



TC06834

Appeal number: TC/2017/02183

Excise and Customs Duty - importation of tobacco products - appeal against Civil Evasion Penalties - s 25(1) of Finance Act 2003 and s 8(1) of Finance Act 1994 - whether dishonesty - yes - whether allowances given to reduce penalties correct - yes – appeal dismissed

FIRST-TIER TRIBUNAL

TAX CHAMBER

SHAHID KHALID

Appellant

- and -

HM REVENUE AND CUSTOMS

Respondents

**TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER SUSAN STOTT FCA CTA**

Sitting in public at Phoenix House, Rushton Avenue, Bradford on 5 June 2018

The Appellant in person

Mr Rupert Davies of Counsel instructed by the General Counsel and Solicitors to HM Revenue and Customs, for the Respondents

1. This is an appeal by Mr Shahid Khalid (“the Appellant”) against a decision by the Respondents (“HMRC”), to issue Excise and Customs Civil Evasion Penalties in the total sum of £1,136 under s 25(1) of Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty, and under s 8(1) of Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty, in that he failed to declare cigarettes which he was importing into the United Kingdom above the personal allowance of 200 cigarettes.

Background

2. On 28 December 2015, the Appellant was stopped and questioned by a UK Border Force Officer, on entering the Green ‘nothing to declare’ channel at Manchester Airport, arriving on a flight from Islamabad, Pakistan. The Appellant was travelling with his wife and two children.

3. From disembarkation to clearing Customs there are displayed a number of notices advising which countries fall inside/outside the European Union (EU) and also the duty free allowances for excise dutiable products acquired outside the EU. Pakistan is not in the EU and therefore, returning travellers, for the purposes of the Travellers Allowance Order 1994, have a personal allowance of 200 cigarettes.

4. Despite the notices, which are also situate in the baggage reclaim area and just before the Customs channel entrances, the Appellant chose to exit through the ‘nothing to declare’ Green channel, indicating that he had no goods to declare, at which point the Appellant was intercepted by a UKBF Officer.

5. The Appellant was asked all the usual initial questions, i.e. whether the bags he had with him were his, had he packed his bags himself and was he was fully aware of the contents of his bags. He was also asked was if he was carrying anything for anyone else and whether he was aware of his allowances for bringing goods into the United Kingdom and whether or not he had goods such as tobacco based goods within his luggage. The Appellant stated he was unaware of his allowances

6. On conducting a search of the Appellant’s luggage, 5000 Players Gold Leaf Cigarettes were found, which was 63 times over the Appellant’s personal allowance. . If the Appellant had not been stopped and the goods seized, a total of £3,787.00 in Excise Duty and Import VAT would have been evaded, in addition to any potential sale value of the goods.

7. As the goods had not been declared and were over the allowances as set out in the Travellers’ Allowances Order 1994 (as amended), a UK Border Force Officer seized the goods as liable to forfeiture under s 139 of the Customs and Excise Management Act 1979 (“CEMA”) and issued the Appellant with Public Notices 1 and 12A, being Seizure Information Notice C156 and Warning Letter BOR162, both of which the Appellant signed. The Appellant offered no other comments or explanation.

5 8. The legality of seizure was not challenged in the Magistrates' court and the seizure was therefore deemed to be legal pursuant to paragraph 5 schedule 3 CEMA.

9. On 28 December 2016, HMRC's Officer Stephen Davies a post detection audit officer of HMRC's Individual and Small Business Compliance Unit, Bootle, wrote to the Appellant at the address he had provided at Manchester airport, informing him that
10 HMRC would be conducting an enquiry into the matter and that the imposition of a Civil Evasion Penalty, under s 25(1) of the Finance Act 2003 and under s 8(1) of the Finance Act 1994 for the evasion of Customs and Excise Duty was to be considered. The Appellant was invited to co-operate with the enquiry and advised of the action he could take to reduce any potential penalty. The letter enclosed Public Notice 300 in
15 respect of Customs Duty and Import VAT and Public Notice 160 in respect of Excise Duty and invited any disclosure by the Appellant. The letter made it clear that any reduction in the penalty was contingent on the Appellant's response and co-operation with HMRC's enquires.

20 10. The letter from Officer Davies explained that if the Appellant was willing to co-operate with the enquiry he should provide the following within 30 days of the date of his letter:

- "A copy of this letter, signed and dated by you, as acknowledgement that you, as acknowledgement that you have read and understood Factsheet CC/FS9, Public Notice 160, and Public Notice 300. If you have any
25 questions regarding any of these, please contact me on the above number.
- Confirmation of who was involved in the smuggling (attempt)
- For each person involved, please state exactly what they did.
- For each person involved, please state why they did it.
- A full explanation as to how the smuggling (attempt) was carried
30 out.
- Confirmation as to how many times and when (the dates) alcohol and tobacco products were smuggled (or attempts made to smuggle them) into the UK.
- For each occasion, please state the quantity of goods.
- Details of all international travel during the period under enquiry,
35 including the reasons for travel.
- Any documentation you think will support the information you are providing.
- Any other information or explanations you think may be of use
40 to this enquiry".

11. Officer Davies referred the Appellant to Public Notice 300, section 3 where it states that a reduction in penalty may be given as follows:

"Disclosure

45 During the investigation an early and truthful admission of the extent of the arrears and why they arose will attract a considerable reduction (up to 40 per cent). By the extent of

5 the arrears we mean what has happened and over what period of time, along with any information about the value involved, rather than the precise quantification.

Co-operation

You will receive further mitigation (up to 40 per cent) if you:

- 10
- attend all the interviews (where necessary);
 - provide all information promptly;
 - answer all questions truthfully;
 - give the relevant information to establish your true liability;
 - co-operate until the end of the investigation.”

15

12. On 30 December 2016 the Appellant's wife, Nazia Kuser, telephoned Officer Davies and enquired why her husband had received the letter dated 28 December 2016. Officer Davies advised her he was unable to disclose much information and that her husband should reply to the bullet points on page 2 of his letter. She advised she would
20 ask the Appellant to respond.

13. On 13 January 2017 the Appellant's wife again telephoned Officer Davies and offered to give information over the telephone. She was advised to put the information in writing and again she was referred the bullet points on page 2 of Officer Davies's letter of 28 December 2016.

25 14. On 23 January 2017 Officer Davies received an undated letter from the Appellant, together with the signed receipt, indicating that the Appellant had read and understood all the enclosures attached to Officer Davies's letter dated 28 December 2016. The receipt was dated 19 January 2017.

30 15. In the letter the Appellant confirmed that he accepted full responsibility for the cigarettes, as he had packed the luggage himself and had put the cigarettes in as gifts for friends who are heavy smokers, as he does not smoke himself. The Appellant confirms that his wife was not aware that he had put the goods within the luggage as she was tending to their children. He also states that he cannot remember how many cigarettes he purchased and was unaware of the amount he could legally bring into the
35 United Kingdom. In the letter he stated the trip was to visit his Father who was ill at that time. He also states that he made a previous trip to Pakistan in July 2015 as his Auntly had passed away and a subsequent trip in February 2016 when his Father passed away. He states on those occasions that he did not bring tobacco goods back with him.

40 16. On 07 February 2017, having reviewed all the available evidence and information, Officer Davies issued to the Appellant a 'civil penalty - notice of assessment' in the sum of £1,136.00 (£224.00 custom civil evasion penalty and £912.00 excise civil evasion penalty), which represented a penalty of 30% of the Potential Loss Revenue of

- 5 £3,787.00 . Officer Davies allowed a 35% reduction for disclosure and a 35% reduction for co-operation. The calculation of the penalty is shown below:

	Duty liable to a penalty	Reduction allowed	Penalty Charged	Amount of penalty	Total penalty
Customs penalty	£747	70%	30%	£224	£1136
Excise duty Penalty	£3040	70%	30%	£912	

- 10 17. On 08 March 2017 HMRC received an undated letter from the Appellant, in response to the Civil Evasion Penalty Notice of Assessment. In the letter the Appellant says that he wished to appeal direct to the Tribunal. He refused the offer of a review by an Independent Officer not previously involved in the case.

18. On 8 March 2017, the Appellant appealed the penalty to the First-Tier Tribunal.

Evidence

- 15 19. The combined bundle of documents included a copy of Forms BOR 156 Seizure Information Notice and BOR 162 Warning letter. Copy correspondence, Notice of Assessment, relevant legislation and case law authority. The Appellant also gave oral evidence under oath to the Tribunal.

The Law

20. The legislation relevant to this appeal is:

- 20 Finance Act 1994, Sections 8(1) and 8(4)

Penalty for evasion of excise duty.

(1) Subject to the following provisions of this section, in any case where –

- 25 (a) any person engages in any conduct for the purpose of evading any duty of excise, and
 (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.

(4) Where a person is liable to a penalty under this section—

- 30 (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and

5 (b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners. (...)

Finance Act 2003, Sections 25(1) and 29(1)(a)

s25 Penalty for evasion.

10 (1) in any case where

(a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and

(b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

15 that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded. (...)

29 Reduction of penalty under section 25 or 26.

(1) Where a person is liable to a penalty under section 25 or 26—

20 (a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and

(b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners. (...)

25 Customs and Excise Management Act 1979, Sections 49(1), 78(3) and 139

49(1) Where-

a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being chargeable on their importation with customs or excise duty, are, without payment of that duty-

30 (i) unshipped in any port,

those goods shall ...be liable to forfeiture.

Customs and Excise control of persons entering or leaving the United Kingdom.

35 S78(3) Any person failing to declare anything or to produce any baggage or thing as required by this section shall be liable on summary conviction to a penalty of three times the value of the thing not declared or of the baggage or thing not produced, as the case may be, or [level 3 on the standard scale], whichever is the greater. (...)

S139 Provisions as to detention, seizure and condemnation of goods

40 (1) Anything 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.

(2) Where anything 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, either—

(a) deliver that thing to the nearest convenient office of Customs and Excise; or

5 (b) if such delivery is not practicable, give to the Commissioners at the nearest convenient office of Customs and Excise notice in writing of the seizure or detention with full particulars of the thing seized or detained.

10 (3) Where the person seizing or detaining anything 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—

15 (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 the Commissioners at the nearest convenient office of Customs and Excise;

20 (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 [section 31 of the Police (Northern Ireland) Act 19987 shall apply in relation to that thing.

25 (5) Subject to subsections (3) and (4) above and to Schedule 3 to this Act, anything 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.

(6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of anything as being forfeited, under the Customs and Excise Acts.

30 (7) If any person, not being an officer, by whom anything 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.

35 (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.

Paragraph 5 Schedule 3 CEMA states:

40 If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of anything no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied.

Travellers' Allowance Order 1994

1. This Order may be cited as the Travellers' Allowances Order 1994 and shall come into force on 1st April 1994.

45 2. (1) Subject to the following provisions of this Order a person who has travelled from a third country shall on entering the United Kingdom be relieved from payment of value added tax and excise duty on goods of the descriptions and in the quantities shown in the Schedule to this Order obtained by him in a third country and contained in his personal luggage,.

- 5 (2) For the purposes of this article—
- (a) goods shall be treated as contained in a person’s personal luggage where they are carried with or accompanied by the person or, if intended to accompany him, were at the time of his departure for the United Kingdom consigned by him as personal luggage to the transport operator with whom he travelled;
- 10 (b) a person shall not be treated as having travelled from a third country by reason only of his having arrived from its territorial waters or air space;
- (c) “third country”, in relation to relief from excise duties, shall mean a place to which Council Directive 92/12/EEC of 25th February 1992 does not apply; and, in relation to relief from value added tax, shall have the meaning given by Article 3(1)
- 15 of Council Directive 77/388/EEC of 17th May 1977 (as substituted by Article 1.1 of Council Directive 91/680/EEC of 16th December 1991

3. The reliefs afforded under this Order are subject to the condition that the goods in question, as indicated by their nature or quantity or otherwise, are not imported for a commercial purpose nor are used for such purpose; and if that condition is not complied with in relation to any goods, those goods shall, unless the non-compliance was sanctioned

20 by the Commissioners, be liable to forfeiture.

4. No relief shall be afforded under this Order to any person under the age of 17 in respect of tobacco products or alcoholic beverages.

HMRC Public Notices

25 HMRC Notice 300 Customs civil investigation of suspected evasion

2.4 Penalty for evasion of the relevant tax or duty

A penalty may be imposed in any case where:

- a person engages in any conduct for the purpose of evading any relevant tax or duty; and
- 30 • his conduct involves dishonesty (whether or not such as to give rise to any criminal liability).
- The penalty that the law imposes is an amount equal to the relevant tax or duty evaded or sought to be evaded.

35 The penalty can be mitigated (reduced) to any amount, including nil. Our policy on how the penalty can be reduced is set out in Section 3.

3.2 By how much can the penalty be reduced?

You should tell us about anything you think is relevant during the investigation. At the end of the investigation we will take into account the extent of your co-operation.

40 The maximum penalty of 100 per cent import duties evaded will normally be reduced as follows:

- Up to 40 per cent -early and truthful explanation as to why the arrears arose and the true extent of them.
- 45 • Up to 40 per cent - fully embracing and meeting responsibilities under the procedure by, for example: supplying information promptly, providing details of the amounts involved, attending meetings and answering questions.

5 In most cases, therefore, the maximum reduction obtainable will be 80 per cent of the value of import duties on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a complete and unprompted voluntary disclosure.

HMRC Notice 160 Compliance checks into indirect tax matters

10 2.3 How can penalties be reduced?

It is for you decide whether or not to co-operate with our check, but if you do you should be truthful as making a statement to us you know to be false, you could face prosecution.

If you choose to co-operate and disclose details of your true liability then you can significantly reduce the amount of any penalties due.

15 You should tell us about anything you think is relevant when we are working out the level of the penalty. At the end of the check we will take into account the extent of your cooperation.

2.3.1 Reductions under Civil Evasion Penalty Rules

The maximum penalty of 100% tax evaded will normally be reduced as follows:

- 20
- up to 40% - early and truthful explanation as to why the arrears arose and the true extent of them
 - up to 40% - fully embracing and meeting responsibilities under this procedure by, for example, supplying information promptly, quantification of irregularities, attending meetings and answering questions.

25 In most cases, therefore, the maximum reduction obtainable will be 80% of the tax on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a full and unprompted voluntary disclosure.

The Appellant's Case

30 21. In the Appellant's Notice of Appeal he appeals HMRC's decision to assess the penalties on the following grounds:

- a) He had apologised for his mistake.
- b) The goods were intended as gifts for friends.
- c) The penalty is too harsh.
- 35 d) He is unable to afford to pay the disputed amount.

22. At the hearing, the Appellant repeated these grounds of appeal.

HMRC's Case

40 23. On 28 December 2015, by entering the Green 'nothing to declare' channel at Manchester Airport, it was implicit that the Appellant was acting dishonestly and deliberately taking action to positively evade duty and tax. As the seizure was not challenged through the Magistrates Court, it is a deemed fact that the goods were legally

5 seized and therefore that he had entered the green channel with goods in excess of his allowances.

24. Although the Appellant contends otherwise, HMRC assert that the Appellant did in fact know of his allowances, or at least otherwise knew enough such that he ought to have made enquiries given the quantity of cigarettes imported in particular because:

10 a) The Appellant entered the Green channel, indicating that he had nothing to declare despite significant signage present. A number of notices are visible to passengers entering the UK, both in the baggage reclaim area and at the entrance to Customs channels. These explain which countries are inside and outside the European Union and the duty free allowances for excise goods.

15 b) The Appellant does not deny that the amount of cigarettes imported was over the permissible limits. The Appellant was carrying 12800 cigarettes - 63 times more than his personal allowance;

20 c) It is well known that Pakistan is outside the EU for excise purposes. The Appellant should have been fully aware that he was bringing more goods into the country than he was entitled to without declaring them, or at least made enquiries as to whether there were any limits or restrictions. Even if genuinely unaware of his allowances, the large quantity of cigarettes and tobacco would have prompted a reasonable and honest person to make enquiries rather than assuming there was no tax to pay.

25 d) Not doing so in the belief that the amount was likely over the allowances constitutes dishonest behaviour. A reasonable and honest person would check the allowances before importing a large amount of cigarettes.

30 e) It is inherently unlikely that, having never imported cigarettes before, a non-smoker would import this quantity of cigarettes as gifts for unspecified friends, which casts his credibility into doubt;

35 f) 12,800 cigarettes equates to 64 sleeves of 200 or 640 packets. This amount of cigarettes would take up a considerable amount of luggage space, suggesting a degree of pre-planning incompatible with the Appellant's claimed naivety;

g) Accordingly, on the balance of probabilities, the Appellant knew his allowances for importing tobacco and cigarettes, or at least knew that the amount he was importing was likely to be over the limit, even if he was not aware of the exact allowance.

40 25. HMRC are entitled under Sections 8(1) of the Finance Act 1994 and Sections 25(1) of the Finance Act 2003 to issue the Appellant with a penalty because he acted dishonestly and deliberately took action to positively evade duty and tax.

- 5 26. A finding of dishonesty requires that act undertaken (entering the green channel with an amount of excise goods above the allowance) was dishonest by the standards of an ordinary, reasonable person and that the Appellant realised that what he was doing was, by those standards, dishonest.
- 10 27. The appropriate test for dishonesty is the objective test set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 and in *Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37. In *Barlow Clowes*, Lord Hoffman at 1110 described the test as follows:
- 15 "Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree."
- 20 28. This test applies in both civil and criminal law. Per Lord Hughes (when discussing the judgements in *Royal Brunei* and *Barlow Clowes*) in *Ivey* at ¶ 63:
- 25 "Although the House of Lords and Privy Council were careful in these cases to confine their decisions to civil cases, there can be no logical or principled basis for the meaning of dishonesty (as distinct from the standards of proof by which it must be established) to differ according to whether it arises in a civil action or a criminal prosecution."
- 30 29. The objective test was confirmed by the Supreme Court in *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67. The two-stage test in *Ghosh* is no longer considered good law. Per Lord Hughes at ¶ 74:
- 35 "These several considerations provide convincing grounds for holding that the second leg of the test propounded in *Ghosh* does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* and by Lord Hoffmann in *Barlow Clowes*: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."
- 40
- 45 30. In the context of the current case, the Appellant's (subjective) state of mind was that he knew he was importing a very large quantity of excise goods and had no intention of paying excise duty upon them. If this conduct is judged by the "standards of ordinary

5 decent people" it is dishonest: entering the green channel with non-duty paid excise goods above the allowance is objectively dishonest.

31. Because the Appellant acted dishonestly and deliberately took the action to positively evade duty and tax, HMRC are entitled under s 8(1) of the Finance Act 1994 and s 25(1) of the Finance Act 2003 to issue the Appellant with a penalty.

10 32. The legislation at s 8(1) of the Finance Act 1994 and s 29(1) (a) of the Finance Act 2003 provide that the Commissioners, or on appeal, an appeal Tribunal may reduce the penalty up to nil.

15 33. The penalty is based on the amount of Customs Duties, Import VAT and assessed Excise Duty that was involved in the offence. In this case the penalty is £1136, being 30% of the culpable arrears.

34. The Appellant exercised its discretion as to the discount to be applied. A 35% deduction was made for early disclosure and a further 35% for cooperation (both out of a maximum of 40%). The discount was properly considered and was reasonable given the Appellant's responses to the queries raised.

20 35. No challenge has been brought to the calculation of the duties. The Excise Duty is calculated pursuant to the following provisions:

(a) The rate of duty on cigarettes is set out in Schedule 1 of the Tobacco Products Duty Act 1979 as amended by s.55 of the Finance Act 2015:

25 "Cigarettes: An amount equal to 16.5% of the retail price plus £189.49 per thousand cigarettes

Cigars: £236.37 per kilogram

Hand rolling tobacco: £185.74 per kilogram

Other smoking tobacco and chewing tobacco: £103.91 per kilogram."

(b) Retail price is defined in s.5 Tobacco Products Duty Act

30 36. Neither HMRC nor the Tribunal can take account of the Appellant's insufficiency of funds (s 29 (2) and (3) Finance Act 2003, and s 8 (5) Finance Act 1994).

37. The Appellant has not shown grounds to successfully appeal the decision to issue the penalty.

Conclusion

35 38. The Appellant imported the cigarettes from Pakistan. There are strict limits on the number of cigarettes that can be brought into the UK. It is well known that tax and duty is payable on imported cigarettes. The airport has clear signage which describes the allowances. The signage is designed to inform travellers who are not aware of importation restrictions. Pakistan is a non-EU country and so there could be no

5 confusion with the ‘unlimited for own use’ provisions which are applicable when importing from EU countries.

39. The Appellant had previously traveled to the UK from a non EU country on at least one occasion and it is more likely than not that he would have been aware of the allowances. In any event, a reasonable person would check the allowances before
10 importing such a large number of cigarettes.

40. The issue as to whether or not the cigarettes were for personal use does not arise. The facts of the matter are not in dispute and the Appellant did not challenge the legality of seizure of the goods within the statutory time limit. Where there is no timely challenge (– within 30 days to the Magistrates court), the law provides that the goods
15 are deemed to be condemned as forfeited and what that means in practice, is that in law, the Appellant is deemed to have imported the goods for commercial use. That is a final decision and the Tribunal has no jurisdiction to consider the issue any further.

41. The issue in this appeal is therefore whether or not the penalties which have been imposed were properly imposed. That raises the question of whether the Appellant has
20 been dishonest. The test for dishonesty when issuing a civil evasion penalty is as set out above by HMRC.

42. It is inherently unlikely that the Appellant did not know or suspect that there were restrictions on cigarettes being brought to the UK in large quantities. We have to conclude that the Appellant acted dishonestly and deliberately, taking action to
25 positively evade duty and tax.

43. As the Appellant dishonestly attempted to evade import VAT, Excise and Customs duties, a penalty is due under s 8(1) Finance Act 1994 and s 25(1) Finance Act 2003.

44. HMRC can reduce a penalty on the basis of the customer’s co-operation. The penalty at 30% of the Potential Loss Revenue has in our view been calculated correctly
30 and we therefore concur with HMRC’s assessment of the penalty.

45. The appeal is accordingly dismissed and the penalties totalling £1,136 confirmed.

46. 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)
35 Rules 2009. The application must be received by this Tribunal not later than 56 days

5 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.

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**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 23 November 2018