



TC04193

Appeal number: TC/2014/03132

*Customs and excise – duties – imported goods – seizure- goods for own use –
penalty – prospects of success – strike out application granted*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ABDUL MALIK

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP

Sitting in Edinburgh on Wednesday 17 December 2014

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DECISION

Background

1. On 24 May 2013, the appellant travelled from Bangladesh via Turkey to Edinburgh Airport and on arrival at Edinburgh passed through the baggage reclaim area of the airport and entered the green “nothing to declare” channel at Customs Control.
2. The appellant was stopped by UK Border Force (UKBF) officers before he left Customs Control. On being questioned he denied having any cigarettes or tobacco in his possession.
3. The UKBF officers then searched the appellant’s luggage and found 220 cigarettes in one of his bags. He was then asked if he had any other cigarettes in his locked bag and he stated that he had a further 600 cigarettes. The UKBF officers then unlocked the bag and searched it finding a further 4,000 cigarettes. The appellant stated that the cigarettes were for friends and offered to pay the duty on the cigarettes.
4. The UKBF officers seized the 4,200 cigarettes found in the appellant’s possession as liable to forfeiture under section 139 of the Customs and Excise Management Act 1979. A Seizure Information Notice and a letter from the UKBF both dated 24 May 2013 were issued to the appellant.
5. On 30 January 2014 the respondents (“HMRC”) wrote to the appellant informing him that they were enquiring into his Customs Duty, Import VAT and Excise Duty affairs. The appellant was invited to cooperate with the enquiry and advised as to the actions he could take to reduce any potential penalty. There was no response.
6. On 13 February 2014 HMRC wrote to the appellant requesting a response by 2 March 2014 indicating that as there was no response it would be assumed that he did not intend to cooperate with the enquiry. There was no response.
7. On 2 April 2014 HMRC wrote to the appellant informing that they were levying a penalty of £44 under section 25(1) Finance Act (FA) 2003 for the evasion and/or attempted evasion of customs duty and a penalty of £1,198 under section 8(1) of the Finance Act (FA) 1994 for the evasion and/or attempted evasion of excise duty. The total penalty was therefore £1,242.
8. Finally, on 20 April 2014 the appellant wrote to HMRC enclosing a medical certificate which stated that he was not fit to work due to depressive symptoms for a period of four weeks commencing on 30 March 2014. He asked that the penalty not be imposed.
9. On 9 May 2014 HMRC wrote to the appellant upholding their decision to impose the penalty.
10. On 25 May 2014 the appellant lodged an appeal with this Tribunal.
11. On 20 June 2014, HMRC wrote to the appellant increasing the penalty in terms of section 25(1) FA 2003 to £232 and reducing the penalty in terms of section 8(1)

FA 1994 to £950. The total penalty was therefore reduced to £1,183 and that is the subject matter of this appeal.

12. The Tribunal issued Directions on 28 August 2014.

5 13. On 15 September 2014, the Tribunal received a letter from the appellant asking that the Judge discharge him from the penalty as he did not have a job and he was a student at Inverness College so it would be difficult for him to pay the penalty. He alleged that he had not been dishonest and that his thinking had “slowed down due to depression”.

10 14. HMRC complied timeously with the Tribunal Directions. The appellant did not. A reminder was issued to him on 6 October 2014. There was no response. A further reminder was sent to him on 3 November 2014 requesting a response within seven days. There was no response.

15 15. On 11 November 2014 the Tribunal wrote to the appellant indicating that if he did not respond the appeal would be likely to be struck out. The appellant finally telephoned the Tribunal on 13 November 2014 indicating he wished to continue with his appeal. He was told that that could only happen if he complied with the Directions. The Tribunal wrote to him by Recorded Delivery on 14 November 2014 stating that by no later than noon on Friday 21 November 2014 he must comply with the Directions of the Tribunal which were clearly detailed in that letter. If there was a failure to do so then the appeal would be struck out. There was no response.

20 16. On 24 November 2014 HMRC lodged an application with the Tribunal requesting that the appeal be struck out. That was copied to the appellant who was given 14 days to respond with representations.

25 17. The only response from the appellant was a letter dated 27 November 2014 enclosing a copy of a “to whom it may concern” medical certificate dated 13 December 2012 indicating that in the three preceding years he had not been able to work for a lot of the time as his concentration had “slowed down”. The covering letter did not make any attempt to comply with the outstanding Directions. It indicated that he was studying business management and accounting at college and had no money to pay the fine See also paragraph 26 below).

30 18. The first decision for the Tribunal was whether or not the application from HMRC should be dealt with on the basis of the available papers rather than at a hearing.

35 19. I had due regard to Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) and in particular to Rule 2 which reads as follows:-

Rule 2:

Overriding objective and parties’ obligations to co-operate with the Tribunal

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

40 (2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- 5 (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.
- 10 (3) The Tribunal must seek to give effect to the overriding objective when it—
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must—
 - 15 (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

20. Rule 29(3) of the Rules provides that:-

“The Tribunal may dispose of proceedings, or a part of proceedings, without a hearing under Rule 8 (striking out a party’s case).”

20 21. In this instance the appellant has persistently failed to cooperate either with HMRC or with the Tribunal notwithstanding frequent reminders. Since the appellant has failed even to give the Tribunal details of dates to avoid for a possible hearing of the substantive appeal there seems to be little point in fixing a date for a hearing on the strike-out application. Accordingly I decided to deal with the matter on the basis
25 of the available papers. The appellant has been given every opportunity to make representations both about the substantive appeal and the strike-out application. I decided to proceed to consider the application for strike-out.

22. Rule 8 of the Rules reads as follows:-

30 (1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

35 (a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

5 (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;

10 (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or

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

15 (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

20 (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.

(7) This rule applies to a respondent as it applies to an appellant except that—

25 (a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; and

(b) a reference to an application for the reinstatement of proceedings which have been struck out must be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

30 (8) If a respondent has been barred from taking further part in the proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

35 23. The appellant's primary argument in regard to the penalties was that he has no money and cannot afford to pay the penalties. The law is very clear on that. Both section 8 FA 1994 and section 29 FA 2003 (which refers to a reduction of penalty under section 25) make it absolutely explicit that neither HMRC nor the Tribunal are entitled to take into account the insufficiency of funds available to any person. Accordingly the appeal could not possibly succeed on that basis.

40 24. The appellant advanced two alternative arguments namely that he had brought the cigarettes in the country for his own use or he brought them in for the use of friends. The appellant did not challenge the seizure of the goods within the statutory time limit. Where there is no timely challenge, the law provides that the goods are

deemed to be condemned as forfeited and what that means in practice, is that, in law, the appellant is treated as having imported the goods for commercial use. That is a final decision and the Tribunal has no jurisdiction to consider that.

5 25. In his most recent letter (see para 17 above) to the Tribunal the appellant confirms that HMRC's account of what happened when he was stopped by UKBF was correct. He simply states that it is unfair because cigarettes are not illegal to smoke and they are not cocaine or cannabis. He finds it expensive to buy cigarettes in the UK. His main "goal was to save some money on smoke". Lastly he states that other people who have broken the regulations have not been fined but were warned.

10 26. As far as the last point is concerned the Tribunal cannot look at the treatment of other taxpayers. They can only look at the circumstances in this case.

15 27. I have considered whether any reduction in the penalties would be likely since the Tribunal has the power to do so. Since the appellant freely admits that he repeatedly lied to the UKBF officers and that he thought that he could save money by bringing the cigarettes into the country and at no stage before or during this appeal has he cooperated with HMRC, it would seem that the prospects of success in any appeal are extremely limited. That must be weighed in the balance when considering whether or not to strike out an appeal. It has been.

20 28. Dealing with matters fairly and justly means for both parties. The appellant's continuing failure to cooperate has meant continuing delay and expense for both HMRC and the Tribunal.

29. Looking at the totality of the evidence in this appeal and the persistent and repeated non-cooperation by the appellant, I grant the application of HMRC and strike out these proceedings in terms of Rule 8.

25 30. 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
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

35 **ANNE SCOTT**
TRIBUNAL JUDGE

RELEASE DATE: 17 December 2014

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