



TC04158

Appeal number: TC/2013/04545

Excise duties – tobacco imports – whether for private use – seizure not challenged – jurisdiction of Tribunal – Customs and Excise Management Act 1979, Sched 3, para 5 – Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – Strike-out granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALAN WEDDLE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE KENNETH MURE, QC

Sitting in public at Manchester on 10 November 2014

Appellant – not present or represented

Respondents – Mr Simon Charles, of Counsel, instructed by the Solicitor's Office, HMRC

DECISION

1. The Respondents, HMRC, were represented by Mr Simon Charles. The Appellant had advised by letter dated “14” October 2014 (date-stamped as received “13 October 2014”) that he did not intend to appear. Nor was he represented. However, he did submit detailed written submissions and other papers to the Tribunal which were carefully considered.

2. Mr Charles referred to the terms of the Application for strike-out. This proceeded in terms of Rule 8(2)(a) and 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 inasmuch as the Tribunal had no jurisdiction and, further, there was no reasonable prospect of success.

3. Mr Charles explained that on 7 November 2012 the Appellant was stopped at Hull by the UK Border Force. He had in his possession 6kg of hand-rolling tobacco. The Appellant explained that it was for his own private use. However, the tobacco was seized as liable to forfeiture. The seizure was not challenged by the Appellant and consequently in terms of para 5 of Schedule 3(2) CEMA the goods were duly condemned as forfeited.

4. Accordingly on the basis of the decision of the Court of Appeal in *Jones & Jones* [2011] EWCA Civ 824, which was followed by Warren J in the recent Upper Tier decision in *Nicholas Race* [2014] UKUT 0331 (TCC), this Tribunal could not consider any argument as to intended personal use of the tobacco by the Appellant. Mr Charles noted particularly the Opinion of Mummery LJ at para 71 of *Jones & Jones*.

5. In these circumstances an assessment to duty of £984 had been made. Additionally a penalty of 20%, being £196, had been imposed. However, only the assessment to duty was under appeal.

6. As noted *supra* Mr Weddle submitted detailed written submissions. He maintained that the tobacco was for private use and he referred to Article 34 TFEU in relation to the free movement of goods within the EU.

7. While I have a certain sympathy for the Appellant I consider that the submissions made by Mr Charles are overwhelming. The Opinion of Mummery LJ in *Jones* sets out clearly the limits on the jurisdiction of this Tribunal. In the absence of Notice objecting to seizure, the goods are deemed to have been condemned. This Tribunal cannot review any evidence or argument as to private use.

8. I agree with Mr Charles that this Tribunal has no jurisdiction in the matter, and it would follow also that there is no prospect of the appeal succeeding. The appeal is accordingly struck out in terms of Rule 8(2)(a) and (3)(c).

9. 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.

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KENNETH MURE, QC
TRIBUNAL JUDGE

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RELEASE DATE: 1 December 2014

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