

EXCISE GOODS – Importation in excess of indicative limits – Seizure of goods and vehicle – Refusal to restore vehicle – Reasonableness, proportionality – Appeal allowed

LONDON TRIBUNAL CENTRE

TRACIE LORRAINE OLDLAND Appellant

- and -

THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: MR PAUL HEIM CMG (Chairman)

MR A McLOUGHLIN

MR R K BATTERSBY

Sitting in public in London on 11 March 2002

Mrs M A Young for the Appellant

Mr J Hyam, counsel, instructed by the Solicitor for the Customs and Excise, for the Respondents

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DECISION

1. Miss Oldland appeals against a decision of the Commissioners contained in a letter of 8 May 2001 not to return to her a vehicle seized by Customs officers at Coquelles on 24 February 2001, when she was returning from a day trip to France and Belgium accompanied by Mr Michael Clark.

2. At the hearing of this appeal the Appellant represented herself with the assistance of a friend, Mrs Young. The Commissioners were represented by Mr J Hyam of Counsel.

3. As Miss Oldland was unrepresented, the parties agreed that it would be helpful if the Commissioners presented their case first and it was so decided.

4. The Commissioners say that on 24 February 2001 the Appellant was travelling in a Renault Espace motor vehicle registration number H930 CRP in the company of Mr Michael Clark, when she was stopped by officers of the Commissioners at the UK Control Zone in Coquelles.

5. It is not in dispute that the officers asked the Appellant and Mr Clark some questions, and that they wrote down the answers.

6. The Statement of Case contains this statement:

"On being questioned by officers of Customs and Excise the Appellant and the said Clark volunteered the following information".

7. It is apparent from the record of the interview kept by the officers that most of the questions were in fact answered by Mr Clark. It is not suggested that the Appellant was told that she was obliged to answer questions, but perhaps the expression "volunteered" is not apt for replies given to officers in those circumstances.

8. However, it is not in dispute that in answer to the question "how much [excise goods] have you got?" Mr Clark replied "20 pouches of tobacco and 800 cigarettes" and in reply to the rejoinder "Is that each?" Both Mr Clark and Miss Oldland are recorded as having said "Yes".

9. Further questions were answered by Mr Clark who upon being asked about the receipts for the excise goods said that the rest of the tobacco was in the front of the van and that he is then recorded as saying "There's no point in me lying". A further 4½ kilos of tobacco were then found in a holdall in the front of the vehicle. The goods and the vehicle were seized. Mr Clark signed the officers' notes as representing a true record. The reasons given for the seizure of the vehicle were that goods were undeclared, that they were repacked, that they were packed in a manner so as to deceive officers.

10. The Commissioners say that in the light of the large amount of tobacco imported by the Appellant and Mr Clark the officer making the decision to seize the goods and the vehicle considered that the goods were not for their personal use but were held for a commercial purpose so that the tobacco was liable to forfeiture in accordance with section 139 of the Customs and Excise Management Act 1979. The vehicle in which the tobacco had been found was a vehicle used for the carriage of the forfeited tobacco and was thus also liable to forfeiture under section 141 of the same enactment and was therefore seized.

11. The Appellant thereafter asked for her vehicle to be returned. Her letter gives the following information. She had only on one occasion been abroad previously. She was a single parent of five children aged 4, 7, 10, 13 and 14 years of age. Her vehicle was urgently required as she used it to do her job delivering a local free newspaper. It was particularly hard to find work that fitted in with children, school, etc. Without her vehicle she would lose her job. It was very difficult to claw her way out of the poverty trap. She and her companion had been unaware of the legal limit for excise goods through their own ignorance. They had bought the 7.5 kilos of tobacco, 1600 "Superkings" and 1 bottle of Remy Martin for personal use. After talking to another tourist they realised that they were above the limit. They knew that it was wrong not to declare the tobacco and apologised. They were nervous and worried about the circumstances. They did admit their error and co-operated.

12. In reply the Commissioners refused to restore the vehicle to her by their letter of 13 March 2001. The letter contains the following statements:

"You request in your letter the restoration of the seized vehicle, which was being driven by Mr Clark, accompanied by yourself, at the time of seizure.

On March 2000, Dawn Primarolo MP, the Minister responsible for Customs and Excise, announced a toughening of Customs vehicle seizure policy. This received widespread national publicity at the time, and to advertise this approach to every motorist in the UK, a leaflet from Customs is issued with their road tax renewal.

This leaflet specifies the guidance levels, and warns of the possibility of having your goods and vehicle confiscated if you exceed them.

The Commissioners normal policy for vehicle seized in relation to excises offences is that they will not be restored, even for first time offences.

There are no exceptional circumstances in this case which would justify departure from this policy and I am therefore unable to restore the vehicle to you".

13. On 24 March 2001 Mrs Young writing to the review officers on behalf of the Appellant reiterated that the Appellant was a single parent of five children aged 4-14 years old who had been fortunate to find work which fitted in with her family needs. She worked as a distribution agent distributing and overseeing paper rounds for the local free newspaper. The condition of this work was that she had to have a vehicle in order to do the deliveries. The vehicle was her most valuable asset. It was only with the help of her father that she had managed to keep her job going. She was unwell. She spent all her time looking after her children. On this one occasion she had received an invitation for a day trip to France from a previous boy friend. At the last moment his car developed a fault and it was suggested that they use hers. It was this which led to the problem. She understood that the Customs officers were very interested in some delivery cards which were in the vehicle because they contained names and telephone numbers. On 10 April 2001 Mrs Young wrote again setting out various family problems which the Appellant had faced, including relation to housing, and giving more information about her family circumstances. In April the Appellant herself wrote to the Commissioners asking for a review. She said that all the goods purchased were for personal use. She now had problems of doing without her car. She had borrowed her father's car. Her children faced problems because she had no car. She had not seen publicity about the risk of seizure of vehicles. She asked for understanding for her difficulties.

14. On 8 May the Commissioners replied in the person of the reviewing officer Mr Hack. His letter sets out the legislation applicable, as well as the Commissioners' restoration policy, the letter was in the following terms:

"The Commissioners' policy regarding private vehicle seized as a result of their use in improper importation of excise goods is that they will not be restored. That policy applied at the time of the seizure of your vehicle. The vehicle may however be restored to a third party where it has been stolen and the matter reported at the time. Having considered all the evidence and information available to me, I can advise you that the decision which you are contesting has been confirmed. The vehicle will not be restored".

15. In her letter of 27 May 2001 expressing her grounds of appeal the Appellant said that the goods were purchased for own use, the original arrangements for the trip being an invitation to dinner extended by Mr Clark paid for by him with a shared expenses day trip to France. Mr Clark had forgotten to bring his credit card with him and was able only to afford £60 in cash towards the cigarettes leaving the balance of the shared purchase to come out of the cash which she had and her credit card. She reiterated that she was the sole provider of five children and that the car was of great importance to her.

16. Giving evidence in support of her case the Appellant said that she contested the statement made in the Statement of Case in paragraph 3 that "on searching the vehicle an officer of Customs and Excise then discovered receipts for 150 pouches of tobacco". The notes of interview showed that the receipts had in fact

been kept inside Mr Clark's passport. She had put the receipts in the passport. The passport was in the bag in front of the car. The goods that they had bought were in cardboard boxes and in bags. She had used the occasion of the trip to buy a sports bag. Some of the tobacco was put in that bag in the front of the car. Her documents and money were in the top of that bag. She reiterated that the goods were for own use. The bag was in full view. It had been bought for her daughter's birthday. There was no concealment. When she and her companion were stopped the officers mainly addressed her companion. She relied on him. She was more worried about being left in Belgium. She was in the passenger seat. She had said that there were 30 pouches of tobacco and 800 cigarettes and admitted that that was not true. It was because she was not positive about the correct amount. They had been told that they had too much. When stopped by the officers she was scared. There were ten people around the car. There was a big discussion. She told the officers everything. She told them about the cards and documents. She said that she would lose her job. In fact that nearly happened; she was obliged to work for no money and to borrow her father's car. She lost some of her jobs and had to sub-contract others. The cost of the tobacco was £296 and the cigarettes £160. That was her expenditure. The cigarettes were bought with cash her companion's £60 and the remainder from herself.

17. For the Commissioners Mr Gerry Dolan gave evidence about the Commissioners' policy, and the publicity which had been given to it. He explained that he considered that the issue of proportionality was dealt with by the fact that there was a proportionate response to tackle smuggling, and to deter persons from using the vehicles for doing so. It was necessary to have tough sanctions in proportion to the problem. The guidance was that there had to be a tough policy of "use it and lose it". There could be exceptional circumstances. The legislation complied with the Human Rights Act. Asked whether the policy was proportional to the individual Mr Dolan replied that the policies were fair and reasonable and could be changed by the courts. Exceptional circumstances could exist. An example would be humanitarian reasons, persons who had disabled children for example, or medical reasons. Asked whether this was not an example of a first time technical offence Mr Dolan said that restitution would depend on a variety of factors including openness. There was rigorous training for the officers who were obliged to be sensitive, fair and to get the job done in difficult circumstances. They tried to be fair-minded.

18. The reviewing officer Mr Hack gave evidence on his decision. He became involved because there was a considerable burden of work at the time. The case was referred to him as a review of the decision not to restore. His job was to look at that decision. He had before him the officer's note of interview and the letters written by and for the Appellant on 27 May, 1 June and 1 July 2001. He explained that when an offence under section 491(f) of the Customs and Management Act 1979 was in issue there was no requirement to read a commerciality statement that is to say a statement that the person concerned was not under arrest, that he was free to go, but that the onus was on him to satisfy the officers that the goods in question were for own use. This was not done in this case. He was not aware how far such matters fell under the Police and Criminal Evidence Act.

19. He said that it was his job to look at the decision not to restore the vehicle given by the team leader. He considered the seizure information, and the fact that the back of the seizure information form indicated that it was open to the persons concerned to challenge the legality of the seizure of the goods or the vehicle within 30 days. If this was not done these were forfeited to the Crown. No challenge was made in this case. He received the letters of 24 March, 10 April written by Mrs Young and the Appellant's letter of 17 April 2001. He did not check

the details. He assumed that they were by and large true. He heard the Appellant's statement that all the goods were for personal use. He said that there was a considerable volume of such work and that he had been told to use standard letters because of that. He could have changed the decision but the letter of refusal was a standard one. It was no longer used. He said that he considered a number of facts, the first being that when questioned both the persons involved declared 30 pouches of tobacco and 800 cigarettes and failed to declare the rest. He considered then the fact that Mr Clark had said that there was no point in lying. It followed that the first answer was not correct. The Appellant's letter said that she was unaware of the legal limits. However, they had had a conversation with other persons about these limits. They had had time to consider the implications of being over the limits. They could have owned up at once. It was only when they were caught that they admitted the facts. The Appellant had said that she could lose her job without the vehicle and would not be able to look after her children. He had no reason to disbelieve that but in fact the Appellant did not lose her job because she was able to borrow a vehicle.

20. Mr Hack says that he took into consideration the reasons advanced for the original seizure that is to say that the goods were underdeclared, and that they were repacked and packed in a manner so as to deceive officers. He said they did not compare the value of the goods to the value of the vehicle as to do that would favour persons who had expensive vehicles. The revenue lost was £940 and the value of the vehicle he thought to be between £1000 and £2000. This was not in the nature of a technical breach. The two persons involved had 7kgs of tobacco when the guidance limits were 1kg per person. In answer to questions he said that he did not blindly follow the policy. He had undertaken forty reviews and overturned three of them. As far as the absence of a commerciality statement was concerned, Mr Hack said it was not part of his remit on review to reconsider the interview. These were civil proceedings. The Police and Criminal Evidence Act did not apply to them. He did not alter the decision not to restore the vehicle because the persons concerned had tried to avoid duty. There was no reason to have done that. He accepted the need to adopt the standards of the Police and Criminal Evidence Act. He agreed that at the original interview most of the questions had been answered by Mr Clark, but said that the Appellant had answered some of them herself. The circumstances were not intimidating. He said that he had a discretion and he exercised it in this case. He said he had not seen the statement of case. Usually he did not get bogged down in considering the value of the vehicles because this would penalise people with cheaper cars. The law allowed conveyances to be seized in these circumstances. He subsequently looked at the value in Glass's Guide. K registration Espace vehicles were not included. He had seen one vehicle a year younger for sale at £1,600. Asked whether it was not so that the Appellant found herself in a dreadful position Mr Hack replied that in the event the hardship claimed did not happen. Although she had to look after her five children she was able to continue. He fully accepted the inconvenience that would result from the loss of the vehicle. In answer to questions in re-examination Mr Hack confirmed that a traveller could bring back as much in the way of excise goods as he liked for personal use. There were indicative limits as to what would not raise the suspicion of commercial use. The onus was on travellers to justify being able to benefit from the reliefs for imports for personal use.

21. The Commissioners say on this evidence that there is no dispute as to the amount of goods involved, and that they exceeded the indicative limits by a considerable amount. In accordance with section 139 of the Customs and Excise Management Act 1979 these goods were therefore liable to forfeiture. Sections 139 and 141 of that enactment allowed the Commissioners to seize not only excise goods liable to forfeiture but also the vehicle which had been used for the

carriage or concealment of the goods so seized. The Commissioners had established that the goods were liable to forfeiture on the ground that they were for a commercial purpose, the officers not having been satisfied that they were for personal use, and that they were packed in a manner to deceive and thus liable to forfeiture under section 49(1)(f) of the Customs and Excise Management Act 1979, that is to say "any imported goods concealed or packed in a manner appearing to be intended to deceive any officer".

22. The Commissioners say that their decision not to restore the seized goods or vehicle were made under section 152(e) of the Customs and Excise Management Act 1979, which states that "they may ... as they see fit ... restore ... any thing forfeited or seized under the Customs and Excise Act".

23. The Commissioners say that the Tribunal's powers on appeal are limited by section 16 of the Finance Act 1994 and that this appeal falls within Schedule 5 to the Act, and is therefore an ancillary matter over which the Tribunal's jurisdiction is supervisory.

24. The Commissioners also referred the Tribunal to the appeal of *Lindsay v Customs and Excise Commissioners*, released on 20 February 2002 where the Commissioners' policy on non-restoration, insofar as it applied to a driver importing goods for social distribution to family or friends in circumstances where there was no attempt to make a profit, was criticised. The Commissioners rely on the following passage from that judgment:

"Those who deliberately use their cars to further fraudulent commercial ventures in the knowledge that if they are caught their cars would be rendered liable to forfeiture cannot reasonably be heard to complain if they lose their vehicles. Nor does it seem to me that, in such circumstances, the value of the car used need to be taken into consideration ... cases of exceptional hardship must always, of course, be given new consideration".

In the circumstances of the present case, say the Commissioners, the decision not to restore was a reasonable one, notwithstanding the hardship claims of the Appellant and should not be interfered with.

25. The Appellant's case relies on the hardship caused to her as a single mother of five young children, by the seizure of the car. The car was a tool of her trade. Full information had not been given. At the review stages decisions were made without interview, clarification or fair hearing. The initial information handed out at the point of seizure gave two routes which one could follow, either an application to the courts or an application for review. It did not appear in the paperwork that unless the first option was taken there would in fact be no car to restore if the review were favourable. There was no sufficient consideration given to one's right to maintain, feed, clothe and house one's family. The Appellant was not informed that her car had been sold; this would have allowed her to save paying out funds on insurance cover. She asked why the notices, presumably the notices saying that one could buy as much in the way of goods as one wanted, were displayed.

26. The decision against which this appeal is brought is that of the Commissioners, taken on review by Mr Hack to refuse to exercise the powers set out in section 152(b) of the Customs and Excise Management Act 1979 to restore the goods and the vehicle.

27. The Commissioners' decision falls within the description specified in Schedule 5 to the Finance Act 1994 and is thus to be treated as an ancillary matter.

28. It is thus subject to review and appeal under the procedure specified in section 14(2) of the Finance Act 1994. Such a review was carried out by Mr Hack for the Commissioners in accordance with the provisions of section 15 of that Act. Accordingly an appeal lies to the Tribunal under section 16 of the Act. Section 16(4) to (7) states:

" (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say –

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

(6) On an appeal under this section the burden of proof as to –

(a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,

(b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and

(c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1) or 23(1) of the Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid),

shall lie upon the Commissioners, but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.

(7) An appeal tribunal shall not, by virtue of anything contained in this section, have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

29. The Commissioners therefore say that the only jurisdiction which the Tribunal can exercise is a supervisory one in terms of section 16(4) of the Finance Act 1994 and that the Tribunal must consider whether it is satisfied that the

Commissioners could not reasonably have arrived at the decision taken on review.

30. The Tribunal relies for the definition of reasonableness on the decisions to the appeal of *Hopping v Commissioners of Customs and Excise* (LON/01/8003) at paragraph 23, and of *Bowd v Customs and Excise Commissioners* (1995) V&DR 212 where reasonableness is defined as "*Wednesbury* reasonableness".

31. It follows that the Commissioners can only be found to be unreasonable if the Appellant can show to the Tribunal that the Commissioners have acted in a way in which no reasonable panel of commissioners could have acted, that they have taken into account some irrelevant matter or disregarded something which they should have given weight, or made some other error of law.

32. The Commissioners referred the Tribunal to their stated policy in this matter, as set out in the witness statement of Mr Dolan, on the restoration of vehicles used in the improper importation of excise goods and the restoration of such goods. They say that they are entitled to have such policies, which pursue the legitimate aim of deterring the importation of goods for commercial purposes without payment of duty and encouraging compliance, also allow for consistency in the decision-making of their officers. They point to the fact that the policy states the principle that privately owned vehicles used for the improper importation of excise goods will not be restored, even on the first occasion. Improperly imported excise goods seized will also not be restored. However, each case is examined on its merits. Specifically the presence of any of the following factors will militate against restoration; any evidence of previous smuggling or failure to comply with legal requirements; any evidence that the person involved knew what they were doing was wrong; any evidence that the person was paid to make the journey; large quantities of goods which might damage legitimate trade; any evidence that the goods were for commercial purposes.

33. The Commissioners say that Mr Hack examined all the matters before him, and concluded that there were no reasons to depart from these policies.

34. This is a case where there is no dispute on the basic facts although the parties see them in a different light. It is not disputed that the Appellant in company with Mr Clark, in her vehicle, were returning from a trip across the Channel and that they had with them excise goods in excess of the indicative limits. When asked questions the answers given were plainly unsatisfactory, and Mr Clark accepted at least by implication, that there were more goods than had been first declared. The Appellant now says that the goods were for own use, and that what the officers found to be suspicious circumstances can also bear an innocent explanation. However the officers clearly were not satisfied. The damaging admission was made by Mr Clark, who indeed gave the majority of the answers to questions and who alone signed the officer's notebook. They clearly considered that the Appellant and Mr Clark were in a joint enterprise, and indeed the indications available to them go in that direction. The Appellant now says that she was the unknowing dupe of events which led to the use of her car and her money and to her subsequent loss of that money and of her car, but that was not the way the matter was put to the officers who carried out the seizure.

35. The Appellant now complains that it was not made clear to her that of the two avenues for contesting the seizure which were open to her the first being to give notice to the Commissioners that she intended to contest the forfeiture, and the second asking for restitution and review, that it was not made clear that the latter course would lead to her car becoming forfeited to the Crown and sold. There

seems to be justification in her criticism, although that criticism does not go to the basic facts which led to the seizure.

36. The Appellant also criticises the review as being made without interview, clarification and a fair hearing. However it does not appear that the Appellant asked for an interview or a hearing so that it is perhaps not surprising that the Commissioners did not consider such a stage.

37. The Appellant also complains that she was not told that her car had been sold. Had she been so told she could have stopped paying out insurance premiums. There is no evidence about this and the Tribunal makes no finding about it. There seems to be no reason at all why persons whose vehicles have been seized cannot be informed that they have been forfeited to the Crown and that the property in them has passed to the Crown, if that is the case.

38. However the Appellant's main argument is that it was unreasonable of the Commissioners not to take into consideration her personal circumstances, that she is a single mother with five young children and that she uses her car as tool of her trade. The Commissioners say that in the event the loss of the car did not mean that she could not longer work because she was able to borrow her father's car but that seems to the Tribunal to be somewhat less realistic a position than the facts advanced by the Appellant require. The Commissioners accept those facts so that the main question before the Tribunal is whether their refusal to restore the vehicle to the Appellant because of her personal circumstances was unreasonable. The Commissioners themselves say that hardship will be a ground for restoring a vehicle but that hardship is not defined and that in this case in the exercise of their discretion they decided that restoration was not proper. The Tribunal proceeds on the basis that what the Appellant says about her personal circumstances was sufficiently advanced to the Commissioners for them to be obliged to take it into consideration. The question therefore is whether it was unreasonable in the way in which that term has been defined in the authorities cited earlier for them not to accept those facts as a ground for restoration. The Commissioners expressed their decision in their letter of 13 March that "there are no exceptional circumstances in this case which would justify departure from this policy ...". That sentence of course gives two justifications for the conclusion, the first being that there are no exceptional circumstances, the second that the circumstances do not justify a departure from the policy. As far as the first of these arguments is concerned it seems to the Tribunal perfectly unreasonable to say that there are no exceptional circumstances in the case of a woman who is looking after five young children alone. That must be in the normal use of language exceptional. To say then that there are no circumstances which justify a departure from the policy can only imply that the deterrent effect which the policy seeks to attain can and should be achieved in spite of the fact that the Appellant is in these exceptional circumstances. The Appellant also says that the car is a tool of her trade and that loss of it jeopardises her possibilities of earning a living. The Commissioners say that in the result she was still able to earn a living but that of course is being wise after the event. It seems to the Tribunal perfectly unreasonable for the Commissioners to reject as not exceptional the fact that seizure of the car was putting at risk the Appellant's possibilities of earning her living and looking after her five children. The Commissioners did not consider the proportionality of their actions in relation to the individual circumstances of the Appellant's case. They relied on the proportionality between their policy and the problems which that policy was designed to meet. However, the obligation of proportionality does not end there. The measures taken in any particular case must be proportionate. As the European Court of Human Rights stated in the case of *Air Canada v United Kingdom* (1995) 20 EHRR 150, the second paragraph of

Article 1 of the First Protocol to the European Convention on Human Rights must be construed in the light of the principle laid down in the Article's first sentence. "Consequently, any interference [with the right to property] must achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and aim pursued."

39. That case concerned the seizure of an aircraft which amounted to a temporary restriction on its use and did not involve the transfer of ownership. The owners of the aircraft were required to pay an amount of £50,000. The court held that taking into account the large quantity of cannabis found in it, the street value of that quantity and the value of the aircraft seized, the requirement to pay £50,000 was not disproportionate to the aim pursued, namely the prevention of the importation of prohibited drugs into the United Kingdom. A fair balance had been achieved in the circumstances of that case.

40. Two matters follow; the first is the Court clearly considered that there needed to be a balance between the general interest and the protection of the individual's fundamental rights, not only a balance in a general way between aims and measures. The Court considered precisely the value of the aircraft seized and the value of the prohibited goods, together with the general purpose. It is worth noting also that the £50,000 was only a small fraction of the aircraft's value and indeed of the "street value" of the illegally imported substance.

41. It follows that proportionality is a principle of law to which regard must be had. In the appeal of *Hopping* the tribunal found that the loss of a car to a person who knew that it was to be used for bootlegging trips was not disproportionate. That decision was no doubt taken on the facts of that case. However in other tribunal cases, in particular that of *Williams v Commissioners of Customs and Excise* (LON/01/8018) and *Lindsay v Commissioners of Customs and Excise* (LON/00/8053) (since upheld on appeal) as well as *Phillip J Lett v Commissioners of Customs and Excise* (LON/00/8052), tribunals have found that the issue of proportionality requires to be taken into account by the Commissioners with regard to their specific effect. It clearly was not in this case. It was in the Tribunal's view unreasonable for the Commissioners not to consider the Appellant's personal circumstances as exceptional and further a mistake of law not to consider the proportionality of the matters which they were taking in the individual case.

42. It follows that this appeal succeeds. In accordance with its powers under section 16(4)(b) the Tribunal requires the Commissioners to conduct a further review of the original decision to take into account the two measures which should have been considered.

CHAIRMAN

RELEASED:

LON/01/8073-OLD.HEIM