

EXCISE DUTIES - Procedure - Right of appeal - Strike out application - Request for review - Whether Appellant gave notice in writing to Commissioners requiring them to review decision not to restore goods - Construction of expression "require them to review that decision" - Commissioners' application to strike out dismissed - FA 1994 ss14-16 - Art 6 of ECHR

LONDON TRIBUNAL CENTRE

RONALD P ANGLISS Appellant

- and -

THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: STEPHEN OLIVER QC (Chairman)

Sitting in public in London on 9 October 2001

The Appellant in person

Ian Hutton, counsel, instructed by the Solicitors for the Customs and Excise, for the Respondents

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DECISION

1. This Decision is concerned with a Notice of Application made by the Commissioners. They want Mr R P Angliss' appeal to be struck out. The grounds are as follows:

"The grounds for this application are that there is no appealable decision and there will not be one until the Commissioners have been asked to and have completed a statutory review under Section 14 and Schedule 15 of the Finance Act 1994."

The question at issue is whether, as Mr Angliss contends, he had notified the Commissioners in writing of his requirement that they should review their decision not to restore goods seized from him. The Commissioners contend that

no such notification was given because Mr Angliss had not written back to the Commissioners, in response to their letter containing the original decision

2. Because this case raises an issue of procedure, I have directed that it be published and circularized.

Sequence of events

3. On 3 February 2001 Mr Angliss travelled by ferry from Dover to Ostende. While in Ostende he visited Ron's Shop. There he spent £195 on 100 pouches of Old Holborn. On his way back in the ferry he purchased 1,400 cigarettes.

4. At Dover he was stopped and questioned. The tobacco was found to be over the indicative limits referred to in Article 5 of the Excise Duties (Personal Reliefs) Order 1992. The goods were seized as liable to forfeiture under section 139 of the Customs and Excise Management Act 1979 (CEMA).

5. Following seizure the Customs officer issued Mr Angliss with a form headed "Seizure Information". This itemized the seized goods and explained how he might get them back. It states that Customs will not return prohibited goods, such as illegal drugs. "Neither will we return alcohol or tobacco products if we have reason to believe that they have been brought into the United Kingdom for sale." In other cases, it says, the Customs may return them on certain conditions such as paying a sum of money. The form goes on to answer the question- "What if I think Customs were wrong to seize the things? It reads as follows -

"You have the right to challenge our decision in court. Make your claim in writing, stating your full name and address, within one month of the date of seizure and send it to the Customs Office shown overleaf.

If you make a proper claim against seizure civil proceedings will follow and a court will decide whether the things are liable to seizure and forfeiture. Since there will be a court hearing we strongly advise you to get legal advice before making a claim."

6. (So far as I am aware a claim of the sort referred to in the explanation set out above is a claim under paragraphs 3 and 4 of Schedule 3 to CEMA requiring the Commissioners to take proceedings in court for condemnation of the goods.) Mr Angliss did not make a claim. Instead, on 8 February 2001 he wrote to the Commissioners. He enclosed a copy of the Seizure Information. His letter reads -

"I enclose copy of goods seized by you and would respectfully request a review of this decision on the following grounds.

1. The goods were purchased by me for my personal use only.

2-4. Accordingly, in the circumstances it is in my opinion extremely penal to subject me to such a financial loss - and would ask you to take my explanation of events into consideration in determining my request for a review."

7. On 22 February a Customs officer replied. The letter contains the following passages -

"You request in your letter the restoration of the seized excise goods.

I have considered all the factors in this case and recommend that the goods, on this occasion, are not offered for restoration, for the following reasons:

1-3 -

If you wish to have the decision not to restore the seized excise goods reviewed, please write to the following address: - you have 45 days from the date of this letter to ask for a Review to be conducted. Please find enclosed Notice 990 giving information on Customs Excise appeals."

On 11 April Mr Angliss appealed to the VAT and Duties Tribunal. In the Notice of Appeal he referred to his letter of 8 February (the letter containing his request for a review) as the letter of request for review.

8. The next move was an application by the Commissioners to have Mr Angliss' appeal struck out. See the grounds set out at the start of this Decision. On 11 July the Tribunal (Mr David Demack) heard the application. I was told that he invited the Respondents to conduct a review and adjourned the hearing of the application to a date not before 1 September.

9. The Commissioners reacted to Mr Demack's invitation by writing to this Tribunal on 13 August 2001. This letter originated from the Solicitor's Office. So far as is material the letter reads as follows:

"I am writing to inform the Tribunal (and the Appellant to whom I am copying this letter) that the Commissioners will not carry out such a review.

The Appellant was notified by letter dated 22 February 2001 that seized goods would not be restored. He was advised that he could seek a review of that decision. By letter dated 29 March 2001 the Appellant was advised again that the seized goods would not be restored and that he had 45 days within which to seek a review of the decision not to restore. The Appellant did not ask for a review.

The Finance Act 1994 does require the Commissioners to carry out reviews of certain decisions and the Commissioners accept that the decision not to restore seized or condemned goods is a decision of a type which they may be required to review. However, there is a time limit of 45 days from the date of notification of the decision to be reviewed for requesting such a review, as set out in section 14(3) of that Act. The Commissioners may, but are not required to, carry out a review which is requested more than 45 days after such notification. The Commissioners' policy is that they do not carry out reviews which are requested late unless there are exceptional circumstances. There are no exceptional circumstances in this case and so the Commissioners will apply their usual policy and will not carry out a review of their decision not to restore seized goods. Furthermore, the Commissioners do not accept that the Tribunal has the power to direct the Commissioners to exercise their discretion to carry out a review out of time."

10. The strike out application was relisted before me on 9 October.

This hearing

11. The representative for the Commissioners, Mr Ian Hutton, took me through the legislation provisions (which are set out in the Appendix to this Decision). The case for the Commissioners was that:

- Mr Angliss had been informed by the Commissioners' letter of 22 February that he had 45 days from that date to ask for a review in pursuance of section 14(3).
- Mr Angliss had declined to request a review; and section 14(3) specifically states that: "The Commissioners shall not be required under this section to review any decision unless notice requiring the review is given before the end of the period of 45 days beginning with the date on which written notification at the decision - was first given to the person requiring the review".
- Instead Mr Angliss had appealed. However an appeal under section 16 requires there to be a decision under section 15 (see section 16(1)) or any decision by the Commissioners made after the end of the period mentioned in section 14(3): see section 16(1)(b). In the absence of a request for a statutory review there can be no appeal against a review decision.
- The Commissioners' application to have the appeal struck out was therefore properly made.
- A review can only be triggered by a request for a review of the decision by an appropriate person : see section 14(2) and (3) and section 16 of Finance Act 1994. There is no power within Finance Act 1994 for the Tribunal to order a review to be made in the absence of a request by an appropriate person.

12. Mr Angliss' case, in essence, was that he had followed the instructions on the back of the Seizure Information. He had duly made his claim in writing in his letter of 8 February. That letter should be read as requiring the Commissioners to go through all relevant formalities involved in the procedure for getting the goods restored to him. That letter actually asked for a "review" and, he said, should have protected his position throughout the Commissioners' decision-making process. There was no evident reason to him why his appeal to the Tribunal should have been disqualified on the grounds that his request for a review did not cover the latest stage of the process (i.e. the decision not to restore) or that he failed to repeat his request for a review.

13. That, argued the Commissioners, was not good enough. It did not satisfy the statutory requirements set out in sections 14-16 of FA 1994.

14. The authority of this Tribunal is given by Finance Act 1994 section 16. We have no wider authority than that. The Act does not enable this Tribunal to review the exercise of the Commissioners' policy (referred to in the Solicitor's letter of 13 August 2001) not to carry out reviews unless there are exceptional circumstances. Nor does the Act allow the Tribunal to substitute its own decision as to what constitute an exceptional circumstance. Of specific relevance to the Directions apparently given on 24 July 2001 (i.e. directing the Commissioners to exercise their discretion and to carry out a review), that is not, I agree with the Commissioners, within the Tribunal's authority.

15. If the Commissioners are correct, Mr Angliss will have lost any right he had to a fair trial (see Article 6 of the Convention on Human Rights). The legislation must therefore be read and given effect in a way that is so far as this is possible compatible with Mr Angliss' Convention rights: Human Rights Act 1998 section 3. With difficulty this can be done.

16. I have to determine whether there has been any decision by the Commissioners "on a review under section 15" (including a deemed confirmation under subsection (2) of that section). There has been no review of the decision not to restore the goods. Has there been a deemed confirmation under section 15(2)? To come within subsection (2) there has to have been a requirement under section 14 to review and a failure by the Commissioners, within 45 days of the requirement, to "give notice to that person of their determination of the review". If so, the Commissioners are assumed to have confirmed their decision. In both cases the decision must have been of a description specified in Schedule 5. Paragraph 2(1)(r) covers any decision under section 152 as to whether or not anything forfeited or seized is to be restored.

17. Mr Angliss did not respond to the letter of 22 February which communicated the "first instance" decision not to restore the vehicle to him. He did not, therefore, issue a specific written notice requiring the Commissioners to review that decision. He says he relied on his letter of 8 February which had been written on the assumption that he had done enough by complying with the printed directions on the back of the Seizure Information. It was clear from his evidence that he thought he had unequivocally communicated to the Commissioners at the outset that, come what may, he wanted his goods back. It was also clear from his evidence that reading and writing were a problem to him though not, admittedly, a serious one.

18. Can it, in the light of the circumstances summarized above, be said that Mr Angliss, as the person to whom the "decision" not to restore (a Schedule 5 matter) was made (in the letter of 22 February), had "by notice in writing to the Commissioners require(d) them to review that decision"? See the words of sections 14(2) and 15(2). The strict interpretation of those words favoured by the Commissioners is that the person affected by the "first instance" decision should serve notice of requirement on them in relation to that decision. And on that basis and in the present situation the notice of requirement must target the decision not to restore. Thus a notice (in the form of Mr Angliss' letter of 8 February) requesting the review of the decision as set out in the Seizure Information is ineffective. The more pragmatic construction is to take into account everything that happened and ask whether in those circumstances a realistic interpretation of what had been done is that the person affected has asked for a review. The latter course has the advantage of giving the individual access to the Tribunal when he may not have been fully aware of the distinction between condemnation proceedings, decisions to seize and decisions not to restore. I think that a pragmatic construction of the words "require them to review" is preferable, possible and compatible with article 6.

19. Applying that construction to the present circumstances, the first thing that would strike the individual whose goods or vehicle had been seized would be the words in the Seizure Information - "Neither will we return the alcohol or tobacco." The individual who writes back, as Mr Angliss did in his letter of 8 February, asking for a review of that decision can, I think, be taken to have requested a review of the decision not to restore even when it is repeated on any later occasion (possibly in the context of different statutory procedures). The individual is not to know that the decision set out on the back of a Seizure Information is intended to communicate a Schedule 3 of CEMA decision and not a Schedule 5 of Finance Act 1994 decision. There has therefore been a proper request for a decision in the present case. The Commissioners have failed to take action on it. Section 15(2) applies and they are to be assumed to have confirmed their "first instance" decision communicated in their letter of 22 February. This means that

Mr Angliss has a right of appeal under section 16(1)(a) on the strength of the words "including a deemed confirmation under subsection (2) of" section 15.

20. I dismiss the Commissioners' application to strike Mr Angliss' appeal out.

21. To the extent that this is necessary I give Mr Angliss leave to appeal out of time.

STEPHEN OLIVER QC

CHAIRMAN

RELEASED:

LON/01/8030-ANG.OLI