



TC 04353

Appeal number: TC/2014/02828

*EXCISE DUTY – penalty – Finance Act 1994, section 8 – importing
cigarettes without payment of duty – dishonestly seeking to evade duty –
appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FARMIDA BEGUM

Appellant

- and -

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

**TRIBUNAL: JUDGE JONATHAN CANNAN
 MS ANN CHRISTIAN**

Sitting in public in Manchester on 12 March 2015

Ms Famida Begum appeared in person

**Mr Christopher McNall of counsel instructed by the General Counsel and
Solicitor of HM Revenue & Customs for the Respondents**

DECISION

Background

1. The Appellant lives in Bolton. On 25 January 2013 she was stopped in the green
5 channel at Terminal 2 Manchester Airport having arrived on a flight from Pakistan. She was found to be carrying 9,800 cigarettes in 49 sleeves in her suitcase. The cigarettes were seized on the basis that excise duty had not been paid. Ms Begum did not challenge the lawfulness of the seizure.

2. On 25 October 2013 a civil evasion penalty assessment was issued to Ms
10 Begum in the sum of £2,772. Following a review which took place on 2 May 2014 the penalty was reduced to £2,700. The reduction was £72 which was what would have been the excise duty and import VAT on 200 cigarettes which Ms Begum was entitled to bring into the UK duty free for personal use.

3. In this appeal Ms Begum challenges the penalty assessment. Her case is
15 essentially that she was unaware that the cigarettes were in her suitcase and that she had no intention of evading excise duty. She claims that the cigarettes were packed into her suitcase in Pakistan by her former son in law without her knowledge.

4. HMRC contend that we can be satisfied on the evidence that Ms Begum was dishonestly intending to evade excise duty.

5. The issue on the appeal is essentially one of fact. It involves Ms Begum's
20 knowledge as to the contents of her suitcase and her state of mind when she returned to the UK from a visit to Pakistan.

6. We can set out the legal background relatively briefly. Travellers arriving in the
25 UK from third countries outside the EU are relieved from excise duty and VAT on up to 200 cigarettes which are not being imported for a commercial purpose. Where more than 200 cigarettes are imported the goods can be seized and excise duty and VAT can be assessed.

7. In this case the cigarettes were seized. No assessment to excise duty or VAT
30 was issued and we were told by Mr McNall that no assessment to excise duty or VAT will now be issued. We are solely concerned with the penalty.

8. Section 8 Finance Act 1994 makes provision for HMRC to assess a penalty as follows:

“(1) Subject to the following provisions of this section, in any case where—

35 *(a) any person engages in any conduct for the purpose of evading any duty of excise, and*

(b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.

...

(4) *Where a person is liable to a penalty under this section—*

5 (a) *the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and*

(b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners.

10 (5) *Neither of the following matters shall be a matter which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under subsection (4) above, that is to say—*

(a) the insufficiency of the funds available to any person for paying any duty of excise or for paying the amount of the penalty;

15 *(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of duty.”*

9. The present appeal is made pursuant to section 16 Finance Act 1994. We have full jurisdiction to consider whether the penalty has been properly imposed and we
20 also have jurisdiction to reduce the penalty if we think it proper to do so, but not on the grounds of inability to pay.

10. Section 16(6) Finance Act 1994 provides that the burden of proof is on HMRC to establish that Ms Begum has engaged in conduct for the purpose of evading VAT and that her conduct involved dishonesty. Otherwise the burden of proof is on Ms
25 Begum.

11. We had witness statements from Ms Lisa Carter and Ms Angela White. Ms Carter was the Border Force officer who stopped Ms Begum at the airport and who interviewed Ms Begum. Ms White reviewed the decision to issue a penalty. Neither gave oral evidence, but their evidence was not in dispute.

30 12. We heard oral evidence from Ms Begum and from her daughter Ms Lubna Sheikh. Ms Begum can speak and write little or no English. The proceedings including her evidence were translated into Urdu for Ms Begum by Ms Seema Abbas. We are very grateful to the interpreter for the professional way in which she carried out her duties.

35 13. On the basis of the evidence before us and on the balance of probabilities we make the following findings of fact.

Findings of Fact

14. Ms Begum is 56 years of age with 5 daughters. She is a regular traveller to Pakistan and other parts of the world. At the time of the seizure she was well aware of the difference between the green channel and the red channel at the airport and that
5 duty is payable on cigarettes brought to the UK from Pakistan. She was aware that there was a small allowance for cigarettes for personal use. Ms Begum does not smoke. Her brother does smoke and 200 of the cigarettes in her luggage were for her brother. He had asked her to bring back one sleeve and she assumed, correctly as it turned out, that those cigarettes were within the duty free allowance.

10 15. Ms Begum had one suitcase and a smaller case as hand luggage on the flight from Pakistan to Manchester.

16. When Ms Begum was interviewed at Manchester Airport she provided the following information to Lisa Carter which was recorded in an officer's notebook:

- (1) Her son in law had helped to pack her bags.
- 15 (2) She was aware of the contents of her bags.
- (3) She was aware that there was an allowance of 200 cigarettes and stated that she had 1 pack of 200 cigarettes.
- (4) Her son in law knew Mr Imran Ashiq and had asked him to look after her on the journey.
- 20 (5) She did not know how her son in law knew Mr Ashiq.
- (6) When it was discovered that she was carrying 9,800 cigarettes she said that she thought she only had 1 pack. She suggested her son in law must have put the other cigarettes in her suitcase.

17. Ms Begum signed the officer's notebook and wrote in her own writing "*I agree the above*". We are not satisfied that Ms Begum would have understood the contents of the notebook at the time, but in her evidence she did not dispute that she had given the information recorded in the notebook.
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18. When Ms Begum refers to her son in law she means Mr Taqiar Rashid, who is 32 years of age. In evidence Ms Begum referred to Mr Rashid as both a distant cousin and also a son in law. Mr Rashid married one of Ms Begum's daughters in or about
30 2000 but they got divorced after about a year. We accept Ms Begum's evidence that she remained on very good terms with Mr Rashid and his family, even though her daughter refuses to have any dealings with him. Whenever Ms Begum goes to Pakistan he visits her at her house there.

19. On 15 July 2013 HMRC wrote to Ms Begum stating that they were enquiring into her involvement in "attempted smuggling" of cigarettes. The writer stated that the letter was written with a view to recovering any duty and a penalty if there was sufficient evidence of dishonesty. Ms Begum was invited to provide further information either at a meeting or in correspondence.
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20. There was no reply to that letter. It was sent to an address at 18 Campbell Street Farnworth. Ms Begum moved out of that address because of illness and went to live
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with one of her daughters some time in or about February 2013. 18 Campbell Street was empty for a while and had then been rented out by Ms Begum.

21. Mr McNall who appears for HMRC suggested that Ms Begum had received the letter but ignored it. On the basis of the evidence we are not satisfied that Ms Begum
5 did receive the letter and we draw no adverse inference from the absence of any response.

22. On 25 October 2013 HMRC wrote to Ms Begum again at 18 Campbell Street notifying a penalty of £2,772 on the basis that Ms Begum's conduct had been dishonest. The sum of £2,772 equates to the excise duty and import VAT which
10 would have been payable on 9,800 cigarettes. Ms Begum did receive this letter from the tenants at the property.

23. On 4 December 2013 Ms Begum wrote in response to HMRC. The letter was written on Ms Begum's behalf by her niece but Ms Begum was aware of its contents. She stated:

15 *"I was never the owner of the Cigarettes as they were never placed in my luggage with my knowledge. I have no idea how they got there. I do however know that Imran Ashiq who is related to me in that he is my cousin brothers son he placed them in my luggage. I believe that he wanted me to be caught with the cigarettes so that I would face such a prosecution.*

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I consider it an embarrassment to myself that I even have to explain myself when I have not done anything wrong. I have been put in this position by the actions of a malicious and malevolent family members who wanted to take revenge for me not associating with them or indeed caring about them."

25 24. Ms Begum was now asserting that it was Mr Ashiq who had put the cigarettes in her suitcase rather than her son in law. She was also clearly asserting that she had been set up and that Mr Ashiq wanted her to be caught because of some grudge he bore.

30 25. Ms Begum was also now asserting that Mr Ashiq was related to her. In oral evidence she claimed that was a mistake and she meant to say in the letter that her son in law was related to her. She maintained that Mr Ashiq was not related to her.

35 26. It is notable that there is no reference at all to Ms Begum's son in law in the letter dated 4 December 2013. However in her oral evidence Ms Begum was clear that it must have been her son in law who had put the cigarettes in her suitcase. Indeed in her oral evidence she also stated that the suitcase was locked before she left for Islamabad Airport and she had the key. Ms Begum did not suggest that there was any opportunity for Mr Ashiq to put the cigarettes in her suitcase.

40 27. There is a further inconsistency in the grounds set out in the Notice of Appeal received by the tribunal on 21 May 2014 where Ms Begum describes Mr Ashiq as her nephew. She states in the notice of appeal *"My nephew Imran Ashiq was also travelling with me and he brought some cigarettes back. I was not aware my son in law helped him (Imran Ashiq) and put some of his cigarettes in my suitcase"*.

28. The notice of appeal was again written by Ms Begum's niece on the basis of what Ms Begum told her.

29. Ms Begum's account in the letter dated 4 December 2013 and in her notice of appeal was wholly inconsistent with the account she gave in her oral evidence which was as follows:

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(1) She had been packing for her journey home to the UK with her son in law. She has arthritis in one hand which is why he was helping her. Ms Begum's clothes and various gifts were arranged on a bed. Before they could finish packing some guests had called at the house. She went to meet her guests and asked her son in law to finish packing for her. As far as she was aware that was what he had done, putting all her clothes and gifts into the suitcase. The suitcase was locked and Ms Begum was given the key. She also had a small case as hand-luggage containing personal items which she had packed herself 2 or 3 days beforehand.

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(2) The suitcase weighed 32kg and the hand luggage 8kg. This was the maximum luggage allowance and her son in law had checked the weight before Ms Begum left for Islamabad Airport.

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(3) She went to the airport with her son in law and his friends. At Islamabad Airport her son in law met with Mr Ashiq and his family who were travelling on the same flight. Mr Ashiq had helped with her bags on the journey. That was the first time she had met Mr Ashiq, although he may have visited when she was at her house in Pakistan.

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(4) Ms Begum said that she was shocked when she opened the suitcase at Manchester Airport. She had not known until opening the suitcase that it contained any more than 200 cigarettes.

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(5) When Ms Begum got home she phoned her son in law. She was angry with him for packing the cigarettes in her suitcase. There were clothes and gifts which he had not packed and which remained in Pakistan.

(6) Ms Begum's son in law informed her that Mr Ashiq had carried more cigarettes than her but had been released without problem. That was the first time she had learned Mr Ashiq's name.

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(7) She formed the view that Mr Ashiq and her son in law wanted her to be arrested and that they had been scheming against her.

30. Ms Begum stated that Mr Ashiq was also stopped and interviewed by Border Force officers and found to be carrying a large quantity of cigarettes. Whilst there was no supporting evidence in relation to this, Ms Begum's evidence was not challenged. We have no reason to doubt that Mr Ashiq was also stopped and interviewed at the same time as Ms Begum and that he was carrying a large quantity of cigarettes.

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31. Ms Begum stated in her notice of appeal that her son in law and Mr Ashiq were effectively colluding. She repeated that claim in her oral evidence. However when asked why they might want to do such a thing Ms Begum could think of no reason. She was not aware of any personal enmity or differences. That contrasts with the letter dated 4 December 2013 where she suggests Mr Ashiq wanted her to be caught was because she did not associate with or care for certain family members.

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32. Ms Begum's evidence in this regard is simply not credible and we reject it. On the one hand she has said that Mr Ashiq is her nephew and describes him as a "malevolent family member" scheming against her. On the other hand she says that they were not related and she only came to know his name when she spoke to her son in law after returning to the UK. We do not accept that the inconsistencies described above are explicable by any confusion between Ms Begum and her niece when the letter and the notice of appeal were being drafted. The inconsistencies are so marked that they cannot be explained by misunderstanding. We cannot rely on Ms Begum's evidence.

33. Ms Sheikh suggested that the son in law may have borne a grudge because he felt that Ms Begum could have done more to help save his marriage to Ms Begum's daughter. We do not accept that evidence. It is inconsistent with the good relationship described by Ms Begum which resulted in her son in law regularly meeting Ms Begum on her trips to Pakistan and helping with her packing. The relationship between the two families also remains very good.

34. Ms Sheikh described her mother as being a very kind hearted woman. She described her as being too supportive of her son in law. She trusted him like her own son. We have no reason to doubt these matters. However there are significant inconsistencies in Ms Begum's evidence. It is inherently unlikely given the nature of her relationship with her son in law that he would deliberately seek to put Ms Begum in trouble or at risk of being caught smuggling. The reality is that Ms Begum was, as we have found, on very good terms with her son in law. There is no reason he would wish her ill and none has been suggested.

35. In the light of all the evidence we are satisfied that Ms Begum was well aware that her suitcase contained 9,800 cigarettes. It seems likely that Ms Begum's son in law persuaded her to carry the cigarettes and that he was indeed colluding with Mr Ashiq, but not to harm Ms Begum.

36. Ms Begum's Notice of Appeal also stated the following:

"I have seen it on TV and heard from a lot of people that on a first offence everyone is let off with a warning as I have no previous offences."

37. Ms Begum stated that she only became aware of this approach by the authorities after the penalty had been assessed. We think it likely that Ms Begum would have been aware when she agreed to take part in this smuggling attempt that she would not be prosecuted and believed that there would be no penalty on the first occasion she was caught smuggling cigarettes.

Decision

38. In the light of our findings of fact we are satisfied that Ms Begum carried the cigarettes in her suitcase through the green channel at Manchester Airport with a view to evading excise duty. She did so dishonestly, knowing that it was wrong.

39. Considering the circumstances as whole we are not satisfied that the penalty should be reduced. We cannot take into account any inability to pay. We therefore affirm the penalty and dismiss the appeal.

40. 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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**JONATHAN CANNAN
TRIBUNAL JUDGE**

RELEASE DATE: 16 April 2015