[2019] UKFTT 570 (TC)

TC07364

Excise duty – seizure and condemnation of vehicle – appeal against refusal to restore the vehicle – whether or not the decision was unreasonable – yes – appeal allowed – directions given for a further review

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/02842

BETWEEN

ANNE GRAYSTON **Appellant**

-and-

DIRECTOR OF BORDER REVENUE

Respondents

TRIBUNAL: JUDGE RICHARD CHAPMAN QC
MS ANN CHRISTIAN

Following the release of a summary decision, HMRC requested a full decision. This is our decision.

Sitting in public at Leeds Magistrates' Court & Family Hearing Centre, Westgate, Leeds, LS1 3BY on 8 March 2019.

The Appellant appeared in person.

Miss Clegg, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

Introduction

1. This appeal relates to a review decision dated 21 March 2019 ("the Review Decision") in which the Border Force refused to restore Mrs Grayston's Citroen Picasso vehicle ("the Vehicle") following its seizure and a request for restoration.

Findings of fact

2. We heard oral evidence from Mrs Anne Grayston ("Mrs Grayston") and her witnesses Mr Christopher Grayston and Mrs Amy Grayston. We also heard oral evidence from Officer Ray Brenton. Officer Brenton is the successor to the officer who made the Review Decision (Mrs Deborah Hodge), but adopted the original review upon the basis that he had considered the case and, had he conducted the original review, would have reached the same decision. The hearing bundle also included a witness statement from Mrs Hodge. She was not present at the hearing and so we give the witness statement limited weight. We find that all witnesses were honest, credible and doing their best to assist the Tribunal.

3. We make the following findings of fact.

4. Mrs Grayston was driving the Vehicle on 29 December 2016 with her son (Mr Grayston), daughter-in-law (Mrs Amy Grayston) and eighteen-month old grandson, in the UK Control Zone, Coquelles, France.

5. Mrs Grayston was asked if she had purchased tobacco. Mrs Grayston said "yes" and handed the officer a receipt for 200 pouches of hand rolling tobacco. Mr Grayston was then asked if he had some tobacco. He said "yes" and went to the boot of the Vehicle, which we take as indicating that he was trying to show the officer the tobacco which was there. The officer then stopped him from opening the boot and asked some further questions.

6. These questions included a request for receipts for the tobacco. Mr Grayston found a receipt for 20 pouches of hand rolling tobacco.

7. The boot was then opened. The relevant extract from the questioning officer's notebook for what followed provides as follows:

> "Boot opened – Black bags sighted. Black bags sighted in foot well of rear seat. Crinkled when touched.
>
> Q. Is that all?
>
> CJG. Yes.
>
> 09.25 Left the area
>
> 09.40 returned car into garage 1
>
> Physical tally showed black bags contained receipted goods. Do you have a receipt to LAG [sic]
>
> ALG No we're together
>
> Q Oh you have the same between you
>
> CSG Yes
>
> Further search of car revealed a further 9kg of HRT under the boot floor/load shelf separator underneath grey poly bag.
>
> Q Do you have the receipt for this?
>
> Eventually, ALG produced the receipts for the [illegible] 9kg."

8. The total amount of tobacco found in the Vehicle comprised 29.96 kg of hand rolling tobacco and 1970 cigarettes (together "the Goods"). The Goods and the Vehicle were then seized.

9. Mrs Grayston, Mr Grayston and Mrs Amy Grayston all signed the officer's notebook, agreeing it as an account of what had happened. However, Mrs Grayston and her witnesses gave the following oral evidence as to the circumstances in which the Goods were found.

10. Mrs Grayston said that she was treated very badly, made to wait for half an hour in the cold and not asked any questions about who the tobacco was for. She explained that her receipts were taken off her before the search started and that the officer went through her son's pockets looking for more receipts. She said that she knew that the family had bought cigarettes (which were hers) but not the hand rolling tobacco. She had purchased the cigarettes for £400. The Goods were for her six children. She said that the Goods were all on show, could be seen plainly and were not covered in grey sheets. It was put to her that some of the Goods were under the boot floor. She denied this, saying that there was nothing under the boot floor other than the spare wheel, wrench and jack. She said that there was nothing under the seat as everything was in the boot, the cigarettes were in black bags on top of the parcel shelf and the tobacco was on a second shelf in the middle of the boot, with nothing underneath any carpet.

11. Mr Grayston said that they were not hiding anything. He said that the hand rolling tobacco was his and Mrs Amy Grayston's. He got mixed up about the receipts for the hand rolling tobacco, thinking he had got them all out but in fact Mrs Amy Grayston also had some receipts.

12. Mrs Amy Grayston said that the cigarettes were on the parcel shelf and the hand rolling tobacco was on the carpet of the boot floor. There was no middle shelf between the parcel shelf and the boot floor. She also said that there were blankets in the boot for her son. She said that she only had one receipt that she had overlooked.

13. We find that the Goods were not concealed. We make this finding for the following reasons.

(1) The officer's notebook is confusing. The note, "under the boot floor/load shelf separator" has been taken by Officer Hodge and Officer Brenton to mean that the Goods were hidden under the carpet of the boot floor. We do not accept that this is what this note means. Indeed, we find that we cannot identify where the Goods were from this part of the note, as "under the boot floor" is wholly different to "under the load shelf separator" if (as we find) the load shelf separator is something different to the boot floor. The author of the note did not attend to give oral evidence and has not expanded upon this explanation in any other way.

(2) Mrs Amy Grayston gave her evidence in a particularly calm and credible manner. She explained that the Goods were not under the boot floor and were instead on the boot floor, beneath the parcel shelf. We accept this evidence. We also accept her evidence that the Goods were not covered up.

(3) At first sight, Mrs Grayston's explanation of the boot does not fit with either the notebook or Mrs Amy Grayston's explanation in that she appears to suggest that there was a shelf in the middle of the boot. However, in the light of Mrs Amy Grayston's evidence, we treat Mrs Grayston as meaning that the boot area is divided between a parcel shelf, the carpeted boot floor and a compartment under the boot floor where she said that the spare wheel, wrench and jack are kept. We therefore treat Mrs Grayston's evidence that some of the Goods were on the second shelf to mean that they were on (and so above) the boot floor rather than below it.

(4) Even if we are wrong in what Mrs Grayston meant by the second shelf, we accept the evidence of Mrs Grayston, Mr Grayston and Mrs Amy Grayston that the Goods were all visible once the boot was open.

(5) We accept that some of the Goods were also in the footwell of the rear seat. However, they were not said by anybody to be under the seat and the notebook states that they were "sighted", which we treat as meaning visible and not hidden.

(6) We accept the evidence of the Grayston family that there were no grey sheets or grey bags and we prefer it to the notebook given that the author of the notebook has not given evidence. The Goods were either uncovered or, in the case of the Goods in the rear seat footwell and the cigarettes, in black bags. The Goods which were in bags were not hidden as these were the bags which they were purchased in.

14. We also find that Mrs Grayston did not seek to deceive the officer in her answers to questioning. This is for the following reasons.

(1) Mrs Grayston was asked "is that all?" when the boot had been opened. As we have found that all of the Goods were visible when the boot was open, it was not misleading for her to say yes to this as appears to us to have been said in relation to the Goods on show in the boot.

(2) We accept Mrs Grayston's evidence that she had only purchased the cigarettes and did not know how much hand rolling tobacco Mr Grayston and Mrs Amy Grayston had purchased. Mr Grayston and Mrs Amy Grayston had visited another shop on their own, and Mrs Grayston did not see all of their purchases.

(3) The failure to provide all the receipts at the outset was because they were held between the three of them rather than by one individual. Mrs Grayston provided all those that she had when asked. Although Mrs Amy Grayston did not provide the receipt which she had until prompted, it was not put to her that this was an attempt to deceive. There were a number of receipts and we find it to be perfectly plausible that Mrs Amy Grayston overlooked the one that she held. In any event, given the circumstances that all the Goods could be seen, we do not agree that this was an attempt to conceal the presence of the Goods.

15. Mrs Grayston was given a form ENF156 seizure information notice, notice 12A and explanatory information.

16. Mrs Grayston did not challenge the legality of the seizure of the Goods or the Vehicle.

17. By a letter dated 4 January 2017, Mrs Grayston asked for the Goods and the Vehicle to be restored. This was refused by the Border Force in a letter dated 5 February 2017.

18. Mrs Grayston asked for a review of the decision dated 5 February 2017, which the Border Force acknowledged in an email dated 14 February 2017 and invited any further information. No such information was received.

19. By a letter dated 21 March 2017, the Border Force upheld the decision. We have considered the whole of this letter and note in particular the following basis for the review decision:

> "Summary of the Border Force Policy for the Restoration of Private Vehicles
>
> The general policy is that private vehicles used for the improper importation or transportation of excise goods should not normally be restored. The policy is intended to be robust so as to protect legitimate UK trade and revenue and prevent illicit trade in excise goods. However, vehicles may be restored at the discretion of the Border Force, subject to such conditions as the Commissioners see fit, eg for a fee.

…

The Excise Goods

…

You were intercepted by a Border Force Officer in uniform and must have known that you were expected both to answer questions truthfully and to disclose the full quantities of any excise goods carried in the vehicle. You told the Officer that you had bought 200 pouches (10 kilos). Christopher said that he had also bought tobacco and showed the Officer a receipt for 20 pouches (1 kilo). Amy was asked if she had any receipts, but said that she did not; she was with Christopher. It was only when a further quantity of tobacco was found under the boot floor, did Amy eventually produce more receipts.

You, collectively, failed to disclose all of the excise goods, thus misleading the Officer about the true quantity of them. If there was nothing to hide there was no need to mislead the Officer, and, on those grounds, together with the fact that 9 kilos of tobacco were concealed under the floor of the boot, I have good reason to doubt your credibility. Furthermore, as you were carrying receipts for the full quantity, you clearly knew that you were misleading the Officer.

…

You hid a large proportion of the goods, which indicates that you clearly knew that what you were doing was wrong. You were importing a large quantity of excise goods – worth over £10,000 in the UK shops – that was likely to damage legitimate UK trade.

…

The Vehicle

…

As you have not claimed that the excise goods were to be passed on to others on a "not for profit" reimbursement basis, I have concluded that they were held for profit and the vehicle should therefore not normally be restored. Non-restoration is fair, reasonable and proportionate in the circumstances.

…

For first offences involving small quantities of excise goods the Border Force policy is to *consider* restoring vehicles even if the goods were held for profit. However, because 29.95 kilos of tobacco does not qualify as a small quantity, I have not applied the provision.

…

I have also paid particular attention to the degree of hardship caused by the loss of the car. I sympathise with your difficulties in transporting your disabled husband to appointments. One must expect a considerable inconvenience as a result of having a car seized by the Border Force, and perhaps considerable expense in making other transport arrangements or even in replacing the car. Hardship is a natural consequence of having a vehicle seized and I would consider only *exceptional* hardship as a reason not to apply the policy not to restore the vehicle. Replacement of a seized vehicle with another does not necessarily require replacement with a vehicle of equal specification and value if a more basic and/or cheaper vehicle will perform adequately. You chose to become involved in a smuggling attempt: if you find that the consequences of those actions puts you in a difficult financial position, that was something you should have considered before choosing to become involved. I do not regard either the inconvenience or expense in this case as *exceptional* hardships over

> and above what one should expect. In the circumstances I do not consider that you have suffered *exceptional* hardship by the loss of the car. I conclude that there is no reason to depart from the policy of not restoring the car in all of the circumstances. I see from official records that you are shown as the keeper of a Ford Fusion car, registration number WL08 HXY since 25 February 2017, therefore your difficulties appear to have resolved."

20. Mrs Grayston lodged her notice of appeal on 13 April 2017. The appeal is only against the decision not to restore the Vehicle.

21. The Grayston family all maintained in oral evidence that the Goods were for personal use. The absence of condemnation proceedings means that we cannot go behind the deemed position that these were not for personal use and were not personal gifts and so we do not do so. However, there is no evidence that they were to be sold on for profit. We accept the Grayston family's evidence that they were not selling them for a profit.

22. We also heard in oral evidence (and accept) that the Vehicle had been used to transport Mrs Grayston's disabled husband, that a new vehicle was purchased on 22 February 2017 and that in fact that this was replaced by a Renault Scenic motor vehicle in November 2017. Mr Grayston was also in possession of a van from August 2017.

23. We note that Mr Brenton's evidence was effectively a repetition of what he had read in the papers which were also before us. He said in cross-examination, and we accept, that he did not know whether or not there were any CCTV cameras and that photographs would not have been taken of the Vehicle as they are only taken if the vehicle has been adapted.

Discussion

24. We have considered the following legislative framework, which we include in an annex to this decision:

(1) The Tobacco Products Duty Act 1979, section 2.

(2) The Excise Goods (Holding, Movement and Duty Point) Regulations 2010, regulations 13 and 88.

(3) The Customs and Excise Management Act 1979, sections 139, 141 and 152.

25. We have also had regard to the Finance Act 1994, sections 14, 15 and 16 (together with Schedule 5) and in particular note that the Tribunal's powers in an ancillary matter such as the present are restricted as follows as set out in section 16(4) of the Finance Act 1994:

> "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 that 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"

26. A decision is not reasonable if the decision maker acted in a way which no reasonable decision maker could have acted, if he or she had taken into account some irrelevant matter or had disregarded something to which he or she should have given weight (see *C&E Commissioners v JH Corbitt (Numismatists) Ltd* [1981] AC 22 at 60 *per* Lord Lane).

27. It is open to the Tribunal to decide the facts and then decide whether in the light of those findings the restoration decision was reasonable. In *Gora v C&E Commissioners* [2003] EWCA Civ 525, [2004] QB 93, Pill LJ stated as follows at [37] to [39]:

> "[37] While it was accepted on behalf of the applicants that the tribunal was independent and impartial, it was submitted that its jurisdiction and powers are insufficient to satisfy the requirements of article 6 of the Convention in the context of the right to peaceful enjoyment of possessions conferred by article 1 of the First Protocol. Subject to an issue considered later in this judgment, recourse to the courts is provided only in condemnation proceedings and not in applications for restoration under section 152(b) of the 1979 Act. By reference to earlier decisions of the tribunal, it was submitted that its powers are too restrictive to provide an effective remedy. The commissioners might, in any event, ignore its findings.
>
> [38] In the course of argument, it emerged that the commissioners took a broader view of the jurisdiction of the tribunal than might have at first appeared. They were invited to set out in writing their views upon the jurisdiction of the tribunal and Mr Parker provided the following written submission:
>
> > "1. The tribunal has found that: 'the commissioners have taken a policy decision not to restore properly seized goods. There are no exceptions to this. Even innocent failures to pay excise duty will not qualify as exceptions to the policy. The commissioners regard themselves as exercising that power to deter illegal activities and to stamp out smuggling": the *Gora case*.
> >
> > 2. Whilst not material to the present case, there are in fact exceptions to this policy. The tribunal has not yet decided on the lawfulness of this policy or its application to these cases.
> >
> > 3. The commissioners accept (a) it would be open to the applicants to contend in the tribunal that the decision on restoration was not reasonable (within the meaning of section 16(4) of the Finance Act 1994) on the grounds that it was based upon an unreasonable policy. (For the avoidance of doubt, it is denied that the policy is unreasonable or otherwise unlawful.) (b) For the purpose of deciding whether the policy was unreasonable, it is submitted that the tribunal should not substitute its view for that of the commissioners as to the appropriate policy in this area of administration. It should ask itself, applying judicial review principles, whether the policy was one that could reasonably be adopted. In a context where article 1 of the First Protocol of the Convention was engaged, the principles of judicial review would include that of proportionality. (c) The applicants contend that the policy is 'unreasonable' in the above sense because it fails to take account of the alleged 'blameworthiness' of the applicants. The commissioners entirely accept that the applicants are free to raise that contention in the tribunal. If that contention were successful, the tribunal would remit the matter to the commissioners and impose such directions, requirements or declarations as it thought fit pursuant to section 16(4)(a) to (c) of the 1994 Act. (d) The commissioners would then retake the decision, in compliance with the tribunal's ruling. If in any subsequent appeal against a further decision, an issue arose as to

> whether the applicants were 'blameworthy', subject to the proviso referred to below, the tribunal's role would be as the tribunal held in the *Gora* case: '[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 section 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."
>
> [39] 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 commissioners later in the sub-paragraph. As a "tribunal" to which recourse is possible to challenge a refusal to restore goods under section 152(b) of the 1979 Act, the tribunal, in my judgment, meets the requirements of the Convention."

28. It follows that we are not limited to considering the decision maker's own findings on the evidence available to him at the time.

29. We were also referred to, and considered, the following authorities:

(1) *Lindsay v Commissioners of Customs & Excise* [2002] EWCA Civ 267.

(2) *Towers & Towers v Commissioners of Customs and Excise, unreported*.

(3) *R (on the application of Hoverspeed Ltd) v Customs and Excise Commissioners* [2002] EWCA Civ 1804.

(4) *Gascoyne v Customs & Excise Commissioners* [2004] EWCA Civ 1162.

(5) *Revenue & Customs Commissioners v Dawkin* [208] EWHC 1972 (Ch).

30. Miss Clegg argued that the decision was one which was reasonably arrived at. The quantity of the Goods was high, it was for profit, Mrs Grayston had been trying to hide the Goods and she had only disclosed part of the Goods when initially asked. Mrs Grayston argued that she had been treated badly and the Goods were for personal use.

31. As set out above, we do not take into account Mrs Grayston's argument that the Goods were for personal use as they were deemed not to have been by virtue of the absence of condemnation proceedings.

32. Further, we accept that Mrs Grayston cannot establish exceptional hardship. Her position does not go beyond the natural result of the seizure and has been ameliorated by the fact that she has replaced the Vehicle.

33. However, we do find that Officer Hodge took into account the following matters which she should not have taken into account, with the effect that the decision is an unreasonable one:

(1) It is clear from the review decision that Officer Hodge found that the Goods were concealed. For the reasons which we have set out above, this was not in fact the case. The Goods were not concealed and could be seen when the boot was opened.

(2) Further or alternatively, Officer Hodge found that Mrs Grayston had misled the officers. For the reasons which we have set out above, this was not in fact the case. In particular, we find that Mrs Grayston did not know how much hand rolling tobacco was in the Vehicle.

(3) Further or alternatively, Officer Hodge found that the Goods were to be sold for profit. For the reasons which we have set out above, this was not in fact the case (although we accept that it was deemed not to be for personal use).

34. Further, we find that Officer Hodge did not take into account the following matters which she should have taken into account, again with the effect that the decision was an unreasonable one:

(1) As set out above, Officer Hodge did not sufficiently take into account Mrs Grayston's position that the Goods were not concealed.

(2) The Goods were not all purchased by Mrs Grayston. Mrs Grayston only purchased the cigarettes.

(3) Mrs Grayston did not know how much hand rolling tobacco had been purchased by Mr Grayston and Mrs Amy Grayston.

35. We have considered whether or not, notwithstanding the above, refusal to restore would be the inevitable consequence of a further review. Whilst we accept that the quantity of the Goods may well tend against restoration, we cannot go so far as to say that this is the inevitable outcome.

Disposition

36. As such, we allow the appeal and we direct as follows in accordance with section 16 of the Finance Act 1994:

(1) The Review Decision is to cease to have effect.

(2) The Border Force shall conduct a further review of the decision not to restore the Vehicle.

(3) In carrying out that review, the Border Force shall take into account paragraphs 11 to 15 above and the findings of fact made in this decision.

Application for permission to appeal

37. 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.

RICHARD CHAPMAN QC
TRIBUNAL JUDGE

RELEASE DATE: 11 SEPTEMBER 2019

ANNEX – RELEVANT STATUTORY MATERIALS

1. The Tobacco Products Duty Act 1979, section 2 provides as follows:

> "2.— Charge and remission or repayment of tobacco products duty.
>
> (1) There shall be charged on tobacco products imported into or manufactured in the United Kingdom a duty of excise at the rates shown in the Table in Schedule 1 to this Act.
>
> (2) Subject to such conditions as they see fit to impose, the Commissioners shall remit or repay the duty charged by this section where it is shown to their satisfaction that—
>
> (a) the products in question have been—
>
> (i) exported or shipped as stores, or
>
> (ii) used solely for the purposes of research or experiment; and
>
> (b) any fiscal marks carried by the products have been obliterated;
>
> and the Commissioners may by regulations provide for the remission or repayment of the duty in such other cases as may be specified in the regulations and subject to such conditions as they see fit to impose."

2. The Excise Goods (Holding, Movement and Duty Point) Regulations 2010, regulations 13 and 88 provide (in their form at the relevant time) as follows:

> "13
> (1) Where excise goods already released for consumption in another Member State are held for a commercial purpose in the United Kingdom in order to be delivered or used in the United Kingdom, the excise duty point is the time when those goods are first so held.
>
> (2) Depending on the cases referred to in paragraph (1), the person liable to pay the duty is the person—
>
> (a) making the delivery of the goods;
>
> (b) holding the goods intended for delivery; or
>
> (c) to whom the goods are delivered.
>
> (3) For the purposes of paragraph (1) excise goods are held for a commercial purpose if they are held—
>
> (a) by a person other than a private individual; or
>
> (b) by a private individual ("P"), except in a case where the excise goods are for P's own use and were acquired in, and transported to the United Kingdom from, another Member State by P.
>
> (4) For the purposes of determining whether excise goods referred to in the exception in paragraph (3)(b) are for P's own use regard must be taken of—
>
> (a) P's reasons for having possession or control of those goods;
>
> (b) whether or not P is a revenue trader;
>
> (c) P's conduct, including P's intended use of those goods or any refusal to disclose the intended use of those goods;
>
> (d) the location of those goods;
>
> (e) the mode of transport used to convey those goods;
>
> (f) any document or other information relating to those goods;

(g) the nature of those goods including the nature or condition of any package or container;

(h) the quantity of those goods and, in particular, whether the quantity exceeds any of the following quantities—

…

800 cigarettes,

…

1 kilogramme of any other tobacco products;

(i) whether P personally financed the purchase of those goods;

(j) any other circumstance that appears to be relevant.

(5) For the purposes of the exception in paragraph (3)(b)—

(a) "excise goods" does not include any goods chargeable with excise duty by virtue of any provision of the Hydrocarbon Oil Duties Act 1979 or of any order made under section 10 of the Finance Act 19933;

(b) "own use" includes use as a personal gift but does not include the transfer of the goods to another person for money or money's worth (including any reimbursement of expenses incurred in connection with obtaining them).

(6) Paragraphs (1) and (2) do not apply—

(a) where the excise duty point and the person liable to pay the duty are prescribed by the Excise Goods (Sales on Board Ships and Aircraft) Regulations 19994; or

(b) in the case of chewing tobacco.

…

88. Forfeiture of excise goods on which the duty has not been paid

If in relation to any excise goods that are liable to duty that has not been paid there is—

(a) a contravention of any provision of these Regulations, or

(b) a contravention of any condition or restriction imposed by or under these Regulations,

those goods shall be liable to forfeiture."

3. The Customs and Excise Management Act 1979, sections 139, 141 and 152 provide as follows:

"139.— Provisions as to detention, seizure and condemnation of goods, etc.

(1) 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.

(1A) A person mentioned in subsection (1) who reasonably suspects that any thing may be liable to forfeiture under the customs and excise Acts may detain that thing.

(1B) References in this section and Schedule 2A to a thing detained as liable to forfeiture under the customs and excise Acts include a thing detained under subsection (1A).

(2) Where any thing is seized or detained as liable to forfeiture under the customs and excise Acts by a person other than an officer, that person shall, subject to subsection (3) below, deliver that thing to an officer.

(3) Where the person seizing or detaining any thing as liable to forfeiture under the customs and excise Acts is a constable and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under those Acts it may, subject to subsection (4) below, be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings shall be brought.

(4) The following provisions apply in relation to things retained in the custody of the police by virtue of subsection (3) above, that is to say—

(a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as to that thing, shall be given to an officer;

(b) any officer shall be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police;

(c) nothing in the Police (Property) Act 1897 shall apply in relation to that thing.

(5) Subject to subsections (3) and (4) above and to Schedules 2A and 3 to this Act, any thing seized or detained under the customs and excise Acts shall, pending the determination as to its forfeiture or disposal, be dealt with, and, if condemned or deemed to have been condemned or forfeited, shall be disposed of in such manner as the Commissioners may direct.

(5A) Schedule 2A contains supplementary provisions relating to the detention of things as liable to forfeiture under the customs and excise Acts.

(6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of any thing as being forfeited, under the customs and excise Acts.

(7) If any person, not being an officer, by whom any thing is seized or detained or who has custody thereof after its seizure or detention, fails to comply with any requirement of this section or with any direction of the Commissioners given thereunder, he shall be liable on summary conviction to a penalty of level 2 on the standard scale.

(8) Subsections (2) to (7) above shall apply in relation to any dutiable goods seized or detained by any person other than an officer notwithstanding that they were not so seized as liable to forfeiture under the customs and excise Acts.

…

141.— Forfeiture of ships, etc. used in connection with goods liable to forfeiture.

(1) Without prejudice to any other provision of the Customs and Excise Acts 1979, where any thing has become liable to forfeiture under the customs and excise Acts—

(a) any ship, aircraft, vehicle, animal, container (including any article of passengers' baggage) or other thing whatsoever which has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and

(b) any other thing mixed, packed or found with the thing so liable,

shall also be liable to forfeiture.

(2) Where any ship, aircraft, vehicle or animal has become liable to forfeiture under the customs and excise Acts, whether by virtue of subsection (1) above

or otherwise, all tackle, apparel or furniture thereof shall also be liable to forfeiture.

(3) Where any of the following, that is to say—

(a) any ship not exceeding 100 tons register;

(b) any aircraft; or

(c) any hovercraft,

becomes liable to forfeiture under this section by reason of having been used in the importation, exportation or carriage of goods contrary to or for the purpose of contravening any prohibition or restriction for the time being in force with respect to those goods, or without payment having been made of, or security given for, any duty payable thereon, the owner and the master or commander shall each be liable on summary conviction to a penalty equal to the value of the ship, aircraft or hovercraft or £20,000, whichever is the less.

…

152. Powers of Commissioners to mitigate penalties, etc.

The Commissioners may, as they see fit—

(a) compound an offence (whether or not proceedings have been instituted in respect of it) and compound proceedings or for the condemnation of any thing as being forfeited under the customs and excise Acts; or

(b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts; or

…"