



Neutral Citation: [2022] UKFTT 00270 (TC)

Case Number: TC08652

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

In public by remote video hearing

Appeal reference: TC/2021/06410

CUSTOMS and EXCISE – civil evasion penalty – appellant entered the green channel at Manchester airport carrying excessive excise goods – whether conduct involving dishonesty – no – appeal allowed

Heard on: 19 July 2022

Judgment date: 05 August 2022

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL

Between

ROSA MOHAMED BIRHAN

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Lee Hardman of the George House Trust

For the Respondents: Miss Jessica Parlour litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. On 2 September 2019, the appellant (or “**Mrs Birhan**”) arrived at Manchester airport having travelled from Dubai, and having collected her luggage, exited customs control through the green channel. She was stopped by a Border Force officer and an examination of her luggage revealed that she was carrying 2,400 cigarettes and 52 kgs of shisha tobacco, both of which amounts are considerably greater than her personal allowance.
2. On 11 January 2021 HMRC issued her with a civil evasion penalty (the “**penalty**”) in the sum of £2,350. This decision deals with the appellant’s appeal against that penalty.
3. For the reasons given below I have decided to allow her appeal.

THE LAW

4. The legislation set out below is cited only so far as relevant to the issues in this appeal.

Excise duty

5. Chapter II of Part I of the Finance Act (“FA”) 1994 is headed “Appeals and Penalties.” Section 8 comes under subheading “civil penalties” and so far as relevant to this decision reads as follows:

“Penalty for evasion of excise duty

- (1) Subject to the following provisions of this section, in any case where—
 - (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.
- (2)
- (3)
- (4) Where a person is liable to a penalty under this section—
 - (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
 - (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.

(5) Neither of the following matters shall be a matter which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under subsection (4) above, that is to say-

(a) the insufficiency of the funds available to any person for paying any duty of excise or for paying the amount of the penalty;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of duty”.

6. FA 1994 s 16(6) provides that the burden of proving dishonesty rests with HMRC.

Customs duty and import VAT

7. FA 2003 s 25(1) provides that where a person has engaged “in any conduct for the purpose of evading” customs duty and/or import VAT and that conduct involves dishonesty, that person is liable to penalties up to the value of the duty or VAT evaded. FA 2003 s 33(7)(b) provides that the burden of proving dishonesty lies with HMRC. Similar provisions to those set out in section 8(4) and (5) FA 1994 apply to appeals against penalties for evading customs duty and/or import VAT, but in addition, there is a further “good faith” defence which I must discount in my deliberations as to whether I should reduce the penalty.

The test for dishonesty

8. A civil evasion penalty can only be levied if a person has behaved dishonestly. The legal test for dishonesty was clarified by the Supreme Court in *Ivey v Genting* [2017] UKSC 67 (“*Genting*”) and is as follows:

“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”.

9. The standard of proof is the civil standard, being the balance of probabilities.

THE EVIDENCE AND FINDINGS OF FACT

10. I was provided with a bundle of documents which also included the authorities and the relevant legislation. The appellant gave oral evidence, and Officer Jamie Watson, the assessing officer, gave evidence on behalf of HMRC. From this evidence I find the following:

Background

(1) On 2 September 2019 the appellant arrived at Manchester airport having travelled from Dubai. Having collected her luggage, she exited customs controls through the green “nothing to declare” channel. She was stopped by Border Force Officer Ford and questioned.

(2) She was asked some initial questions which she confirmed that she understood, but then further questions about her customs allowances about which she appeared vague.

(3) Her trolley bag was examined and found to contain 2,400 cigarettes. She also had three further bags of luggage which, when searched, revealed a total of 52 kg shisha tobacco, which was packed in 1 kg packets, inside bags or packets advertising a product called “Arabian Tea”. Both amounts are far in excess of the personal allowance (the shisha tobacco being more than 220 times that allowance). Shisha tobacco is a type of loose tobacco which is flavoured and generally smoked in a pipe.

(4) The goods were seized and the appellant was issued with forms BOR 156 and BOR 162 which she signed. She was also given notices 1 and 12A. These explain that if the appellant wished to claim that the goods were not liable to seizure, an appeal should be made to the magistrates court within 30 days of the seizure. No such challenge was made. As such, the goods were deemed liable to forfeiture.

(5) On 27 October 2020 HMRC wrote to the appellant to tell her that they were enquiring into the evasion of duty and invited the appellant to disclose any relevant information or documents in relation to the seizure. The appropriate notices and fact sheets were issued to her at the same time. HMRC chased for a response, and on 18 November 2020 the appellant telephoned HMRC and authorised them to speak to a friend on her behalf. An explanation was given to the friend as to why the appellant had received the letter of 27 October 2020 and the chasing letter. An extension for responding was ultimately granted until 19 December 2020.

(6) In a letter dated 5 December 2020 the appellant provided further information about the goods which were seized on 2 September 2019. Details of that letter are set out below.

(7) On 11 January 2021, Officer Watson issued the appellant with the penalty for £2,350 comprising a customs evasion penalty of £546 and an excise evasion penalty of £1,804. He also confirmed, in the covering letter, that the appellant had been awarded 35% mitigation for disclosure and 40% mitigation for cooperation. The relevant factsheet and duty schedule were enclosed with the letter.

(8) Following a telephone conversation between the appellant’s friend and HMRC in February 2021 in which the latter explained the appellant’s options, the appellant wrote to HMRC in a letter dated 3 February 2021 requesting reconsideration of the penalty decision together with details as to why that reconsideration should be undertaken.

(9) Officer Watson wrote to the appellant on 1 March 2020 explaining that notwithstanding the additional information which she had provided, the penalty decision remained unchanged. On 6 April 2021, HMRC received a letter from the appellant requesting a review of that decision, and following that review, on 27 August 2021, HMRC issued a review conclusion letter confirming the decision to issue the penalty. The appellant, through her representative, appealed against this decision on 17 September 2021.

The relevant correspondence

(10) In the letter of 5 December 2020, which was signed by the appellant, the following information was provided to HMRC.

(a) She was ready to provide HMRC with any information required to explain the mistake that she had made in bringing molasses exceeding what “I am allowed” (molasses is an alternative description for shisha tobacco).

(b) When asked for confirmation of who was involved in the smuggling (attempt), the reply was that “there was no other person involved other than myself”. And that “I solely bought the molasses for my use and for the use of myself and extended family and friends in social gatherings. It is a traditional custom that we have in various occasion and there was no other person involved in organising this purchase or bringing it to Manchester”.

(c) She explained that she had purchased the molasses from a shop in Dubai and “they perform the and I have put it in my luggage”. She went on to say, in response to a question asking for a full explanation as to how the “smuggling (attempt) operation was carried out” that there was no intention to conceal the molasses. “This was the first time that I brought this quantity. In past trips I did bring few units that were requested by friends as a gift, however, I was under the impression that molasses was not under the same restrictions as tobacco.” When asked for confirmation as to how many times and when alcohol and tobacco products were smuggled (or attempts made to smuggle them) into the UK, the reply was “this was the only time that I brought such a quantity of molasses. In the past it was only few packages if any”.

(d) She went on to say that the “quantity that I have ever brought in past journeys where always a pack or two of cigarettes that I would buy from Dubai Duty. In the few occasions I bought a bag or two of molasses”.

(e) In response to a question asking whether there was any other information or explanations you think may be of use to this enquiry, the response was “the quantity that I have ever brought in past journeys where always a pack or two of cigarettes, and no quantity of molasses that exceeded few bags if any.” She went on to say that the reason for bringing the molasses was to use personally, that she had no understanding that it was treated as a tobacco import, and it was a mistake which she acknowledged and has not repeated.

(11) In the letter dated 3 February 21, again signed by the appellant, the following information was provided to HMRC:

(a) “Let me start by pointing out that while I was aware of the rules concerning cigarettes imports to the UK, I was not aware of any restriction concerning molasses. We consume it a lot in our social gatherings. I sincerely was not aware that it is viewed and treated with the same restrictions as cigarettes”.

(b) If she had the funds available she would have paid the penalty. She is a single mother with a daughter who is looked after and has modest savings. She had started working on a full-time job in September 2020 prior to which she had been mainly unemployed or doing occasional part-time work and thus had generated little income. She has no savings apart from a small amount in case of emergencies.

(12) In the letter dated 21 March 2021, seeking a review, which is not signed but the type ends “Kind Regards, Rosa Birhan” further representations are made:

(a) She was never aware that she had brought in a quantity of cigarettes that was over the permissible limit. The cigarettes had been bought from the duty-free shop in Dubai

and “every passenger is allowed 2 cartons per boarding pass. I had 2 boarding passes, one for myself and one for my daughter. I have always understood the rules to be 2 cartons per passengers”.

(b) She would never intentionally break the rules. “I have always limited my purchases of cigarettes to the allowed limits per passenger.....” And “I did bring the molasses as stated in my last letter to share it with friends and family in social gatherings”.

The penalty assessment

(13) Oral evidence regarding the penalty assessment given by Officer Watson. His evidence was set out on a witness statement which he adopted. He was asked some supplemental questions and was cross-examined by Mr Hardman. I find the following facts based on his evidence:

(a) He is an experienced HMRC employee and has worked in the appropriate customs team since February 2020.

(b) On receipt of the letter dated 5 December 2020 he analysed its contents and considered them against the evidence of Officer Ford’s notebook dealing with the seizure. His interpretation of that notebook was that the shisha tobacco was split between the three bags of luggage but each packet was concealed in a bag marked “Arabian Tea”.

(c) He also knew that at all ports of entry into the UK there is essential information displayed for travellers at both the baggage reclaim and in the customs declaration areas which sets out which countries are within the EU and advising the allowances for tobacco products for countries outside the EU. He was satisfied that the appellant was aware of the customs allowances. In his view she had made a dishonest attempt to bring in more than the allowance.

(d) He based his assessment, that the appellant had been dishonest, on a number of factors. Firstly, the evidence of Officer Ford’s notebook. Secondly, the large quantity (52 kgs) of shisha tobacco, and the fact that it was packed in the Arabian Tea bags. This was evidence of concealment, and that the appellant had made a conscious effort to conceal the goods. Thirdly, when answering a question about smuggling in the letter of 5 December 2020, the appellant raised the issue of concealment which had not been mentioned in the question, which implied that she was aware that she was concealing the goods. Fourthly, she had offered no explanation as to why the goods were packaged in the Arabian Tea bags. Fifthly, answers in that letter made it, in his view, clear, that the amount she was bringing in was excessive as she had brought in packages of molasses in the past when she had only brought in “few packages”. The appellant had stated that she was unaware that shisha tobacco was treated as tobacco which is why she brought that amount back with her, and he thought this was evidence that she was aware of the tobacco allowance and also disregarded the fact that she was carrying 2,400 cigarettes which is 12 times over the personal allowance. Finally, her answers evidencing that on previous trips she had only brought back a few packs of cigarettes, and on a few occasions a bag or two of molasses, demonstrated that she was an experienced traveller and would have known, or at least have been aware, of a personal allowance, and as such he would have expected a reasonable person to have investigated that allowance before attempting to import goods.

(e) He also took the view that the appellant evidenced dishonesty by not admitting her attempt to avoid duty.

(f) Accordingly, he issued a civil evasion penalty assessment for £2,350 comprising a customs duty penalty of £546 and an excise duty penalty of £1,804.

(g) He allowed a 35% reduction for disclosure and a 40% reduction for cooperation against the maximum penalties. Having been asked for a reconsideration, he undertook that exercise but there was nothing in the additional information supplied by the appellant which caused him to alter those penalties. Indeed, the appellant's letter of 3 February 2021 confirmed that she was aware of restrictions on the importation of tobacco products.

The appellant's oral evidence

(14) The appellant provided a document entitled "STATEMENT OF CASE" which to all intents and purposes was a (very brief) witness statement on which she was asked some supplementary questions by Mr Hardman following which she was cross examined by Miss Parlour. At this stage I set out her evidence, and thereafter, in the Discussion section of this Decision, I shall make appropriate findings of fact.

(a) The purpose of her trip to Dubai was to take her 5-year-old daughter to see her father.

(b) The appellant had been asked by some friends of hers in her community if she could bring back some shisha tobacco and cigarettes for a planned New Year's Eve party on 8 September, the date of New Year's Eve for those in that community. Those friends had given her some money to pay for the goods and told her which type of cigarettes and shisha tobacco she should buy.

(c) The shopkeeper in Dubai who had sold her the shisha tobacco had told her that the packets in which he sold it to her would not fit into her luggage unless it was repacked. It was the shopkeeper who packed the shisha tobacco in the bags marked Arabian Tea.

(d) She does not smoke either regular tobacco (including cigarettes) or shisha tobacco and has never done so. She therefore was not intending to use the goods herself.

(e) She has never brought into the UK, before 2 September 2020, either regular tobacco (including cigarettes) or shisha tobacco.

(f) She had two boarding passes, one for herself and one for her daughter. She was told by the trader at Dubai airport, where she bought the cigarettes, that she could purchase and import into the UK, two packets of cigarettes per boarding pass. They did not tell her that each boarding pass had to be for a person aged 18 or over. Each "packet" of cigarettes in fact included three smaller cartons of cigarettes, each containing 400 cigarettes. But in her view these packets fell within the description as one packet even though they were made up of the smaller cartons.

(g) She did not know that there were any rules, when she flew out to Dubai, concerning the amount of tobacco that she could import into the UK. She learnt that there were rules at the Dubai airport shop. She was not, however, aware that there was any restriction on importing shisha tobacco. She therefore thought that she was bringing in an allowable amount and thus went through the green channel.

(h) She did not dishonestly attempt to evade duty. She did not know that she was doing anything wrong.

(i) It was Mr Hardman who had assisted the appellant to compile her witness statement. However, it was her neighbour, who spoke Arabic, who helped her with the letters that were sent to HMRC. This neighbour assisted the appellant because the appellant's English was poor. The neighbour asked the appellant the questions posed by HMRC's letter of 5 December 2020, in Arabic. She then wrote down the appellant's answers translated back into English. The appellant then used Google translate to check those answers (as I understand it, translating them back into Arabic) but did not check all responses in this way. The same method was adopted in her letters of 3 February 2021 and 21 March 2021 when replying to the other HMRC correspondence. She does not read English well and cannot understand everything that she reads in English.

DISCUSSION

11. The legislation is clear that it is for HMRC to establish conduct involving dishonesty on the part of the appellant and the standard of proof is the balance of probabilities, or more likely than not. HMRC accept this.

12. Miss Parlour submitted:

(1) The test of dishonesty is an objective test and the fact that the appellant did not see herself as acting dishonestly is not relevant.

(2) The appellant has changed her story, and I should prefer that reflected in the correspondence to the story that she has told in her evidence today. Indeed, this is the first time that HMRC have been told about the shopkeeper packing the shisha tobacco in the Arabian Tea bags.

(3) The story told in correspondence clearly demonstrates dishonesty as set out in the testimony of Officer Watson.

(4) It is the appellant's duty, as a traveller, to ascertain the relevant limits to the amount of tobacco which she is allowed to import into the UK. It is not the duty of airport staff to advise her. An honest traveller would have found out what they could bring in and the relevant limits.

(5) There were clear signs at the airport regarding the permitted allowances, and in ignoring these, the appellant acted dishonestly. She wilfully exited the airport through the green channel.

(6) It is inconceivable that the appellant genuinely believed that a boarding pass for a 5-year-old child would enable the appellant to import, duty free, 1,200 cigarettes.

(7) Given that the appellant did not challenge the seizure of the goods in the magistrates' court, it is not open for her now to claim that they were not imported for commercial purposes. In any case, the intended use of the goods is not relevant to the penalty.

(8) Had she succeeded in entering the UK through the green channel, unchallenged, she would have got away with failing to pay a substantial amount of duty.

(9) The reductions to the maximum penalty, made by Officer Watson, are entirely reasonable. He is entitled not to give full deductions on the basis that the appellant did not admit that she had acted dishonestly.

13. Mr Hardman submitted:

(1) The appellant's evidence to me is the correct version of events. The version explained in the correspondence was inaccurate. The inaccuracies are a result of the translation difficulties arising from the fact that the appellant does not read, write or understand English at all well. She did not fully check the information which had been written down by her neighbour, and which she sent on to HMRC. She did not fully understand the information that she was giving to HMRC in those letters.

(2) She does not, nor has ever, smoked tobacco cigarettes or shisha tobacco, nor has she on any previous occasion, imported these into the UK.

(3) Packing the shisha tobacco into the Arabian Tea bags is not a particularly subtle form of disguise and suggests that she was not trying to deliberately conceal the tobacco.

(4) Furthermore, it was so packed by the shopkeeper who sold her the tobacco who had told her that it would not, as originally packed, fit into her luggage. It was not the appellant who asked him to so pack it.

(5) Officer Watson's conclusion that the appellant had behaved dishonestly by raising concealment in answer to a question in the 5 December 2020 letter, was not evidence of dishonesty given that the answer was given to a question regarding smuggling.

(6) She had only brought two packets of cigarettes into the UK as advised by those who sold them to her at Dubai airport, but did not realise that the packets meant the smaller cartons rather than the combination of cartons which comprised each packet.

(7) When she said that there were no other persons involved, she thought this meant involved in the actual purchasing in Dubai rather than the members of the community who had asked her to undertake, and indeed had funded, the purchases.

(8) The appellant had always maintained the position set out in her witness statement to Mr Hardman who believed her story set out in it.

14. In considering whether the appellant has acted dishonestly, I must apply the test set out in *Genting*, the first element of which is that I must ascertain subjectively the actual state of the appellant's knowledge or belief as to the facts. I must ascertain whether that belief is genuinely held based on the evidence. I must then go on to decide whether the conduct was honest or dishonest by applying the objective standards of ordinary decent people. I agree, therefore, with HMRC that the appellant's view that she was not acting dishonestly by those standards is not relevant to this analysis.

15. But the appellant's subjective knowledge or belief of the facts is highly relevant. Indeed, it is the first limb of the *Genting* test.

16. And the crucial issue, as I see it, concerns the inconsistency between the evidence given to me by the appellant at the hearing (on the one hand) and the information provided to HMRC in the correspondence mentioned above (on the other hand).

17. As is apparent, there are glaring inconsistencies between the two. For example, the information given to HMRC in the correspondence clearly indicates that the appellant had brought both cigarettes and shisha tobacco into the UK on previous occasions. Yet her evidence before me was that she had not done so. She had also stated that she had bought the shisha “for my use” clearly implying that she was smoking it, when in her oral evidence before me, she said that she had never smoked shisha tobacco (or indeed cigarettes).

18. I therefore need to find as a fact which version of events is the correct one. And I find, for the reasons given below, that the evidence which the appellant gave to me at the hearing is to be preferred as evidence of her actual knowledge or belief as to the facts.

19. Firstly, it was clear from the way in which the appellant gave evidence that she had difficulty in understanding English. Indeed, had it not been for Mr Hardman who acted, most properly, as a conduit for the questions posed of the appellant both by Miss Parlour and by myself (and in essence translated the questions that we are asking into a form of language the appellant could understand and thus provide an answer to) it would have been very difficult for the appellant to have provided her evidence in a comprehensible manner.

20. This difficulty with English is also clearly evidenced in the extracts from the letters that I have set out above. Those who have had the stamina to reach this part of the decision will be pleased to hear that the words in those extracts, which appear to be spelt incorrectly, were not spelt incorrectly by me, but by the appellant. So, the use of “brough” instead of “brought”; “ceased” rather than “seized” “where” rather than “were” are her spellings not mine. Furthermore, there are a number of sentences which simply did not read correctly (“I have purchased the molasses from a shop in Dubai and they perform the and I have put it in my luggage.”). There are other grammatical errors.

21. In my view this is consistent, too, with the evidence given by the appellant regarding the way in which her neighbour assisted the appellant in providing information to HMRC. I can see that given the translation firstly from English and Arabic and then back again, that something was lost in translation, and I accept the appellant’s testimony (which was not seriously contested by Miss Parlour) that she did not use Google translate to translate all of the English responses back into Arabic so that she could analyse them. In any event, given the demeanour of the appellant when giving evidence and the way in which she answered the questions, from which it was clear that she did not, to my mind, fully understand either the process nor the answers that she had given to HMRC in correspondence, I strongly doubt that even if she had read the answers in Arabic, she would have fully understood what was, effectively, being said on her behalf. It is my suspicion that the neighbour had sought to assist the appellant and had included information in those responses which was not given to her by the appellant and was included in an effort to provide information to HMRC which the neighbour thought would better the appellant’s position. Alternatively, the neighbour may simply not have understood what the appellant was saying and misinterpreted her “instructions”.

22. However, I did not see the exchanges between the appellant and her neighbour, but I have seen her give evidence to me. I accept the appellant’s testimony (again largely unchallenged by Miss Parlour) that the reason for the shisha tobacco being packed in bags labelled Arabian Tea was because the shop keeper thought that, as originally packed, the appellant would not be able to fit that tobacco into her luggage.

23. I find, therefore, that this ostensible concealment is not evidence of dishonesty. The subjective belief of the appellant was that it was so packed to ensure it would fit into luggage. It was not so packed to deceive the UK Border Agency.

24. I believe the appellant when she says that she does not smoke, has never done so, nor has she brought back either tobacco, cigarettes, or shisha tobacco on previous trips abroad.

25. I also believe the appellant that she genuinely thought that she could bring back two packets of cigarettes, one for each boarding pass, and that her view of a packet was a wrapped bundle comprising three cartons each containing 400 cigarettes. And that this is what she had been told by those who sold her the cigarettes at Dubai airport.

26. I wholly accept the criticisms of this approach made by Miss Parlour, and agree with her, wholeheartedly, that it is for the appellant to ascertain the relevant limits to the quantity of goods which can lawfully be brought into the UK. And that 52 kgs of shisha tobacco is a significant amount. And, furthermore, reliance on shopkeepers or friends as to the relevant limits is no substitute for checking things oneself. But I do not accept that these are evidence of dishonest behaviour. It would clearly be evidence of failure to take reasonable care, but HMRC need to go further than that and demonstrate dishonesty. And these failures are not, to my mind, such evidence.

27. In my view the appellant was an innocent abroad (no pun intended). When giving evidence she struck me as someone who did not fully understand the proceedings and was only able to fully participate in by dint of the perfectly proper and acceptable assistance of Mr Hardman. On the basis of this, it is my conclusion that she was equally unaware of the duty ramifications of purchasing and importing the cigarettes and shisha tobacco which are the subject matter of this appeal.

28. Turning then to the second limb of the *Genting* test, I need to decide whether the appellant's conduct was honest or dishonest judged against the objective standard of ordinary decent people. Given that I have decided that the appellant genuinely thought that she could bring back the quantity of cigarettes and shisha tobacco, duty free, which she brought through the green channel on 2 September 2019, I have no hesitation in saying, tested against the objective standard of honesty, the appellant did not act dishonestly.

29. In saying this, I make no criticism of the contrary decision reached by Officer Watson. As is apparent from the reasons set out above, I have come to my conclusion based on the evidence given by the appellant at the hearing. Officer Watson did not have the benefit of this when he raised the penalty assessment. And, frankly, based on the information which he had at that stage, and the answers and information provided by the appellant in correspondence, I would have reached the same conclusion too. But the relevant legislation provides that on an appeal I can reach a fresh decision. And I can do so in the light of the evidence which is presented to me. On the basis of that evidence, it is my decision that the appellant has acted honestly.

DECISION

30. For the foregoing reasons I allow the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

31. 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.

**NIGEL POPPLEWELL
TRIBUNAL JUDGE**

Release date: 05 AUGUST 2022