



**TC04671**

**Appeal number:TC/2014/06781**

*EXCISE DUTY – penalties – Finance Act 1994, section 8 and Finance Act 2003, section 25 – importing cigarettes without payment of duty – dishonestly seeking to evade duty – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MOHAMMED HASSAN ENTEZAM**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE JONATHAN CANNAN  
                    MR SIMON NEWTON**

**Sitting in public in Manchester on 17 July 2015**

**Mr Mohammed Entezam appeared in person**

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

## DECISION

### *Background*

1. The Appellant lives in Manchester. On 23 September 2013 he was stopped in  
5 the green channel at Terminal 1 Manchester Airport having arrived on a flight from  
Tehran via Istanbul. He was found to be carrying 8,000 cigarettes in his luggage. The  
cigarettes were seized on the basis that excise duty had not been paid. Mr Entezam did  
not challenge the lawfulness of the seizure.

2. On 6 November 2014 a civil evasion penalty assessment was issued to Mr  
10 Entezam in the sum of £1,309. This comprised £259 for evasion of customs duty and  
£1,050 for evasion of excise duty. Following a review which took place on 8  
December 2014 the penalty was maintained.

3. In this appeal Mr Entezam challenges the penalty assessment. His case is  
essentially that he was unaware that there was a maximum allowance of 200  
15 cigarettes which could be brought into the UK duty free from a third country and that  
he had no intention of evading duty. He also contends that seizure of the cigarettes  
was a sufficient penalty.

4. HMRC contend that we can be satisfied on the evidence that Mr Entezam was  
dishonestly intending to evade excise duty and customs duty.

5. The principal issue on the appeal is essentially one of fact. It involves Mr  
20 Entezam's knowledge as to duty free allowances at the time of the importation.

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

7. In this case the cigarettes were seized. No assessments to excise duty or customs  
duty were issued. We are solely concerned with the penalties.

8. Section 8 Finance Act 1994 makes provision for HMRC to assess a penalty in  
30 relation to evasion of excise duty as follows:

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

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

35 *(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 provisions for penalties in relation to evasion of customs duty are materially identical and contained in sections 25 and 29 Finance Act 2003.

20 10. 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 also have jurisdiction to reduce the penalty if we think it proper to do so, but not on the grounds of inability to pay.

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

30 12. Arguments have recently been raised before the First-tier Tribunal that where excise goods have been seized and destroyed no excise duty can be assessed. Further, that where goods have been seized it is disproportionate for HMRC to also assess excise duty as well as a penalty. See *Williams v Commissioners for HM Revenue & Customs [2015] UKFTT 0330 (TC)*. Those issues do not arise in the present case because there has been no assessment to excise duty and we have jurisdiction in relation to the penalty to reduce it to such amount as we think proper, albeit not on the grounds of inability to pay. We deal with this latter point below.

35 13. We had witness statements from Mr Mark Hilton and Ms Melissa Hatcher. Mr Hilton is the Border Force officer who stopped Mr Entezam at the airport and who

interviewed Mr Entezam. Ms Hatcher is the officer of HMRC who decided to assess the penalty. Ms Hatcher also gave oral evidence before us.

14. We heard oral evidence from Mr Entezam.

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

*Findings of Fact*

16. We have set out in the background above the circumstances in which the cigarettes came to be seized which is common ground.

17. Mr Entezam has been a heavy smoker for about 40 years. In 2013 he was  
10 smoking 10-20 cigarettes a day. He rarely smoked UK brand cigarettes. He smoked an Iranian brand which he claimed to purchase for £2.50 per packet. Following the seizure he has given up smoking and has not imported any cigarettes at all into the UK.

18. Mr Entezam is a regular traveller. He has lived in the UK for approximately 12  
15 years and has travelled back to Iran once a year for the past 6 or 7 years. He said that he had not purchased cigarettes on previous trips because he did not have enough money.

19. At the date of the seizure Mr Entezam was 60 years of age. He was travelling  
20 with his wife and two daughters. One of his daughters is disabled. She is 33 years of age and whilst she sometimes has to use a wheelchair, she was not in a wheelchair when they passed through baggage reclaim and the customs channels.

20. Mr Entezam was found to be importing 8,000 Bahman cigarettes. He had  
25 purchased those cigarettes in Iran for about £1 per packet or £400 in total using money borrowed from his parents. The cigarettes were contained in 16 cartons of 500 cigarettes which were spread throughout 8 pieces of baggage of various sizes. We are satisfied that Mr Entezam fully co-operated with the Border Force officer at the time of seizure. He correctly confirmed the quantity of cigarettes being imported when asked by the officer. Of course at that stage it would have served no purpose to lie.

21. Mr Entezam claimed that for cultural reasons he could not do anything wrong  
30 when he was with his family. We take into account in making our findings of fact that Mr Entezam was travelling with his family, but we attach little weight to this factor in assessing whether, on the basis of all the evidence, it is likely that he was knowingly evading duty.

22. We do not accept Mr Entezam's claim that this was the only time he had ever  
35 imported cigarettes into the UK, or that he was unaware that there was duty on cigarettes bought in the UK. He was a heavy smoker. He accepted that the cigarettes were a lot cheaper in Iran than in the UK and that it would be unlawful if he brought cigarettes back from Iran in order to sell them in the UK. We consider he must have been aware that the reason for this, at least in part, was because of the UK duty on  
40 cigarettes.

23. We are satisfied that there are notices on display at all UK entry points explaining the duty free allowances where cigarettes are imported from third countries outside the EU. Those allowances are also explained in public notices issued by HMRC. Mr Entezam was aware that there was a red and a green channel for customs declarations. We do not accept Mr Entezam's claim that he thought the only relevant restrictions were in relation to unlawful drugs, jewellery, drinks or very expensive items.

24. Mr Entezam claimed that he did not understand the notices on display at the airport. It is true that English is not Mr Entezam's first language. However, during the course of the hearing his spoken English was good and he had no difficulty in reading documents in English. He was a frequent traveller and a heavy smoker. It is inherently unlikely that he would have been unaware that there were customs restrictions on the importation of cigarettes. We are satisfied that he knew there was a limit on the number of cigarettes he could import into the UK from Iran. Even if he did not know the specific limit was 200 cigarettes, we are satisfied that he was aware it would have been much less than 8,000 cigarettes and he deliberately chose not to make himself aware of the limit. Either way we consider that he was dishonestly evading duty.

25. On 19 August 2014 Ms Hatcher wrote to Mr Entezam stating that she was enquiring into his involvement in "attempted smuggling" of cigarettes. She stated that the letter was written with a view to recovering any duty and a penalty if there was sufficient evidence of dishonesty. Mr Entezam was invited to provide further information either at a meeting or in correspondence. Specific information was requested including details of the circumstances in which the cigarettes had been purchased and imported. The period of enquiry was stated to be between 20 August 2012 and 19 August 2014 and details of all international travel during that period and the reasons for travel were requested.

26. There was no reply to that letter. Mr Entezam suggested that he might have mistaken it for some form of market research. We find that highly unlikely. It was clearly an official letter from HMRC in connection with the seizure which required a response.

27. On 2 September 2014 Ms Hatcher sent a reminder, asking for a response by 19 September 2014.

28. Mr Entezam replied on 9 September 2014 stating that he had been smoking for 40 years but he was unaware that there was a limit on the cigarettes that could be brought into the UK. He had not imported any cigarettes since 23 September 2013 and has now stopped smoking.

29. Ms Hatcher concluded that Mr Entezam's actions had been dishonest with a view to evading excise duty. On 6 November 2014 she issued a penalty in the sum of £1,309. This was based on the customs duty and excise duty payable on the cigarettes of £432 and £1,751 respectively with a reduction of 40%. The reduction was based on 15% for disclosure and 25% for co-operation.

30. On 11 November 2014 Mr Entezam wrote to HMRC asking for a review of the decision to issue the penalty. He repeated that he had been unaware of any restriction on the quantity of cigarettes he was entitled to import. He had answered the Border

Force officer honestly and accurately at the time of seizure. That was the only time he had imported cigarettes, he permitted them to be seized without objection and had not bought a single cigarette since. He stated that it was unfair to penalise someone for lack of knowledge and that seizure of the cigarettes was a sufficient penalty. He added that he did not have the financial means to pay the penalty.

31. The review letter is dated 8 December 2014. It set out the circumstances of the seizure and the matters referred to in correspondence. It then set out the views of the review officer and concluded that Ms Hatcher's decision should be upheld.

#### *Decision*

32. Mr Entezam's notice of appeal is dated 14 December 2014. His grounds of appeal are essentially as follows:

(1) He was not aware of any restriction on the quantity of cigarettes he could bring into the UK from Iran.

(2) He was honest in his responses to the Border Force officer at the time of seizure.

(3) He had lost HMRC's letter dated 19 August 2014 and that was why he had not provided the information being sought.

33. In the light of our findings of fact we are satisfied that Mr Entezam imported the cigarettes in his luggage knowing that duty was payable. We are satisfied that he went through the green channel with a view to evading duty. He did so dishonestly, knowing that it was wrong.

34. Much of the evidence upon which we have based our findings of fact was only provided by Mr Entezam at the hearing, notwithstanding it had been requested previously by HMRC in correspondence. Considering all the circumstances we are not satisfied that the penalty should be reduced beyond the reduction already given. The reduction in the penalty of 40% for disclosure and co-operation was, if anything, generous. However we are not minded to exercise our jurisdiction to increase the penalty.

35. In reaching that conclusion we have taken into account that in a letter dated 13 December 2014 Mr Entezam offered to answer the questions he had originally been asked in August 2014.

36. We cannot take into account any inability to pay the penalty, but even if we could based on arguments of disproportionality it would not cause us to reduce the penalty on the facts of the present case. Mr Entezam has said that he has given up smoking. That would provide sufficient funds over a period of 18 months following the seizure to pay the penalty imposed, based on 20 cigarettes a day at £2.50 per pack. Further, the only evidence we have as to Mr Entezam's means is a bank statement from November 2014 showing a balance of £106. That would be insufficient to find an inability to pay. We do not consider that seizure of the cigarettes in itself would be a sufficient penalty. In our judgment the penalty imposed properly reflects a proportionate and reasonable response to the unlawful actions of Mr Entezam

37. For the reasons given above we confirm the penalty and dismiss the appeal.

38. 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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**JUDGE CANNAN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 7 OCTOBER 2015**