



**TC04160**

**Appeal number: TC/2013/02371**

*Excise duties – import of cigarettes – whether for personal use – seizure not challenged – jurisdiction of Tribunal – Customs & Excise Management Act 1979, Schedule 3, para 5 – Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – strike-out granted*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DMITRIJ FEDORUK**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE KENNETH MURE, QC**

**Sitting in public at Manchester on 11 November 2014**

**Appellant – appeared in person**

**Respondents – Miss Eleanor Caine, with Mr Riley, Solicitors Office, HMRC**

## DECISION

1. The issue in this appeal is an assessment on Mr Fedoruk to excise duties of  
5 £4,626 and a 20% penalty of £925.20 arising out of the import of 20,000 cigarettes.  
The appeal is in respect of both the assessment and penalty. HMRC seek to strike-out  
the appeal on the basis that this Tribunal does not have jurisdiction to hear it, and  
further that there is no reasonable prospect of success.

2. Helpfully Miss Caine agreed to introduce the Appeal and set out her argument  
10 before Mr Fedoruk was invited to reply. This was a helpful means of highlighting the  
issues arising for his consideration.

3. On 2 September 2012 Mr Fedoruk had returned to the UK from Lithuania,  
Miss Caine explained. At Robin Hood Airport, Doncaster, he was challenged by  
officers of the UK Border Force about the import of 20,000 cigarettes. These were all  
15 Marlboro KSF brand. Mr Fedoruk had explained to the officers that they were for his  
personal use, but notwithstanding they were seized. The seizure was not challenged  
by Mr Fedoruk, and they were condemned as forfeit. On 19 October 2012 he was  
assessed for excise duties of £4,626. He sought a review of HMRC's decision but this  
was not successful. The 20% penalty reflected that this had been a non-deliberate but  
20 prompted disclosure.

4. Miss Caine submitted that an excise duty point and consequent liability had  
occurred on the import of the cigarettes into the UK, and that duty had been properly  
levied. She founded on the decisions in *Jones & Jones* [2011] EWCA Civ 824 and  
*Nicholas Race* [2014] UKUT 0331 (TCC). In particular she referred to the opinion of  
25 Mummery LJ in *Jones* where it is indicated that if seizure is not challenged, the goods  
are deemed to be held for a commercial purpose. By reason of CEMA 1979,  
Schedule 3, para 5, this Tribunal's jurisdiction does not extend to considering whether  
the seized goods were held for personal use, she argued.

5. The hearing was adjourned briefly to enable Mr Fedoruk to revise his  
30 submissions. In reply he did not challenge the factual aspects of Miss Caine's  
account. He was insistent that he had imported the cigarettes for personal use. He  
maintained that there was no restriction for excise duty purposes on the amount of  
cigarettes which could be imported for personal consumption. He had consulted  
HMRC's website. He explained too that he had not challenged seizure because of  
35 having to pay expenses of perhaps £1,500.

6. While I do not doubt Mr Fedoruk's personal credibility, I consider that on the  
basis of the authorities cited I have no alternative but to grant the strike-out  
application at the instance of the Respondents. I consider the submissions of  
Miss Caine to be well-founded. I agree with her that the powers of this Tribunal are  
40 circumscribed by the decision of the Court of Appeal in *Jones*. Where seizure is not  
challenged, as in the present case, the goods are deemed to have been condemned, and  
consideration of possible private use by the importer is not a matter on which I can  
make fresh findings-in-fact. For these reasons I consider that I cannot consider the  
appeal against the assessment of excise duties and the penalty.

45 7. Accordingly I strike-out the appeal in terms of Rules 8(2)(a), *ie* "no  
jurisdiction", and (3)(c), *ie* "no reasonable prospect of success".

8. 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**

**RELEASE DATE: 1 December 2014**

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