



TC05483

Appeal number: TC/2015/03875

EXCISE DUTIES – application to strike out – no reasonable chance of success - granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT WOULDS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

Sitting in public at Bedford on 3 May 2016

The Appellant did not appear and was not represented

Thomas Chacko, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an application by the respondent to strike out the appellant's appeal on the basis that there is no reasonable prospect of any part of the appellant's case succeeding.

2. The appellant did not attend and was not represented. The appellant had written to the Tribunal by email on 28 April 2016 confirming that he did not intend to attend the hearing and asking the Tribunal to proceed with the hearing in his absence.

3. The Tribunal had due regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules"). We decided that the appellant was clearly aware that the hearing was taking place and had chosen not to attend and that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with Rule 33 of the Rules.

Background

4. The substantive appeal is an appeal against an excise duty civil evasion penalty under s8(1) Finance Act 1994 and a customs duty and import VAT penalty under s25(1) Finance Act 2003, totalling £3,111 after a 45% reduction for disclosure and co-operation.

5. On 9 April 2013, the appellant arrived at Manchester Airport from the Gambia. He entered the green channel, indicating that he had nothing to declare. On being stopped and questioned by Border Force, he said that he had cigarettes in his bag. On a search, he was found to have 20,400 cigarettes in his luggage, substantially in excess of the personal allowance of 200. The cigarettes were seized by Border Force.

6. HMRC wrote to the appellant to advise him that they were considering imposing civil penalties in respect of excise duty, customs duties and import VAT. The appellant telephoned HMRC in response and, in a telephone call on 8 April 2014, stated that he had intended to sell the cigarettes in order to raise money so that he could obtain a visa for his partner and her daughter to come to the UK.

7. HMRC issued the penalties stated above on 21 July 2014.

8. On 18 April 2015, the appellant wrote to HMRC stating that he wanted to appeal the decision. His letter accepts that he was wrong in bringing the cigarettes into the UK, and states that he had offered to pay the duty due when he was stopped at Manchester Airport. He confirmed that he had intended to sell the cigarettes to raise funds for visas for his partner and her daughter, and that he had been under a lot of stress at the time as his partner and her daughter were being threatened by his partner's ex-husband.

9. The grounds of appeal were stated to be that the appellant had offered to pay the duty when stopped and that he did not now have the ability to pay the duty.

Appellant's submissions

10. In his correspondence with the Tribunal, the appellant explained that he is unwell, having been diagnosed with depression. He stated again that he accepts that he was wrong to bring the cigarettes into the country and that he had offered to pay the duty due. He stated that following the confiscation notice being given to him at the airport, he was told he would hear no more about it.

11. The appellant confirmed in correspondence that he did not have the funds to pay the penalty and asked for clemency.

HRMC submissions

12. For HMRC it was submitted that none of these grounds of appeal provide the Tribunal with a reason to allow the appeal or reduce the penalty and so the appeal has no reasonable prospect of success (per Rule 8(3)(c) Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009).

13. It was submitted that the appellant has admitted dishonesty and, although the appellant may have had good reasons for wanting to raise funds, that does not alter the dishonest conduct.

14. The offer to pay the duty, once stopped by Border Force, is not relevant to the fact that the appellant attempted to evade excise and customs duties and VAT.

15. As a matter of law, the Tribunal cannot take into account the ability of the appellant to pay when deciding whether to overturn or reduce a penalty (s8(5) Finance Act 1994; s29(3) Finance Act 2003).

Decision

16. Having reviewed the evidence provided and, in particular, the appellant's admission of dishonest conduct the Tribunal finds that the appeal has no reasonable prospect of success and the application to strike out is therefore granted.

17. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 10 NOVEMBER 2016