



Neutral Citation: [2024] UKFTT 00150 (TC)

Case Number: TC09081

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Decided on the papers

Appeal reference: TC/2022/02668

Customs Civil Evasion Penalty - Dishonesty

Judgment date: 20 February 2024

Decided by:

TRIBUNAL JUDGE WATKINSON

Between

ALI SALAMAT

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the appeal on 13.2.24 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 12.4.22 (with enclosures), HMRC's Statement of Reasons dated 12.9.22 and the remainder of the hearing bundle running to 96 pps.

DECISION

INTRODUCTION

1. This is an appeal by Mr. Salamat against a Customs Civil Evasion penalty in the sum of £205 and an Excise Civil Evasion penalty in the sum of £712 issued pursuant to s.8(1) Finance Act 1994 and s.25(1) Finance Act 2003. The penalties total £917.

2. Resolving this appeal requires me to determine whether the Respondents have proved that the Appellant was dishonest. Ordinarily, no Tribunal would countenance making such a finding without it being put to the party accused of being dishonest. Here, however, the Appellant knows full well what is alleged against him, consents to the hearing taking place in his absence and has said that he has no more evidence to provide. In the circumstances Judge Zaman directed a hearing on the papers. Bearing in mind the findings I am asked to make on the papers I treat the written documents, and contemporaneous notes, with particular care. I also bear in mind that the Appellant's absence cuts both ways, in that neither the Respondents, nor the Tribunal can test his account beyond what is said on the face of the documents.

THE RELEVANT LAW

3. Sections 8(1), (4) and (5) of the Finance Act 1994 provide as follows:

“8 Penalty for evasion of excise duty

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

- (a) any person engages in 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 –

- (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.”

4. Section 8 of the Finance Act 1994 was repealed by paragraph 21(d)(i) of Schedule 40 of the Finance Act 2008 with the exception of the dishonesty penalty, which was preserved by the Schedule 41 (Appointed Day and Transitional Provisions) Order 2009.

5. Sections 25(1) and 29 of the Finance Act 2003 provide as follows:

“25 Penalty for evasion

(1) In any case where –

(a) a person engages in any conduct for the purposes 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),

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 –

(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.

(2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).

(3) Those matters are –

(a) the insufficiency of the funds available to any person for paying any relevant tax or duty or 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 or any relevant tax or duty,

(c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.”

24. The Travellers’ Allowance Order 1994 provides for the limits for the importation of relevant goods from third countries (whereby a “third country” is defined in relation to relief from excise duties as a place to which Council Directive 92/12/EEC of 25 February 1992 does not apply). The limit for cigarettes is 200.

25. The test for dishonesty has been clarified by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords v Genting* [2017] UKSC 67. Lord Hughes (with whom Lord Neuberger, Lady Hale, Lord Kerr and Lord Thomas agreed) stated as follows at [74]:

“[74] 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.”

FINDINGS OF FACT

6. The key documents that I had before me were: the witness statement of HMRC Officer Natasha Sultman who issued the penalties to the Appellant, the contemporaneous notes in the notebook of UK Border Force Officer Trendall who stopped the Appellant at Manchester airport, a letter from the Appellant to HMRC dated 4.3.22 and the Appellant’s Grounds of Appeal from a notice of appeal dated 12.4.22.

7. From all the documents I find the following facts:

8. At the time the Appellant was stopped at Manchester Airport there was essential customs information displayed both at the baggage reclaim and customs declaration areas detailing which countries were within the EU and advising of the allowances for tobacco products for countries outside the EU.

9. On 27.3.21 at 08:00 Officer Trendall stopped the Appellant in the Green Channel of Manchester Airport. The Appellant had arrived on a flight from Pakistan and had with him 4 bags that he said he had packed himself. Officer Trindall asked the Appellant whether he understood his customs allowances when returning to the UK, the Appellant said “not really” and that this was the first time that he had been away in 30 years. The Appellant said that he only had cigarettes, he had been told in Pakistan that he could have 7 cartons per bag, and he had 28 cartons of cigarettes. Officer Trendall then found 28 cartons of Players Gold Leaf cigarettes in the Appellant’s bags, with 4 parcels each containing 4 cartons being wrapped in gift wrap. There were 5,600 cigarettes in total seized.

10. Officer Trendall seized the cigarettes, gave the Appellant a seizure information notice and a warning letter about seized goods. The seizure was not challenged and the cigarettes were therefore condemned as forfeit.

11. On 10.2.22 HMRC sent a letter to the Appellant advising him of an enquiry and that co-operation may reduce any penalties. The Appellant did not reply in writing but telephoned HMRC on 28.2.22 saying that he was aware that he needed to respond, that he was confused as he was not a smuggler, he left the UK to go to Pakistan for the first time in 30 years, and he did not know that he wasn’t allowed to bring in so much as he is a heavy smoker.

12. On 1.3.22 HMRC again wrote to the Appellant requesting a response by 12.3.22. The Appellant replied in a letter of 4.3.22 saying:

“There are about 6 smokers in my family and I am one of them, the cigarettes were for friends and family. This was the first time in 30 years I had travelled to Pakistan. At arrivals at Manchester Airport, when I picked up my luggage a gentleman asked me to come with him into the side room he asked me what I had in my luggage I told him cloths, pots, pans and cigarettes. He then said to me did I read the sign where it says to declare cigs and alcohol. I told him before I could read any signs you had asked me to come with you. As for travelling abroad from 27/3/20 – 10/2/22 that was my only trip abroad and the reason for travel was an elderly sick relative who is now deceased.”

13. The total duty due on the cigarettes was £2,294. On 18.3.22 Officer Sultman issued a penalty letter to the Appellant charging total penalties of £917 broken down as follows. There were reductions of 30% each for disclosure and co-operation:

We have assessed the penalty for 27 March 2021	Duty liable to a penalty	Reduction allowed	Penalty charged	Amount of penalty	Total penalty for period
Customs civil evasion penalty	£513	60%	40%	£205	£917
Excise civil evasion penalty	£1781	60%	40%	£712	

14. On 12.4.22 the Appellant appealed the penalty to the Tribunal giving the following grounds:

“The reason to why I am appealing is because I am not a frequent traveller, I have travelled to Pakistan after 30 years. Due to being a heavy smoker, the cigarettes that I bought in my luggage were for my own personal use.

At Manchester Airport as I picked my luggage up and started walking, an officer asked me to come with him, so we went into an office and he asked what I had in my luggage. I told him pots, pans and clothes as well as cigarettes. He then said why did you not declare the cigarettes as there is a sign above you. I then went on to tell the officer you did not give me time to look around for signs as this is my first trip to Pakistan in 30 years. So I am not familiar with certain rules For these reasons. Please could you forgive this penalty as this is my first time. Also, due to COVID-19 I'm stressed as well as financially struggling. Once again, I apologise for any convenience of course, but please, could you forgive this penalty.”

DISCUSSION - DISHONESTY

15. I am satisfied on the balance of probabilities that the Respondents have proved that the Appellant’s conduct in entering the green channel without declaring the cigarettes that he was carrying involved dishonest conduct. I reach that conclusion for the following reasons:

16. I find that the Appellant’s accounts are inconsistent. He told HMRC in the letter of 4.3.22 that the cigarettes were for friends and family, and he has told the Tribunal in his Grounds of Appeal that the cigarettes were for his own personal use. I find that this impacts the credibility of the Appellant’s account.

17. I am satisfied on the basis of Officer Trendall’s contemporaneous notebook that the Appellant had entered the green channel when he was stopped, and I reject his suggestion that as soon as he picked up his bags he was asked to come into a side room. Again, I find that this impacts the credibility of the Appellant’s account.

18. I am satisfied that, contrary to the Appellant’s account of what he said to Officer Trendall, the Appellant did have the opportunity to, and did see, the signs in relation to cigarette allowances prior to entering the green channel. Again, I find that this impacts the credibility of the Appellant’s account.

19. I find that the Appellant’s answer “not really” to the question of whether he understood the customs allowances when returning to the UK and his assertion that he was told in Pakistan that he could have 7 cartons per bag, show that he did know that there was a limited allowance. I find that the Appellant knew from the signs that he had seen that the 28 cartons of cigarettes that he was carrying were vastly in excess of that allowance. To be clear, I reject as a matter of fact the assertion that the Appellant was specifically told that he could have 7 cartons of cigarettes per bag, instead, as above, I find that the fact that the Appellant made this assertion shows that the Appellant was, in fact, aware of the limit on bringing cigarettes into the UK or he would, on the balance of probabilities, have had no reason to make such an enquiry.

20. I also note that the Appellant has said that he has no other evidence to give, and there is therefore nothing else that supports his accounts.

21. I find that knowingly breaching the allowance on bringing cigarettes into the UK without declaring those cigarettes is dishonest by the standards of ordinary people.

DISCUSSION – OTHER MATTERS

22. I am satisfied that the penalty has been properly calculated and issued and that appropriate mitigation was applied. Financial difficulties do not allow the Tribunal to reduce the penalty.

23. This appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

24. 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.

**HOWARD WATKINSON
TRIBUNAL JUDGE**

Release date: 20 FEBRUARY 2024