shopping. He took the car to a car wash two or three times and hoovered the inside. He did not remove the seats, which he believed were fixed.

20. It is worth noting at this point that the car is a saloon car with a separate boot, rather than a hatchback or estate car where the rear seats fold down. The rear seats would ordinarily be fixed in place. In our experience seats of this nature would not be moved during routine use or maintenance.

Discovery of adaptation

21. Over the weekend of 14 and 15 February 2015 the appellant travelled in the BMW via France to Ghent in Belgium. He caught a boat across. We accept the appellant's explanation that he was travelling to see a husband and wife who were relatives of his. The trip was prompted by the fact that the wife was ill in hospital and her husband was worried about her. On Sunday 15 February the appellant travelled back earlier than previously planned because he was busy at work, having to buy a new ticket for the Channel Tunnel because he could not use his previously booked return ticket.

22. The appellant was stopped at the UK control zone in Coquelles, Calais. The BMW was examined by Border Force officers and was found to contain an adaptation for the purpose of concealing goods. The vehicle was seized.

23. The nature of the adaptation was to create a false compartment approximately 15 cm in depth across the width of the vehicle between the rear seats and boot. The review letter describes the discovery as follows:

> "During the examination of the vehicle by Officers the rear seats were removed. The Officer noted two central retaining bolts were not present. Upon unclipping the upright seat at the base on the near side, and pulling the seat forwards and out, it became apparent that a concealment had been constructed between the rear seats and the boot. Tape drumming was used around the recessed bulkhead to hold this in place approximately 15cm behind its original position and running the width of the rear seat. Upon removal of the tape drumming, four metal right angled brackets on the base were revealed holding the bulkhead in position."

24. Apart from the first two sentences this is an almost verbatim extract of text that appears in one of the examining officer's notebooks. The immediately preceding entry in the notebook that is reflected in the first two sentences above reads:

> "After removing the rear base seats I noticed the two central retaining bolts for the rear seat uprights were not present."

25. At the hearing we were provided with a series of photographs taken during the search. These photos had not been viewed by Mrs Perkins when she reached her review decision, although it is evident from one of the officer's notebooks to which she did have access at that time that photos had been taken. Mrs Perkins obtained the photos during preparation for the Tribunal hearing. She also discussed the case with the examining officers at that later time.

26. None of the photos show the inside of the passenger compartment in the state it was in before being examined. Most are photos of the concealed compartment. Apart from one poor quality photo of the open boot, the one photo that provides some assistance shows the rear seat uprights still in place but the base seats removed.

27. Mrs Perkins explained that her understanding from the examining officers was that the effect of the modification was to bring the angle of the rear seat uprights closer to vertical, with the effect that the tautness of the seat belts increased and their positioning changed since they had to extend further forward horizontally to clear the top of the seat uprights. This effect on the seat belts caught the attention of the examining officers. She also said that the change in seat angle could be seen by comparing it to the edge of the door frame: the seat uprights were further forward than they should have been in relation to the frame. The absence of retaining bolts also meant that the seat belts were effectively holding the seats in place.

28. Whilst we can follow this description, the one photo that shows the seat uprights still in place does not indicate to us that the changes were apparent, at least to an

untrained eye. For example, we cannot see any damage to fabric and whilst the seat belts do seem to lie snugly against the seats this does not strike us as obviously wrong. The photo is too close up to view the relationship between the seat and door frame clearly, but based on the small visible portion of frame it is again not apparent to us that the relationship is incorrect.

29. Mrs Perkins was unable to comment on the professionalism or otherwise of the concealment. She could not confirm that the changes would have been evident to a layman. Based on the described size she considered it to be a significant alteration, and believed that a compartment running the whole width of the vehicle would normally be apparent. She was also unclear exactly what would have been unclipped to remove the rear seats, but commented that the examining officers would know how to do it.

30. Nothing was found in the compartment. In the rest of the vehicle, apart from personal effects, limited documentation was found, mainly comprising the V5, the MoT documents and receipts for the Eurotunnel ticket and for petrol.

31. During the seizure and subsequently the appellant has consistently maintained that he was not aware of the existence of the compartment, and he wrote to the Border Force to this effect on both 17 and 26 February 2015, and again via solicitors following receipt of the initial decision to refuse restoration on 19 March. Other details were included in this and subsequent correspondence that are to some extent inconsistent with the appellant's oral evidence, in particular in relation to his reliance on the car for work and the size and purpose of his personal loan. These inconsistencies are discussed further below.

The restoration policy

32. The review decision summarised the restoration policy as follows:

> "The general policy is normally to refuse to restore vehicles that have been seized under section 88 unless we are satisfied the owner has no knowledge of the adaptation, in which case the vehicle may be restored on certain conditions, one of would be the removal of the adaptation.
>
> In all cases other relevant circumstances will be taken into account in deciding whether restoration is appropriate or not"

33. Mrs Perkins confirmed at the hearing that this was her understanding of the policy, but was unable to identify what "conditions" might be imposed in circumstances where the owner was unaware apart from removing the adaptation. In practice that was the one condition imposed, and the work would be carried out by a Border Force contractor once the person seeking restoration had agreed to bear the cost.

34. Mrs Perkins also indicated that, if the Border Force concluded that the appellant was aware of the adaptation, restoration would normally only occur in circumstances of exceptional hardship.

35. Our understanding of the general policy is therefore that a vehicle will be restored if the Border Force is satisfied that the owner was unaware of the adaptation, subject to covering the cost of removing it. Otherwise the general policy is only to restore in cases of exceptional hardship. We do not see any basis to question the reasonableness of this in principle, and the appellant's Counsel did not seek to do so.

The review decision

36. After describing the compartment, the review decision goes on to say:

> "Following on from above, it is also difficult to see how your client, as driver of this vehicle, could not have known about the adaptation. This adaptation would have undoubtedly resulted in the disturbance to the fabric of the vehicle and is likely to have come to the attention of a reasonably careful owner monitoring the maintenance and movement of their vehicle. Given the significant '*alteration*' made to this vehicle, I am not persuaded, on the balance of probability that your client was as unaware of the alterations made to this vehicle, as he suggests."

37. Before the Tribunal the Border Force submitted that this was a conclusion that, on a balance of probabilities, the appellant was aware of the adaptation.

38. The review decision letter went on to refer to the trips apparently made by the car in December 2014 and January 2015 as supporting a conclusion that the vehicle was being used for smuggling and providing "an additional reason to support the non-restoration decision".

39. The letter then considers the degree of hardship the appellant would suffer and determines that it is not exceptional, questioning the absence of evidence of an alleged £5000 loan to purchase the vehicle and suggesting that its absence called into question whether the appellant was the legal owner, noting that there were others living at the same address who appeared to have use of the car. The letter also refers to the fact that the appellant was the registered keeper of an Audi, so appeared to have alternative means of transport.

40. Subsequent correspondence ensued in which details of the Barclays loan was provided. The amount and date of the loan did not tally with what had previously been said (although the monthly repayment amount was broadly in line), and the discrepancies effectively reinforced Mrs Perkins conclusions since it led her to question the appellant's credibility and claim of financial hardship. The bank account information supplied also suggested that the loan repayments were being funded by transfers from another account.

Conclusions on awareness

41. We have concluded that the appellant was not aware of the adaptation before its discovery by the Border Force, and infer that it was already in place when the appellant bought the car.

42. The Border Force's review decision relied on a conclusion that the nature of the adaptation was such that the appellant must have known about it. However, there is no evidence to indicate that the adaptation would have been apparent to anyone other than a trained officer. Mrs Perkins could not give evidence to the effect that it would have been apparent to a layman and the remainder of the evidence, including the photographic evidence, suggests to us that it would not be so apparent. Indeed the description in both the review decision and the notebook it was taken from only refers to it becoming "apparent" that a concealment had been constructed after describing the removal of a rear seat upright. We do not think it is reasonable to conclude that apparently fixed rear seats should be removed either when considering purchasing a car or after its acquisition, unless (unusually) there is a specific reason to do so.

43. The fact that the compartment was empty is also clearly relevant. Combined with the fact that its existence was not obvious this supports the appellant's claim that he was not aware. The appellant's evidence about his work patterns is also relevant here. As someone of relatively modest means who typically works five or six days a week, and for whom a trip to the continent would not be an everyday occurrence, it might be expected that the compartment would have been in use on a return trip to the UK if the appellant was blameworthy.

44. We also accept that the appellant did not at any point sit in the back seats, which might have given him cause to notice that something was amiss.

45. A more minor point is the fact that the compartment had some accumulated dirt: the appellant clearly liked to keep his cars clean and, so far as we can tell from the photos, the rest of the car was. The existence of dirt also provides some support for the view that the adaptation was in place at the time the car was purchased rather than having been added subsequently.

Inconsistencies

46. Before the Tribunal the Border Force relied on a number of inconsistencies between what the appellant had said or written during the investigation and review process and the evidence given by him at the Tribunal, as indications that the appellant's credibility was in question. We have considered these carefully but have concluded that they do not affect our conclusion that the appellant was not aware of the adaptation before its discovery by the Border Force. We consider that the inconsistencies may be attributed to a combination of the appellant's imperfect command of English, an imprecision of expression or thinking and (on financial matters) and element of exaggeration of the hardship suffered which clearly should not have occurred but does not change our conclusion on the key issue of awareness. The points relied on by the Border Force were as follows:

(1) The appellant told the investigating officers that he had been to see a female friend, but later in the investigation he referred to visiting a male cousin. In fact, both could be said to be true.

(2) The appellant signed a statutory declaration prepared by his solicitors saying he had travelled to France, whereas he told the investigating officers and

the Tribunal that he had been to Ghent, Belgium. We think this is an example of imprecision of expression: the appellant in fact travelled through France and gave evidence that in the absence of border controls between them he did not in his own mind draw a real distinction between France and Belgium.

(3) There were material discrepancies in relation to the appellant's personal loan- see [15] and [39] above- with the appellant claiming that he had taken out a £5000 loan to purchase the vehicle. We agree that this was not accurate but we have concluded that it was explicable on the basis that a larger loan was outstanding and provided an overall increase in the appellant's funds that would have allowed him to purchase the BMW, and the monthly repayments were broadly as claimed by him.

(4) In correspondence the appellant relied on requiring the car to get to and from work, and relying on taxis without it when he was working late at night. It is clear from the evidence before the Tribunal that this was, at the least, exaggerated and also made no mention of the Audi. However, whilst clearly wrong to take this approach we are satisfied that the evidence given by the appellant to the Tribunal was truthful.

(5) The appellant had made no previous mention of other trips to the continent made by the car while owned by the appellant. We think this is explained by the appellant not considering the one trip he thought his friend had made to be relevant.

Exceptional hardship

47. Prior to the Tribunal hearing the appellant not only maintained that he was not aware of the adaptation but also argued that the car should be restored on hardship grounds. This was not pursued at the Tribunal and in our view it was right not to do so. The appellant does not generally need a car for work purposes and in any event has use of another car. His financial position is also not such as to indicate any exceptional level of hardship.

Discussion

48. Both parties agreed that the key question in this appeal was whether the appellant was telling the truth when he said he had no knowledge of the adaptation. We have concluded that he was, whereas the Border Force maintain that they reached a different view in making their decision.

49. On the face of it this appears to raise a difficulty: the Tribunal is not permitted to substitute its own decision for the one made by the Border Force, and the argument could be made that the Tribunal should restrict itself to determining whether the Border Force could reasonably have concluded that the appellant was aware of the adaptation. The Border Force did not however raise that argument.

50. A similar point was discussed by Pill LJ in the Court of Appeal decision in *Gora v Commissioners of Customs & Excise* [2004] QB 93. The point was strictly unnecessary to decide because the Commissioners specifically accepted that the

Tribunal's comprehensive fact finding role meant that it was able to decide the appellant's blameworthiness as a primary fact, and go on to decide in the light of that whether the decision on restoration was reasonable. Written submissions by the Commissioners are set out at [38] in the decision and include these comments:

> "3…(d)… If in any subsequent appeal … an issue arose as to whether the Appellants were 'blameworthy', subject to the proviso referred to below, the Tribunal's role would be as the Tribunal held in *Gora* :
>
> '[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.'
>
> (e) 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."

51. Pill LJ commented on this at [39] as follows:

> "I would accept that view of the jurisdiction of the Tribunal subject to doubting whether, its fact-finding jurisdiction having been accepted, it should be limited even on the "strictly speaking" basis mentioned at the beginning of paragraph 3(e). That difference is not, however, of practical importance because of the concession and statement of practice made by the respondents later in the sub-paragraph."

52. Although the point was not argued before us, it is implicit in the Border Force's agreement about the key issue for us to decide (see [48] above) that they were taking a similar approach to the submissions put forward in *Gora* on this issue. We have therefore proceeded on that basis, though if necessary to decide it we would conclude that, as a matter of law, the Tribunal must take account of its own findings of fact in applying s 16(4). To do otherwise would be demonstrably unfair. The most obvious way of approaching this would be on the basis that the (now established) fact that the appellant was not aware of the adaptation was clearly a relevant factor that should have been taken into account in the decision making process.

53. In any event, and irrespective of the points discussed at [48] to [52] above, we have concluded that, in reaching the review decision, relevant factors were not properly taken into account and irrelevant factors were taken into account such that the decision could not properly have been arrived at. Our particular concerns are as follows:

(1) We are not persuaded that the review officer gave any real consideration to whether the adaptation would have been apparent to a lay observer, and

indeed could not give evidence that it would have been. There is no indication that the review officer asked the examining officers whether the modification would have been apparent to a lay person. This seems to us to be an extremely pertinent question. It is certainly hard to see how the description of the discovery of the modifications in the review letter set out at [23] above could reasonably justify a conclusion that the adaptation was apparent without the removal of a rear seat. We certainly do not think that there was a basis to conclude that the appellant was aware because he must be assumed to have removed the rear seats when inspecting the vehicle before purchase, or when cleaning it subsequently.

(2) There is no mention in the letter of the effect of the adaptation on the seat belts or seat angle, and we have inferred that the review officer became aware of these points only subsequently when preparing for the Tribunal, at which time she discussed the case again with the examining officers. They are not referred to in the examining officers' notebooks to which the review officer did have access when she reached her decision. Bearing in mind that, unless apparently fixed rear seats were removed, the seat belts and seat angle provided the only indication that there was a hidden compartment, the review officer should have considered these points in determining whether the appellant was aware of the changes. Indeed, these points should have been critical to the decision.

(3) The review officer did not have access to the photographic evidence when she reached her decision. Given the points mentioned in (2) above this evidence should also have been considered in deciding whether the appellant was aware. In doing so account should also have been taken of the fact that there is no photographic evidence of the interior before it started being disturbed by the examining officers.

(4) It appears to us that the review officer relied on her experience that most hidden compartments that run the full width of a vehicle are apparent rather than determining whether this one actually was. The first part of the paragraph set out at [36] above seems to us to be disconnected from the description given of the compartment (a compartment of this nature should have no impact on the "movement" of the vehicle) and the reference to disturbance of fabric is a general assertion rather than one applied to the facts of this case.

(5) Whilst the Border Force maintain that a conclusion was reached that the appellant was aware, we are not convinced of this. The sentence at the end of the paragraph at [36] above suggests to us that, in reality, the review officer was unsure and may not in fact have concluded that the appellant was actually aware. The earlier reference to a "reasonably careful owner" also possibly indicates some confusion: the question being addressed was whether the appellant was aware, not whether a careful owner might be expected to be aware.

(6) We do not think that weight, or at least adequate weight, was placed on the fact that the compartment was completely empty apart from some accumulated dirt. Whilst we accept that this point does not of itself determine

the appellant's blamelessness, it is clearly a relevant factor, particularly when put together with the nature of the concealment.

(7) There is no indication that the review officer considered the potential relevance of the fact that the appellant had only purchased the car around two months previously, and given the recent MoT would seem to have had no reason to have had the car worked on in the interim by a professional or to have the back seats removed, such that the alteration might have been discovered.

(8) It does not seem to us that it was relevant to the review that other people lived at the appellant's address, or particularly relevant that the car may have made two other trips, unless goods had been found on either of those trips.

Decision and directions

54. We have decided that the Border Force's review decision in this case should cease to have effect from the date of release of this decision.

55. We require the Border Force to conduct a further review of the decision within 28 days of release of this decision. In doing so, we direct that they take full account of the facts found and conclusions reached by the Tribunal, and in particular the conclusion that the appellant was not aware of the adaptation before its discovery on 15 February 2015.

56. The appellant should be aware that, if he disagrees with a further review decision, he will have the ability to appeal to the Tribunal who will have the same powers as the Tribunal has in relation to this appeal.

57. 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.

SARAH FALK
TRIBUNAL JUDGE

RELEASE DATE: 18 FEBRUARY 2016