



TC04733

Appeal number: TC/2014/05043

Excise and Customs Duty - importation of tobacco products - appeal against penalties - whether dishonesty - yes - appeal struck out.

FIRST-TIER TRIBUNAL

TAX CHAMBER

SHAZIA AKHTAR HUSSAIN

Appellant

- and -

HM REVENUE AND CUSTOMS

Respondents

TRIBUNAL: JUDGE: MICHAEL CONNELL

MEMBER: SUSAN STOTT

Sitting in public at Alexandra House 14-22 The Parsonage Manchester on 9 June 2015

The Appellant in person

Mr Thomas Chacko, Counsel, instructed by the General Counsel and Solicitor for HM Revenue and Customs, for the Respondents

DECISION

- 5 1. This is an appeal by Mrs Shazia Akhtar Hussain (“the Appellant”) against a decision by HM Revenue and Customs (“HMRC”) in a letter dated 30 June 2014, to issue Excise and Customs Civil Evasion Penalties in the total sum of £1,735 under s 25(1) of Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty, and under s 8(1) of Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty.
- 10 2. The Appellant says that her English is not particularly good. Her native language is Urdu and therefore the Tribunal Service arranged for an Urdu speaking interpreter to attend the hearing.

Background

- 15 3. On 4 August 2013 the Appellant arrived at Manchester Airport having travelled from Islamabad, Pakistan. The Appellant was stopped and questioned by a UK Border Force Officer on entering the Green ‘nothing to declare’ Channel indicating that she had nothing to declare and in particular had no duties or taxes to pay.
- 20 4. UK Border Force Officer Christian Riley asked the Appellant whether she had packed her bags herself. She replied that she had and that she was aware of her bags contents.
5. When asked if she had any cigarettes the Appellant replied that she had one box.
- 25 6. The Appellant’s baggage was searched, revealing a quantity of 6,400 Gold Leaf cigarettes, (“the goods”). The quantity of cigarettes greatly exceeded the personal allowance for a person travelling outside the EU as set out in the Travellers’ Allowances Order 1994 (as amended). Pakistan is a “third country” from which there is a personal allowance of 200 cigarettes for returning travellers.
- 30 7. Officer Riley advised the Appellant that the goods would be seized as liable to forfeiture under s 139 of the Customs and Excise Management Act 1979 (“CEMA”) and issued her with Public Notices 1 and 12A, being Seizure Information Notice ENF156 and Warning Letter BOR 162, both of which the Appellant signed.
8. The legality of seizure was not challenged in the Magistrates’ court and the seizure was deemed to be legal pursuant to paragraph 5 schedule 3 CEMA.
- 35 9. On 28 March 2014 Compliance Officer Claire Scott of HMRC wrote to the Appellant notifying her of HMRC’s intention to investigate the Appellant’s conduct surrounding the smuggling or attempted smuggling of tobacco into the UK, with a view to establishing whether the Appellant’s conduct was dishonest and therefore whether it was appropriate to issue a Civil Evasion Penalty under s 25(1) of the Finance Act 2003 and under s 8(1) of the Finance Act 1994 for the evasion of Excise Duty. The Appellant was invited to co-operate with the enquiry and advised as to the

actions she could take to reduce any potential penalty. The letter enclosed Public Notice 300 in respect of Customs Duty and Import VAT and Public Notice 160 in respect of Excise Duty and invited any disclosure by the Appellant. The letter made it clear that any reduction in the penalty was contingent on response and co-operation with HMRC's enquires. The Appellant was given the opportunity to provide any relevant information which she thought should be taken into account in calculating the amount of penalty.

10. As no reply had been received, Officer Scott wrote to the Appellant again on 11 April 2014 asking for a response by 28 April 2014, in the absence of which she would make a decision with regard to the imposition of a penalty

11. On 30 June 2014 having heard nothing from the Appellant, Officer Scott issued civil evasion penalties to the Appellant totalling £1,735. The penalties took into account the 200 cigarettes personal allowance. The evaded duties were calculated as: Excise Duty of £1,392, Customs Duty of £42 and import VAT of £301. HMRC had allowed a 0% reduction for disclosure and 0% for co-operation (out of a maximum of 40%).

12. For the purposes of Excise Duty, it is the recommended retail price in the UK which is used as the calculation basis. HMRC say that the retail price of the cheapest known brand (£5.86) has been used to calculate the Excise Duty and that accordingly in that regard the Appellant has received the maximum benefit in the calculation of the penalty.

13. On 8 July 2014 the Appellant's sister in law, Shaheen Hussain, who speaks English much better than the Appellant, wrote to Officer Scott requesting a review of the decision. In her letter she states that the Appellant was not aware of the law regarding customs and that she "did not know it was illegal to be in possession of so many cigarettes". She said that most of the cigarettes were gifts from relatives in Pakistan and were for cousins in the UK. She further stated that the Appellant was struggling financially and was unable to pay the penalty.

14. Officer Scott responded by writing to the Appellant to say that she had afforded the Appellant an opportunity to co-operate with the enquiry and to potentially have her penalty reduced by up to 80%. As the Appellant had failed to respond within the timescale specified, Officer Scott had to assume she did not wish to co-operate. Officer Scott said that the Appellant had not actually provided any new evidence or information in response to the points raised in her initial letter. She said that she was unable to remove the penalty simply because of an inability to pay. If there was an issue regarding affordability of the penalty, she suggested that the Appellant contacted HMRC's Debt Management team and provided their telephone number.

15. On 24 July 2014 the Appellant's sister in law wrote to Officer Scott again, advising that the Appellant disagrees with the decision to uphold the penalty, stating that she would be appealing to the Tribunal.

16. On 10 September 2014 the Appellant filed a Notice of Appeal with the Tribunal.

The Law

17. The legislation relevant to this appeal is:

Finance Act 1994, Sections 8(1) and 8(4)

Penalty for evasion of excise duty.

- 5 (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
 - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- 10 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—
- (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
 - 15 (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. (...)

Finance Act 2003, Sections 25(1) and 29(1)(a)

- 20 s25 Penalty for evasion.
- (1) in any case where
- (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and
 - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- 25 that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded. (...)
- 29 Reduction of penalty under section 25 or 26.
- (1) Where a person is liable to a penalty under section 25 or 26—
- 30 (a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
 - (b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or
 - 35 any part of the reduction previously made by the Commissioners. (...)

Customs and Excise Management Act 1979, Sections 49(1), 78(3) and 139

49(1) Where-

a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being chargeable on their importation with customs or excise duty, are, without payment of that duty-

(i) unshipped in any port,

5 those goods shall ...be liable to forfeiture.

Customs and Excise control of persons entering or leaving the United Kingdom

S78(3) Any person failing to declare anything or to produce any baggage or thing as required by this section shall be liable on summary conviction to a penalty of three times the value of the thing not declared or of the baggage or thing not produced, as the case
10 may be, or [level 3 on the standard scale], whichever is the greater. (...)

S139 Provisions as to detention, seizure and condemnation of goods - s139(1)

(1) Anything liable to forfeiture under the Customs and Excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's armed forces or coastguard.

15 (2) Where any thing is seized or detained as liable to forfeiture under the Customs and Excise Acts by a person other than an officer, that person shall, subject to subsection (3) below, either—

(a) deliver that thing to the nearest convenient office of Customs and Excise; or

20 (b) if such delivery is not practicable, give to the Commissioners at the nearest convenient office of customs and excise notice in writing of the seizure or detention with full particulars of the thing seized or detained.

(3) Where the person seizing or detaining any thing as liable to forfeiture under the Customs and Excise Acts is a constable and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under those Acts it may,
25 subject to subsection (4) below, be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings shall be brought.

(4) The following provisions apply in relation to things retained in the custody of the police by virtue of subsection (3) above, that is to say—

30 (a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as to that thing, shall be given to the Commissioners at the nearest convenient office of Customs and Excise;

(b) any officer shall be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police;

35 (c) nothing in [section 31 of the Police (Northern Ireland) Act 19987 shall apply in relation to that thing.

(5) Subject to subsections (3) and (4) above and to Schedule 3 to this Act, anything seized or detained under the Customs and Excise Acts shall, pending the determination as to its forfeiture or disposal, be dealt with, and, if condemned or deemed to have been
40 condemned or forfeited, shall be disposed of in such manner as the Commissioners may direct.

(6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of any thing as being forfeited, under the Customs and Excise Acts.

5 (7) If any person, not being an officer, by whom any thing is seized or detained or who has custody thereof after its seizure or detention, fails to comply with any requirement of this section or with any direction of the Commissioners given thereunder; he shall be liable on summary conviction to a penalty of level 2 on the standard scale.

10 (8) Subsections (2) to (7) above shall apply in relation to any dutiable goods seized or detained by any person other than an officer notwithstanding that they were not so seized as liable to forfeiture under the Customs and Excise Acts.

Paragraph 5 Schedule 3 CEMA:

15 “If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied.”

Travellers’ Allowance Order 1994

20 1. This Order may be cited as the Travellers’ Allowances Order 1994 and shall come into force on 1st April 1994.

25 2. (1) Subject to the following provisions of this Order a person who has travelled from a third country shall on entering the United Kingdom be relieved from payment of value added tax and excise duty on goods of the descriptions and in the quantities shown in the Schedule to this Order obtained by him in a third country and contained in his personal luggage,.

(2) For the purposes of this article—

30 (a) goods shall be treated as contained in a person’s personal luggage where they are carried with or accompanied by the person or, if intended to accompany him, were at the time of his departure for the United Kingdom consigned by him as personal luggage to the transport operator with whom he travelled;

(b) a person shall not be treated as having travelled from a third country by reason only of his having arrived from its territorial waters or air space;

35 (c) “third country”, in relation to relief from excise duties, shall mean a place to which Council Directive 92/12/EEC of 25th February 1992 does not apply; and, in relation to relief from value added tax, shall have the meaning given by Article 3(1) of Council Directive 77/388/EEC of 17th May 1977 (as substituted by Article 1.1 of Council Directive 91/680/EEC of 16th December 1991).

40 3. The reliefs afforded under this Order are subject to the condition that the goods in question, as indicated by their nature or quantity or otherwise, are not imported for a commercial purpose nor are used for such purpose; and if that condition is not complied with in relation to any goods, those goods shall, unless the non-compliance was sanctioned by the Commissioners, be liable to forfeiture.

4. No relief shall be afforded under this Order to any person under the age of 17 in respect of tobacco products or alcoholic beverages.

HMRC Public Notices

HMRC Notice 300 Customs civil investigation of suspected evasion

2.4 Penalty for evasion of the relevant tax or duty

A penalty may be imposed in any case where:

- 5
- a person engages in any conduct for the purpose of evading any relevant tax or duty; and
 - his conduct involves dishonesty (whether or not such as to give rise to any criminal liability).
- 10
- The penalty that the law imposes is an amount equal to the relevant tax or duty evaded or sought to be evaded.

The penalty can be mitigated (reduced) to any amount, including nil. Our policy on how the penalty can be reduced is set out in Section 3.

3.2 By how much can the penalty be reduced?

15 You should tell us about anything you think is relevant during the investigation. At the end of the investigation we will take into account the extent of your co-operation.

The maximum penalty of 100 per cent import duties evaded will normally be reduced as follows:

- Up to 40 per cent - early and truthful explanation as to why the arrears arose and the true extent of them.
 - Up to 40 per cent - fully embracing and meeting responsibilities under the procedure by, for example: supplying information promptly, providing details of the amounts involved, attending meetings and answering questions.
- 20

25 In most cases, therefore, the maximum reduction obtainable will be 80 per cent of the value of import duties on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a complete and unprompted voluntary disclosure.

HMRC Notice 160 Compliance checks into indirect tax matters

2.3 How can penalties be reduced?

30 It is for you decide whether or not to cooperate with our check, but if you do you should be truthful as making a statement to us you know to be false, you could face prosecution.

If you choose to cooperate and disclose details of your true liability then you can significantly reduce the amount of any penalties due.

35 You should tell us about anything you think is relevant when we are working out the level of the penalty. At the end of the check we will take into account the extent of your cooperation.

2.3.1 Reductions under Civil Evasion Penalty Rules

The maximum penalty of 100% tax evaded will normally be reduced as follows:

- up to 40% - early and truthful explanation as to why the arrears arose and the true extent of them
- 40

- up to 40% - fully embracing and meeting responsibilities under this procedure by, for example, supplying information promptly, quantification of irregularities, attending meetings and answering questions.

5 In most cases, therefore, the maximum reduction obtainable will be 80% of the tax on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a full and unprompted voluntary disclosure.

The Appellant's Case

10 18. The Appellant's grounds of appeal as stated in her Notice of Appeal are that:

- Her English is poor.
- She was unaware of the number of cigarettes she was allowed to bring into the UK. Most of the cigarettes were gifts from cousins but she also bought some for her husband as the cigarettes are cheaper in Pakistan.
- 15 • The Appellant did not fully understand what the Border Force Officer had said to her, and had assumed that she had been let off because this was her first offence.
- The penalty will place the Appellant in financial difficulty.
- She did not reply to any of the letters because she could not read them and
20 only showed them to her sister in law after she got a few letters.

19. At the hearing, the Appellant said that she was travelling with a seven-year-old child and had two suitcases. The 6,400 cigarettes were divided equally between the two suitcases. In each suitcase there were sixteen boxes, each containing 10 packets of 20 cigarettes. The Appellant said that she has lived in the UK for seventeen years
25 and in that time probably travelled between Pakistan and the UK six or seven times. She said that she had been visiting her mother in Pakistan and stayed for two weeks. She said that her English was still very poor. She agreed however that she had a conversation in English with Officer Riley and understood most of what he said. She said that she was aware that there were customs rules and restrictions against the
30 importation of drugs, fire arms, offensive weapons, and possibly cigarettes in Pakistan but was unaware of and restrictions in the UK.

20. The Appellant accepted that she had failed to respond to HMRC's letters but said she believed that the Border Force Officer who interviewed her had told her she would be let off as it was a first offence. She agreed that she had received HMRC's
35 letters. She said that she had showed them to her husband who said that she probably would not be fined and so she threw them away.

HMRC's Case

21. HMRC contends that the Appellant was stopped in the green channel, which automatically constituted a false declaration that she had no goods attracting Excise or Customs Duty. It is a deemed fact that the goods were legally seized and therefore that she had entered the green channel with goods in excess of her allowances.

22. HMRC are entitled under s 8(1) of the Finance Act 1994 and s 25(1) of the Finance Act 2003 to issue the Appellant with a penalty because she acted dishonestly and deliberately took action to positively evade duty and tax.

23. The penalties under the above provisions require that the Appellant has been dishonest. The act undertaken (entering the green channel with an amount of cigarettes above the allowance) was dishonest by the standards of an ordinary, reasonable person. The Appellant realised that what she was doing was, by those standards, dishonest.

24. Dishonesty is a criminal law concept and its definition in relation to civil penalties is taken from the Theft Act 1968. The VAT Tribunal considered the meaning of dishonesty in the context of s 13 of the Finance Act 1985 (which is worded in a similar way to the s 8 penalty) in the case of *Ghandi Tandoori Restaurant v Customs and Excise Commissioners* (1989) VATTR 39. The Tribunal stated that there were the following two elements:

- i. The taxpayer should have done something for the purposes of evading tax; and
- ii. The taxpayer knew that according to the ordinary standards of reasonable and honest people, what she was doing would be regarded as dishonest.

25. The Tribunal in *Ghandi* found that in the majority of cases, the course of conduct adopted by the taxpayer would be such that the necessary mental element of dishonesty can be readily inferred. The Tribunal said:

“It seems to us clear that in such a context, where a person has, ex hypothesi, done, or omitted to do, something with the intention of evading tax, then by adding that the conduct must involve dishonesty before the penalty is to attach, Parliament must have intended to add a further element in addition to the mental element of intending to evade tax. We think that that element can only be that when he did, or omitted to do, the act with the intention of evading tax, he knew that according to the ordinary standards of reasonable and honest people that what he was doing would be regarded as dishonest.”

26. Dishonesty in this context followed the guidance given by the Court of Appeal in *R v. Ghosh* [1982] 1 QB 1053, CA, where a two-step test for showing dishonesty was set out:

“In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of

reasonable and honest people what was done was dishonest. . . If it was dishonest by those standards then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest. In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did. For example, Robin Hood or those ardent anti-vivisectionists who remove animals from vivisection laboratories are acting dishonestly, even though they may consider themselves to be morally justified in doing what they do, because they know that ordinary people would consider these actions to be dishonest.”

27. ‘Dishonest’ should be given its ordinary English meaning, namely ‘not honest, trustworthy, or sincere’. The correct test for establishing dishonesty as stated in the High Court case of *Sahib Restaurant v HM Revenue & Customs* (February 2008 - unreported) where HH Judge Pelling QC (sitting as a Judge of the High Court) stated at para. 40 of the judgment that the correct test in relation to civil penalties was as follows:

“In my view in the context of the civil penalty regime at least the test for dishonesty is that identified by Lord Nicholls in *Tan* as reconsidered in *Barlow Clowes*. The knowledge of the person alleged to be dishonest that has to be established if such an allegation is to be proved is knowledge of the transaction sufficient to render his participation dishonest according to normally acceptable standards of honest conduct. In essence the test is objective — it does not require the person alleged to have been dishonest to have known what normally accepted standards of honest conduct were.”

28. In the case of *Barlow Clowes International Limited (in liquidation) and others v Eurotrust International Limited and others* [2005] UKPC 37 it was held that the test laid down in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 was the correct test and was summarised as follows:

“...although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct statement of the law and their Lordships agree.”

29. While this is in a sense an objective test, in that it does not matter whether or not the taxpayer thought they were being dishonest, it remains subjective to the extent that the taxpayer cannot be dishonest unless they understand what they are doing: the taxpayer cannot be dishonest accidentally. It is (objectively) dishonest if someone knowingly ignores the restrictions on importing cigarettes, and knowingly implies to Border Force that they are not importing cigarettes: it is not dishonest if they do not realise that that is what they are doing.

30. The Appellant has travelled to Islamabad, Pakistan on previous occasions. Numerous notices posted around Manchester Airport detail personal allowance limits. Clear, unambiguous signage is also present at the entrance to the channels.

31. The legislation at s 8(1) of the Finance Act 1994 and s 29(1)(a) of the Finance Act 2003 provide that the Commissioners, or on appeal, an appeal tribunal may reduce the penalty up to nil.

5 32. Because the Appellant had not replied to HMRC's letters or co-operated in any way it was not possible to allow any deduction for early disclosure or co-operation.

10 33. The calculation of the tax and duties were based upon the recommended retail price of the cheapest UK brand. Accordingly the Appellant has been given the most benefit possible in the calculation of the Excise Duty. The actual purchase price was used to calculate the Customs Duty and VAT. The Appellant does not argue that the rates used were incorrect.

34. The penalty is based on the amount of Customs Duties (and Import VAT) and Excise duty assessed as involved in the offence, and has therefore been correctly calculated.

15 35. The Appellant has not put forward any grounds of appeal which could allow the Tribunal to reduce the penalty as assessed.

Conclusion

20 36. The Appellant imported the cigarettes from Pakistan, a non EU country and there are strict limits on the number of cigarettes that can be brought into the UK. The issue as to whether or not the cigarettes were for personal use does not arise. In any event, the facts of the matter are not in dispute and the Appellant did not challenge the legality of 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 deemed to have imported the goods for commercial use. That is a final decision and the Tribunal has no jurisdiction to consider that issue any further.

30 37. The issue in this appeal is whether or not the penalties which have been imposed were properly imposed and for the correct amount. That raises the question of whether the Appellant has been dishonest. The test for dishonesty is an objective one and involves assessing whether the actions of the taxpayer were dishonest by the standards of ordinary and honest people. The burden of proof for dishonesty in a civil evasion penalty case is assessed on the balance of probabilities (*Sahib Restaurant v H M Revenue & Customs* and *Tahir Iqbal Khawaja v HMRC* [2008] EWHC 1687 (Ch.), [2009] 1 WLR 398 at [25]).

35 38. In determining the Appellant's culpability we take into account that:

(i) It is well known that tax and duty is payable on imported cigarettes;

(ii) Pakistan is clearly a non-EU country and so no confusion is possible in respect of the "unlimited for own use" provisions when importing from other EU countries;

(iii) The Appellant stated that she did not know her allowances. However the airport has signage which described the allowances. The signage is designed to inform travellers who are not aware of importation restrictions. In any event, a reasonable person would check the allowances;

5 (iv) The Appellant appears to have been a regular traveller and would, on the balance of probabilities, have known of the allowances for importing tobacco and cigarettes.

10 39. The Appellant was dishonest if she knew: (1) that there were restrictions on the personal import of cigarettes to the UK from Pakistan; and (2) that she was carrying a greater number of cigarettes than the permissible limit. It is inherently unlikely that the Appellant did not know or suspect that there were restrictions on cigarettes being brought to the UK in large quantities.

15 40. The Appellant's actions demonstrate that she acted deliberately and dishonestly. She took action to positively evade duty and tax. Her attempt to clear customs without paying any duties by walking through the green channel with concealed cigarettes demonstrates her intent to positively evade duty and tax.

41. As the Appellant dishonestly attempted to evade import VAT, Excise and Customs Duties, a penalty is due under s 8(1) Finance Act 1994 and s 25(1) Finance Act 2003.

20 42. The Appellant has indicated that the penalty, if it is due, should be reduced, as it will place her in financial hardship HMRC can reduce a penalty on the basis of the customer's co-operation. There are two factors determining the level of any reduction. Firstly, there can be a reduction for an early and truthful explanation of the event giving rise to the penalty and secondly there can be a reduction for fully embracing and meeting responsibilities under the enquiry procedure. The Appellant did not reply
25 to HMRC or co-operate in any way. We do not accept the Appellant's explanation that she thought she had been let off by the UK Border Officer.

43. Any difficulty that the Appellant may have in paying the penalty is not a legitimate reason to reduce it: see s 8(5) FA 1994 and s 29(3) FA 2003.

30 44. The Excise and Customs Civil Evasion Penalties in the total sum of £1,735.00 are accordingly confirmed and the appeal dismissed.

35 45. 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.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 25 NOVEMBER 2015

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