



TC04159

Appeal number: TC/2013/01036

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**

ANDREW WOOD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE KENNETH MURE, QC

Sitting in public at Manchester on 11 November 2014

Appellant – appeared in person

Respondents – Miss Young, Solicitor's Office, HMRC

DECISION

1. In this appeal the Appellant, Mr Wood, appeared in person, assisted by his
5 mother. The Respondents, HMRC, were represented by Miss Young. The issue
before the Tribunal was HMRC's application for strike-out of the appeal in terms of
Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009
inasmuch as the Tribunal had no jurisdiction in the matter, and also that there was no
reasonable prospect of success in the appeal.

10 2. Helpfully, Miss Young agreed to set out HMRC's argument at the outset.
Mr Wood and his mother, not unnaturally, were unfamiliar with the procedural
process, and it was useful for them to have an outline of HMRC's argument before
they addressed the Tribunal.

15 3. On 5 October 2012, Miss Young explained, Mr Wood was stopped at Hull,
having returned from Belgium. He had in his possession 15kg of hand-rolled tobacco,
which he claimed was for personal use and for presents. The tobacco was seized.
Mr Wood was given documentation which explained his right to challenge seizure,
but in the event he chose not to do so. On 25 January 2013 he was assessed for
£2,461.

20 4. In his Notice of Appeal Mr Wood states that he was unaware of any limit and
that the tobacco was for personal use and gifts. Although he complained about
receiving misleading advice from the officers of the UK Border Force, that is not
supported by the notebook of the officer principally concerned, which has been signed
by Mr Wood. It is appreciated that Mr Wood is dyslexic. However, the UK Border
25 Force's officers were unaware of this. They had not understood that he had any
incapacity.

30 5. Miss Young relied on the decision of the Court of Appeal in *Jones & Jones*
[2011] EWCA Civ 824 and noted also the recent Upper Tier decision in *Nicholas*
Race [2014] UKUT 0331 (TCC). These authorities emphasise that where seizure is
not challenged, the presumption is against private use. In particular this Tribunal
cannot "re-hear" this aspect which is the subject of the Notice of Appeal.

35 6. The foregoing factual narrative was not challenged by Mr Wood. Equally
Miss Young did not question Mr Wood's assertion that the tobacco was in fact for
private use or gifts. For my part I found Mr Wood (and his mother) both candid and
credible. The difficulty for him as the Appellant relates to the correct interpretation
and application of CEMA Schedule 3, para 5.

40 7. In *Jones & Jones*, Mummery LJ explained (para 71) that the statutory effect of
the failure to challenge condemnation meant that the particular goods were duly
condemned as forfeited as illegally imported. It followed that it was not open to the
First-tier Tribunal to conclude as a matter of fact that the goods were imported for
personal use. This approach was followed in the recent UT decision in *Nicholas*
Race.

45 8. While I have sympathy for Mr Wood, I consider that HMRC's stance is well-
founded. Given the decision in *Jones & Jones* this Tribunal does not have jurisdiction
to consider whether the tobacco was intended for private use. The *forum* for

challenging that was in the Magistrates' or Crown Court, and the necessary notice within one month of seizure had not been submitted by the Appellant.

5 9. Accordingly I consider that the Respondents' application for strike-out falls to be granted both in terms of Rules 8(2)(a) *ie* "no jurisdiction", and 8(3)(c) *ie* "no reasonable prospect of success".

10. Mr Wood did raise other procedural aspects which again were outwith the jurisdiction of this Tribunal. The possible remedy (and expense) of Judicial Review was noted.

10 11. 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)" 15 which accompanies and forms part of this decision notice.

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KENNETH MURE, QC
TRIBUNAL JUDGE

RELEASE DATE: 1 December 2014

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