



TC04214

Appeal number: TC/2013/02468

CUSTOMS DUTY – 18 kg hand rolling tobacco for personal use of appellant, his wife and two friends, one of whom travelled with him - – failed to apply to Magistrates’ Court – deemed forfeit –assessment properly raised - minimum penalty after prompting properly raised– case dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT MARTIN PASCO

Appellant

- and -

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

**TRIBUNAL: JUDGE DAVID S PORTER
 MR DEREK ROBERTSON**

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

The Appellant appeared in person

Miss Joanne Vickery instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. Miss Joanne Vickery (Miss Vickery) appeared for the Commissioners for Her Majesty's Revenue and Customs (HMRC) and produced a bundle of documents. Mr Robert Martin Pascoe (Mr Pascoe) appeared in person. HMRC, by a Notice of Application dated 10 October 2013, 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 grounds that then Tribunal does not have jurisdiction or that there was no reasonable prospect of Mr Pascoe's case succeeding.

2. Mr Pascoe appealed against an assessment of duty of £2,734 and a penalty of £956.90 arising from his importation of 18 Kg of hand rolling tobacco. He had been stopped at the Coquilles passenger terminal on his return from Belgium with his wife and Mr Nesbit on 20 January 2012. Upon inspection he had 8 kg of Golden Virginia Hand Rolling Tobacco, 9.5 kg Amber Leaf Hand Rolling Tobacco and 0.5 kg of Cutters Choice Tobacco with him.

3. At the interview, he explained that they had bought the hand rolling tobacco for themselves and that it was proposed that they would take 120 pouches each. His friend Mr Nesbit had accompanied them, but his other friend 'Matty' had been unable to accompany them and they had bought 120 pouches for him as well. He had shown the officer's his receipt for the goods. Mr Pascoe confirmed that he had used the proceeds from an insurance policy to help fund his purchases.

4. The UK Border Force officer was not convinced with the answers given by Mr Pascoe and seized the tobacco and the vehicle as he considered that the tobacco had been bought for commercial purposes and that no UK duty had been paid on it. The tobacco and the vehicle were forfeit and a seizure notice was issued and handed to Mr Pascoe on 20 January 2012. He had been served with a warning letter and Notice 12A at the same time. The 12A Notice advised that if he wished to contest the seizure he should apply to HMRC, who would commence 'condemnation proceedings'. HMRC would then arrange for a hearing at the Magistrates Court. If he failed to do so, which he did, then the tobacco and the vehicle would be forfeited and he would not be able to apply to the Tribunal to have the tobacco or the vehicle returned to him on the basis that he had purchased the tobacco for his own use.

5. Mr Pascoe told us that he was a mechanic and that the vehicle was only valued at £250. As a result, he had decided that it was not worth his while to risk substantial costs by applying for the vehicle and the tobacco not to be forfeit. As a consequence of his failure to apply for 'condemnation proceedings' before the Magistrates the tobacco and the vehicle were 'deemed' to be forfeit. HMRC subsequently assessed him to duty of £2,734. The duty was calculated on the basis that one kilogram of the tobacco should pay £151.90 duty. ($£151.90 \times 18 \text{ kg} = £2,734$).

6. HMRC also raised a penalty of £956.90. It considered that his behaviour had been deliberate. The amount of tobacco purchased appeared excessive as it represented 60 weeks supply for each person. Mr Pascoe had collected all the cash and carried out

one purchase of all the tobacco. For the deliberate failure to notify HMRC together with the prompted disclosure the minimum percentage for the penalty is 35% and the maximum penalty is 70%. In the circumstances HMRC decided to charge 35% of the duty for the penalty.

5 7. Miss Vickery applied for the case to be struck out on the basis that the Tribunal
has no jurisdiction in these cases. She submitted that since the decision of Mummery
LJ in *Revenue and Excise Commissioners v Jones* [2012] Ch 414 it was not possible
for Mr Pascoe to claim that the tobacco had been bought for his own use, as he had
failed to apply to the Magistrates Court under Schedule 3 paragraph 5 of the Customs
10 and Excise Management Act 1979. As a result, the tobacco and the vehicle were
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
15 should stand and the case should be struck out.

8. Mr Pascoe confirmed that he had decided not to apply to the Magistrates Court for
the return of his vehicle because it was of insufficient value. He had not appreciated
that there would be duty to pay and the penalty. He had little prospect of paying the
duty and penalty in light of his current income. It was obvious from the hearing that
20 Mr Pascoe had severely damaged his shoulder. He also told us that his family had had
considerable difficulty with the neighbours and children in the area. His wife was
Turkish and the general public thought his children came from Pakistan. Bricks had
been thrown at his house and his children had been abused and had stones thrown at
them. The police had been informed.

25 9. Mr Pascoe produced to the Tribunal a report from the police from which it was
clear that his family had had a very difficult time. He had, on the advice of the Police,
installed an outside light and camera on his house, which have substantially reduced
the problem. He told us that as he had lost his car he had had to arrange for his
children to go to school by taxi, so that they would avoid the abuse. Judge Porter and
30 Mr Holden retired from the Tribunal as they were concerned that Mr Pascoe had had
sufficient reasons for the vehicle to have been restored to him. On returning to the
Tribunal Mr Pascoe indicated that this matter had been ongoing since January 2012
and, given the value of the car and the distress the matter was causing him, he did not
wish the Tribunal to require HMRC to consider whether they might restore the
35 vehicle or its value.

The Decision

10. We 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
40 jurisdiction to hear any argument to the effect that the tobacco had been purchased for
his own use, as a result, the assessment must stand. The Tribunal does have
jurisdiction to decide whether the penalty has been properly charged. Mr Pascoe did
not volunteer the purchase of the tobacco and only disclosed the quantities when he

was stopped and interviewed by the officers. Further, he had obtained all the money from his friends and purchased the tobacco in one transaction. In those circumstances, we must accept that the information was prompted and deliberate. Therefore we have decided that the penalty has been correctly raised and must stand. Given Mr Pascoe's financial position it is hoped that HMRC might give him time to pay the assessment and penalty.

1. 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.

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.

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.

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.

5 12. 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
10 “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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