



TC04213

Appeal number: TC/2013/07933

CUSTOMS DUTY – 6.5 kg Golden Virginia hand rolling tobacco for her personal use – failed to apply to Magistrates’ Court – deemed forfeit – assessment properly raised - minimum penalty after prompting properly raised– case dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MAXINE MAY LAW

Appellant

- and -

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

TRIBUNAL: JUDGE DAVID S PORTER

Sitting in public at Alexandra House, Manchester on 2 December 2014

The Appellant appeared in person

Mr Richard Chapman, of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. Mr Richard Chapman (Mr Chapman), of Counsel, appeared for the
5 Commissioners for Her Majesty's Revenue and Customs (HMRC) and produced a
bundle of documents. Mrs Maxine May Law (Mrs Law) appeared in person. Mr
Chapman, by a Notice of Application dated 4 March 2014, applied for this appeal to
be struck out under Rule 8 (3) of the Tribunal Procedure (First-tier Tribunal (Tax
Chamber) Rules 2009 on the basis that there was no reasonable prospect of Mrs
10 Law's case succeeding.

2. Mrs Law appealed against an assessment of duty of £1,122 and a penalty of £224
arising from her importation of 6.5 kg of hand rolling tobacco. She had been stopped
at the Zebrugge passenger terminal, Hull on 29 March 2013 together with some other
passengers. Upon inspection, she had in her possession 6.5 kg of Golden Virginia
15 Hand Rolling Tobacco (the tobacco), 4.5 kg Amber leaf Hand Rolling Tobacco and 1
KG Royal Leaf Hand Rolling Tobacco. She stated that the tobacco was for her
personal use, bought using a friend's credit card as she had agreed to repay her friend
on a weekly basis. She had been unable to make a large single purchase.

3. The UK Border Force officer was not convinced with the answers given by Mrs
20 Law and seized the tobacco on the premise that it had been bought for commercial
purposes and that no UK duty had been paid on it. The tobacco was forfeit and a
seizure notice was issued and handed to Mrs Law on 29 March 2013. She was also
served with warning letter and Notice 12A. The 12A Notice advised that if she wished
to contest the seizure she should apply to the Border Agency, who would commence
25 'condemnation proceedings'. The Border Agency would then arrange for a hearing at
the Magistrates Court, presumably in Hull. If Mrs Law failed to do so, which she did,
then the tobacco would be forfeited and she would not be able to apply to the Tribunal
to have the tobacco returned to her on the basis that she had purchased it for her own
use.

4. As a consequence of her failure to apply for 'condemnation proceedings' before
30 the Magistrates, HMRC assessed her to duty of £1,122. The duty was calculated on
the basis that one kilogram of the tobacco should pay £174.74 duty. ($£174.74 \times 6.5\text{kg}$
 $= £1,122$). HMRC also raised a penalty of £224 on the basis that she had been called
in for interview and had not volunteered the type and amount of the goods she had
35 purchased. As a result, it was considered that the assessment had been prompted,
which meant that the penalty would be calculated between 20% and 30%. HMRC
accepted, however, that she had been perfectly frank when asked about the transaction
and as her behaviour had not been deliberate it would allow a 100% reduction. The
100% is of the difference between the 20% and 30% tariff which equals 10%. The
40 maximum penalty of 30% has the 10% deducted from it leaving 20%. 20% of £1122
is £224.

5. Mr Chapman applied for the case to be struck out on the basis that the Tribunal
has no jurisdiction on these sort of cases. He submitted that since the decision of
Mummary LJ in *Revenue and Excise Commissioners v Jones* [2012] Ch 414 it was not

possible for Mrs Law to claim that the tobacco had been bought for her own use, as she had failed to apply to the Magistrates Court and under Schedule 3 paragraph 5 of the Customs and Excise Management Act 1979. As a result, the tobacco was deemed to be forfeit and the Tribunal had no jurisdiction to consider the matter further. In *The Commissioners for Her Majesty's Revenue and Customs v Nicholas Race* [2014] UKUT (TCC) FTC/131/2013 Mr Justice Warren confirmed the law as set down by Mummery LJ. The duty and penalty had been assessed correctly and they should stand and the case should be struck out.

The Decision

6. I have considered the law and the facts and strike out the appeal in relation to the return of the tobacco and the assessment of duty. As a result of Mummery LJ's decision in *Revenue and Excise Commissioners v Jones*, this Tribunal has no jurisdiction to hear any argument from Mrs Law to the effect that the tobacco was purchased for her own use, as a result, the assessment must stand. The Tribunal does have jurisdiction to decide whether the penalty has been properly charged. Mrs Law did not volunteer her purchase of the tobacco and only disclosed the quantities when she was interviewed by the officers. In those circumstances, I must accept that the information was prompted. Therefore I have decided that the penalty has been correctly raised and must stand. Given Mrs Law's financial position it is hoped that HMRC might give her time to pay the assessment and penalty.

7. I have sat as a Chairman, and latterly as a Judge, in this Tribunal for many years and I have, over the years, asked that Notice 12A be made comprehensible to the members of the public. It has been my experience in several of those cases, that even counsels appearing before me have had difficulty understanding the 'deeming' provisions and, in the alternative, the right to restoration. How a traveller confronted by the loss of his/her goods and his or her vehicle, often late at night with the prospect of having to use public transport to get home then or later, is meant to understand the nicety of a 'deemed forfeiture' is beyond reason. It has even taken some of the Chairmen and Judges several years to get clarity on the issue. The Notice 12A **should** state clearly and preferably on the outside cover:

APPLICATIONS TO THE BORDER AGENCY.

"IF YOU WANT TO GET YOUR GOODS BACK, AND/OR YOUR VEHICLE, you MUST ask the Border Agency, within ONE MONTH of the date the goods or vehicle were taken from you to apply to a Magistrate Court, so that you can explain that the goods were purchased for YOUR OWN USE.

IF YOU FAIL TO ASK THE BORDER AGENCY TO MAKE THE APPLICATION FOR YOU WITHIN THE ONE MONTH PERIOD, YOU WILL NOT BE ABLE TO RECOVER EITHER YOUR VEHICLE OR YOUR GOODS.

AS AN ALTERNATIVE, and at the same time, you can ask the Border Agency to return your goods and the vehicle without asking the Border

Agency to apply to the Magistrates Court, but this will be a matter for the **DISCRETION OF THE BORDER AGENCY** and the request is unlikely to be successful except in the most exceptional of circumstances. Even then the Border Agency may require you to pay a fee and/or the amount of the duty avoided.

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APPLICATIONS TO THE TAX TRIBUNAL

IF THE BORDER AGENCY REFUSE TO RESTORE THE GOODS AND/OR THE VEHICLE when you have asked for them to be restored, you can apply by way of appeal to the **TAX TRIBUNAL** who can require the Border Agency to reconsider your request.

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If the goods and/or the vehicle have been **DEEMED TO BE FORFEITED** because you failed to ask the Border Agency to apply to a Magistrates Court, within the one month period, **YOU WILL NOT BE ABLE TO APPLY TO THE TRIBUNAL** to have your goods or the vehicle returned.

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Perhaps the notice could contain cartoons and/or animations to make the appropriate point and be more user friendly? I appreciate that there is a substantial cost involved, but perhaps a more readily understood Notice 12A would reduce the amount of time and costs for all parties when processing these appeals.

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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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**DAVID S PORTER
TRIBUNAL JUDGE**

RELEASE DATE: 6 January 2015

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