



TC04186

Appeal number: TC/2013/01917

EXCISE DUTY – assessment – excise goods seized at UK border – application to strike out – no reasonable prospect of appeal succeeding – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL MARSHALL

Appellant

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN

Sitting in public in Manchester on 8 December 2014

The Appellant did not appear

Ms Rebecca Young of HM Revenue & Customs Solicitor's Office for the Respondents

DECISION

1. This is an application by the Respondents, HMRC to strike out the appeal. Mr Marshall did not appear but wrote a letter to the Tribunal dated 10 November 1014
5 stating that he was suffering ill health but wanted the case to go ahead. He did not seek an adjournment and I decided that it was in the interests of justice to proceed with the application.

1. The following facts are not in dispute.

2. The Appellant was stopped by officers of the UK Border Force on 21 November
10 2012 at Hull Docks having returned from Zeebrugge. He was importing 11.5 kg of hand rolled tobacco and 100 cigars (“the Goods”).

3. The officers concluded that the Goods were not for Mr Marshall’s personal use and the Goods were seized. Mr Marshall was given a seizure information notice, a warning letter about seized goods, Notice 12A and Notice 1. The information
15 available to Mr Marshall contained explanations as to how a person in Mr Marshall’s position could challenge the legality of the seizure or seek restoration of the Goods. It also explained that further action could be taken in relation to the Goods.

4. On 7 February 2013 HMRC issued an assessment to Mr Marshall for the excise duty payable on the Goods in the sum of £1,949.

20 5. On 23 February 2013 Mr Marshall asked for a review of the decision to issue the assessment. In requesting a review he set out the circumstances in which he had come to purchase the goods and asserted that they were for personal use.

6. On 28 February 2013 a review by HMRC concluded that the assessment should be upheld. It pointed out that whilst Mr Marshall was claiming that the Goods were
25 for personal use he had not appealed the seizure.

7. The reference to an appeal against seizure is to the provisions of Schedule 3 Customs & Excise Management Act 1979 (“CEMA 1979”). In particular paragraphs 3 and 5 which refer to a notice of claim as follows:

30 *“3. Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners at any office of customs and excise.*

...

35 *5. If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.*

8. The effect of these provisions is that where no notice of claim is given in the period of 1 month following the date of seizure the Goods are deemed to have been lawfully seized. In particular it is deemed that they were not being imported for personal use. This applies in the context of an assessment to excise duty such as that issued to Mr Marshall. See *HM Revenue & Customs v Nicholas Race* [2014] UKUT 0331 (TCC) which is binding as a matter of law on this Tribunal.

9. On 5 March 2013 Mr Marshall appealed to this Tribunal. His notice of appeal stated that the Goods had been imported for personal use and that he had not challenged the legality of the seizure because he had been told that if he was unsuccessful then he would be liable for HMRC's costs of such proceedings.

10. On 3 May 2013 HMRC made the present application to strike out the appeal. The application and the appeal were both stayed pending the decision of the Upper Tribunal in *Nicholas Race* referred to above. In the light of that decision HMRC pursue their application to strike out the appeal.

11. The only ground of appeal raised by Mr Marshall is that the Goods were for personal use. For the reasons given by the Upper Tribunal in *Nicholas Race* it is not open to anyone in the position of Mr Marshall to argue in this Tribunal that seized goods were for personal use. The effect of the deeming provision in CEMA 1979 is that the Goods were imported for commercial purposes.

12. Rule 8(3)(c) of the Tribunal Rules provides as follows:

“The Tribunal may strike out the whole or a part of the proceedings if –

...

(c) the Tribunal considers that there is no reasonable prospect of the appellants' case, or part of it, succeeding.”

13. I am satisfied that there is no reasonable prospect of Mr Marshall's case succeeding. As a matter of law he cannot pursue his argument in this Tribunal that the Goods were for personal use. That is his only ground of appeal and having considered everything Mr Marshall has said in correspondence I cannot see that there is any other ground of appeal.

14. In the circumstances I must strike out the appeal.

15. 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.

JONATHAN CANNAN

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TRIBUNAL JUDGE

RELEASE DATE: 12 December 2014