



TC04184

Appeal number: TC/2012/09131

Excise Duty - importation of tobacco products - concealment - seizure and confiscation of tobacco - CEMA 1979 – excise duty assessment under Finance Act 1994 s 12 (1A) - no valid grounds of appeal presented - appeal disallowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JADE MCAREAVEY

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MR DEREK ROBERTSON**

Sitting in public at Wilberforce Court, Alfred Gelder Street Hull on 9 September 2014

The Appellant appeared in person

Ms Joanna Vicary of Counsel for the Respondents

DECISION

1. This is an appeal by Ms Jade McAreavey (“the Appellant”) against the decision of The Director of Border Revenue (“the Respondents”), dated 8 August 2012 (“the Assessment decision”), to assess the Appellant pursuant to 13(1) and 13(2) of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 in the sum of £1,641 (plus interest) representing Excise Duty, on goods imported for a commercial purpose on which duty had not been paid.

The Facts

2. On 23 June 2012, the Appellant was a foot passenger travelling from Zeebrugge to Hull. She was stopped and questioned by Officers of the United Kingdom Border Force as authorised Customs Officials on behalf of HMRC. The Appellant was travelling with a Mr Trevor Sunman.
3. The Border Force Officers were able to determine that the Appellant was carrying Ten (10) kilograms of Hand Rolling Tobacco.
4. Guidance given in Notice 1 “The Home Office UK Border Agency Traveling to the UK” states that if an individual is carrying more than one kilogram of tobacco, Border Control Officers are to ascertain whether the tobacco is held for a commercial purpose. One kilogram is the indicative limit set by the European Union for personal use. Because the answers given by the Appellant to questions as to why she was carrying an amount of tobacco well in excess of that indicative limit were considered to be unsatisfactory by the Officers in attendance, it was determined that the tobacco was for a commercial purpose and therefore liable to forfeiture. They therefore took seizure action, pursuant to s 139 of the Customs and Excise Management Act 1979 (“CEMA”) in the presence of the Appellant.
5. After formal notification of seizure the Officers issued a Seizure Information Notice C156, a warning letter and Public Notice 12A, which set out the Appellant’s rights to appeal the seizure. No appeal of the seizure, or Notice of Claim was made by the Appellant within the statutory 30 day deadline, [prescribed by paragraph 5 of Schedule 3 Customs and Excise Management Act 1979].
6. Because the seizure action was not challenged by the Appellant, by due process, the goods were condemned as forfeit to the Crown as having been imported for a commercial purpose.
7. The Respondents gave consideration to the evidence regarding the seizure and made the determination that by virtue of Part 2 Regulations 13(1) and 13(2) of the Excise (Holding, Movement and Duty Point) Regulations 2010, the Appellant was liable to pay the Excise Duty on the forfeited tobacco. In addition they also determined that the Appellant was subject to a financial penalty.
8. The Respondents issued an assessment to the Appellant, for the sum of £1,641 on 8 August 2012, together with a copy of the calculations for the sum demanded. This

was accompanied by a covering letter, which explained the authority to issue the assessment by virtue of Section 12(1A) of the Finance Act 1994.

5 9. On 7 September 2012 the Respondents received a letter from a Mrs J Gough, who stated that she was the grandmother of the Appellant and was writing to the Respondents on her behalf. In essence, the letter states that the Appellant is aware that she has broken the law but only became aware of the fact after being stopped by Customs Officials. The Appellant is only eighteen years old, very naïve and had no intention of being deceitful. Mrs Gough said that the Appellant held a position of trust, working with mentally disturbed people, working long hours. Her salary is relatively small and she struggles to maintain her upkeep. Mrs Gough said that the Appellant has become ill with worry over the matter and asked whether the Respondents would consider cancelling the fine.

15 10. The Respondents, by letter dated 10 September 2012, stated that they were unable to discuss the matter with any person other than the Appellant and were unable to re-appraise the assessment. If the Appellant was suffering from financial difficulties, then there was the possibility of being granted time to pay. In addition the Appellant could ask that the decision be looked at again by an independent review unit of the Respondents.

20 11. By a Notice of Appeal 30 September 2013 and received by the Tribunal Service on 2 October 2012, the Appellant appealed the Assessment decision.

The Relevant Legislation

25 12. The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (as amended 2011) provide the regulatory framework for all movement of excise goods into, and out of and within the UK. Regulation 88 provides that excise goods that are liable to duty that has not been paid are liable to forfeiture if there is a contravention of a condition or restriction imposed by or under the regulations.

13. The Finance Act 1994 provides:

“12 Assessments to excise duty.

30 (1A) Subject to subsection (4) below, where it appears to the Commissioners—

(a) that any person is a person from whom any amount has become due in respect of any duty of excise; and

(b) that the amount due can be ascertained by the Commissioners,

35 The Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.”

14. The Excise Goods (Holding, Movement & Duty Point) Regulations 2010 provides:

“Goods already released for consumption in another Member State-excise duty point and persons liable to pay

5 (13) (1) Where excise goods already released for consumption in another Member State are held for a commercial purpose in the United Kingdom in order to be delivered or used in the United Kingdom, the excise duty point is the time when those goods are first so held.

(2) Depending on the cases referred to in paragraph (1), the person liable to pay the duty is the person —.

(b) Holding the goods intended for delivery...”

10 15. It was held in *HMRC v Jones & Jones* [2011] EWCA Civ 824 that:

“71... For the future guidance of tribunals and their users I will summarise the conclusions that I have reached in this case in the light of the provisions of the 1979 Act, the relevant authorities, the articles of the Convention and the detailed points made by HMRC.

15 (4) The stipulated statutory effect of the owners' withdrawal of their notice of claim under paragraph 3 of Schedule 3 was that the goods were deemed by the express language of paragraph 5 to have been condemned and to have been "duly" condemned as forfeited as illegally imported goods. The tribunal must give effect to the clear deeming provisions in the 1979 Act: it is impossible to read them in any other way than as requiring the goods to be taken as "duly condemned" if the owner does not challenge the legality of the seizure in the allocated court by invoking and pursuing the appropriate procedure.

20 (5) The deeming process limited the scope of the issues that the owners were entitled to ventilate in the FTT on their restoration appeal. The FTT had to take it that the goods had been "duly" condemned as illegal imports. It was not open to it to conclude that the goods were legal imports illegally seized by HMRC by finding as a fact that they were being imported for own use. The role of the tribunal, as defined in the 1979 Act, does not extend to deciding as a fact that the goods were, as the owners argued in the tribunal, being imported legally for personal use. That issue could only be decided by the court. The FTT's jurisdiction is limited to hearing an appeal against a discretionary decision by HMRC not to restore the seized goods to the owners. In brief, the deemed effect of the owners' failure to contest condemnation of the goods by the court was that the goods were being illegally imported by the owners for commercial use.”

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The Appellant's case

16. In her Notice of Appeal the Appellant said:

40 “At the time of the offence I was only seventeen and very naïve. I was not aware of the law and the amount of tobacco I was allowed to bring back. I took advice from family friends about buying the tobacco they advised me that it would save money in the long run as I am a smoker.

5 I am struggling financially and I believe it was a punishment getting the tobacco seized as I lost money buying it. I have never been in trouble with the police before this had made me ill with worry. I understand that it is the law but I plead with you to review the amount of the said £1641 as I find it very harsh and cannot find a way in which I could pay such an amount.”

The Respondents’ case

10 17. The legality of seizure and subsequent forfeiture of the Ten (10) Kilograms of Hand Rolling Tobacco was not challenged by the Appellant and therefore the tobacco in question was deemed to have been imported for a commercial purpose and forfeit to the Crown. By electing not to challenge the seizure, the Appellant has accepted that the seized goods were held for a commercial purpose and a duty point was created. Accordingly, the only issue in contention before the Tribunal is the Respondents
15 determination to issue an assessment for the Excise Duty [*HMRC v Jones & Jones*].

20 18. The Respondents say that given the provisions of 13(1) and 13(2) of the Excise (Holding, Movement and Duty Point) Regulations 2010, the Appellant was rendered liable to pay the Excise Duty on the forfeited Hand Rolling Tobacco and a penalty under Schedule 41 of the Finance Act 2008.

25 19. The Appellant submits that she cannot afford to pay the Assessment. The Respondents submit that this is not a valid ground of appeal. The goods were lawfully seized as being held for a commercial purpose without the payment of duty. The Respondents are therefore entitled to assess the duty amount on the goods. It is also submitted that the assessment has been correctly calculated.

Conclusion

30 20. The Appellant chose to become involved in a smuggling attempt, and the consequences following from this should have been apparent and considered. The facts of the matter are not in dispute and the Respondents were entitled to issue an assessment for the duty.

35 21. There are theoretically no limits on the amount of duty and/or tax paid alcohol and tobacco that individuals can bring into the UK, provided they are for own use. However, in our view the tobacco held by the Appellant was not for ‘own use’. Goods held or payment, or re-sale are regarded as held for a commercial purpose. In any event the legality of seizure and subsequent forfeiture of the Ten (10) Kilograms of Hand Rolling Tobacco was not challenged by the Appellant and therefore the tobacco
40 in question was deemed to have been imported for a commercial purpose and forfeit to the Crown. By electing not to challenge the seizure, the Appellant has accepted that the seized goods were held for a commercial purpose.

45 22. The assessment has therefore been correctly raised under s 13 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010.

23. The Appellant has not put forward any grounds of appeal other than to say that she will suffer financial hardship and will not be able to pay the assessment. This is

5 not a valid ground of appeal. The assessment has been correctly calculated and is payable by the Appellant pursuant to s 12(1A) of the Finance Act 1994. The Appellant unfortunately may suffer financial difficulties in paying the assessment, but it is open to her to submit a request for time to pay. The assessment itself cannot be waived.

24. For the above reasons we dismiss the appeal.

10 25. 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 12 December 2014

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