



**TC05065**

**Appeal number: TC/2015/06230**

***CIVIL EVASION PENALTY - Importation of cigarettes – appeal dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SHAZAD ANJUM**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JENNIFER DEAN  
MR MICHAEL ATKINSON**

**Sitting in public at Manchester on 22 April 2016**

**Mr R. Davies, Counsel instructed by HM Revenue and Customs, for the  
Respondents**

**Mr S. Anjum, the Appellant was assisted by Ms Duffy.**

## DECISION

### *Appeal and background*

5 1. By Notice of Appeal dated 1 October 2015 the Appellant appealed against a Civil Evasion Penalty in the sum of £1,150.

2. By way of background the Appellant was intercepted at Manchester Airport Terminal 2 on 3 June 2014 returning from Lanzarote. He was travelling as a party of three adults with Ms Duffy and her brother and the Appellant's four children aged 11,  
10 10, 9 and 6 years.

3. By virtue of Article 2 (2) of Council Directive 92/12/EEC, Lanzarote is a third country for the purposes of Section 2 of the Travellers' Allowances Order 1994. The allowances on goods from a third country are 200 cigarettes and 250g of tobacco.

4. The Appellant was intercepted on entering the 'nothing to declare' Green  
15 channel. HMRC contend that he confirmed the luggage as his and that he had packed it himself. When asked if he was aware of his allowances the Appellant stated he had cigarettes; what was said thereafter was a matter in dispute and we will set out our findings in due course.

5. The Appellant's baggage was found to contain 8000 cigarettes and 1.25kg of  
20 tobacco. On the basis that the goods were not declared and exceeded the allowances set out in the Travellers' Allowances Order 1994 HMRC seized the goods as liable to forfeiture under section 139 of The Customs and Excise Management Act 1979 ("CEMA").

6. The legality of the seizure was not challenged in the Magistrates' Court and the  
25 goods are therefore deemed to have been lawfully seized.

7. On 12 May 2015 HMRC Officer Wright wrote to the Appellant notifying him that he was being investigated for the purposes of potential liability to a Civil Evasion Penalty for the attempted evasion of excise duty and customs duty. The letter invited disclosure by the Appellant in order to mitigate the penalty. A reminder letter was  
30 issued on 24 June 2015.

8. On 29 June 2015 the Appellant replied in a letter we were told was prepared and handwritten on his behalf by a solicitor which stated that he had purchased "*16 sleeves of cigarettes whilst on holiday in Lanzarote*" as he believed he was entitled to do. The Appellant objected to the allegation that he was smuggling and stated that he  
35 purchased the goods for his own use on a one-off basis. He stated he did not believe he was doing anything wrong and that the goods were readily accessible in his hand luggage.

9. On 10 August 2015 a penalty was levied in the sum of £1,150. The total duty evaded was reduced by 55% for the Appellant's disclosure and co-operation.

40 *Legislation*

10. There was no issue between the parties as to the legislation applicable in this case. The provisions, so far as are relevant to this appeal, are as follows:

Section 8 Finance Act 1994:

*“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), that person shall be liable to a penalty of an*  
10 *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 section, may cancel the whole or any part of the reduction made by the Commissioners.”*

Section 25 (1) Finance Act 2003:

*“Penalty for evasion*

- 20           (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), that person shall be liable to a penalty of an*  
25 *amount equal to the amount of the tax or duty evaded, or, as the case may be, sought to be evaded...”*

Section 29 Finance Act 2003:

*“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...*
- (2) *In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).*

(3) Those matters are—

(a) the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty,

5 (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 any relevant tax or duty,

(c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.”

*Evidence and Submissions*

10 11. On behalf of HMRC Mr Davies submitted that the Appellant had been intercepted in the green “nothing to declare” channel at Manchester Airport which constituted a false declaration by the Appellant that he was not in possession of non-duty paid goods. He submitted that this is objectively dishonest by the standards of ordinary, reasonable people.

15 12. HMRC officer Trendall who was responsible for the interception, from whom we did not hear evidence, recorded her conversation with the Appellant as follows:

“Q...Are you aware of your customs allowances?

A. I have cigs

Q. How many?

A. 13, they said I can pay the duty

20 Q. Who did?

A. The Spanish. We have already been searched, they said if I had the receipt I could have paid the tax.

Q. If you had gone to the red point and declared the goods you would have been given that option. However as you have entered the GC you won't.

25 A. Well we didn't know. We were concentrating with the kids...”

13. Mr Davies accepted that the officer, who is on maternity leave, was unavailable to give evidence but submitted that there was no reason to doubt the record made at the time when the Appellant was intercepted. He submitted that in assessing the issue of dishonesty we should also take into account the following matters|:

- 30
- The Appellant was a relatively regular traveller and had travelled to Spain and Tenerife in the past;
  - The legislation specifically precludes insufficiency of funds as a relevant factor;
  - It is well known that Lanzarote is outside the EU for excise purposes;
  - The airport has signage which describes the allowances informs travellers who
- 35 are not aware of importation restrictions;

- The fact that the Appellant was searched in Lanzarote and told he could pay the duty on entry to the UK meant that even if he had been unaware of the importation restrictions he had been put on notice prior to entering the UK yet failed to declare the goods or make enquiries of the officers before entering the Green channel;
- The Appellant had initially only declared “13” when asked about the quantity of cigarettes. Taking this to mean sleeves of cigarettes equates to 2600. The Appellant subsequently referred to have 16 sleeves which equates to 3200 yet the amount seized, namely 8000 cigarettes (40 sleeves) and 1.25kg of hand rolling tobacco, was far in excess.

14. We heard evidence from HMRC officer Wright who was responsible for issuing the penalty. She explained that the reduction of 55% comprised 30% for disclosure and 25% for co-operation on the basis that some information had been provided but not all that had been requested and the Appellant had continued to deny he had acted dishonestly. In cross-examination Ms Wright accepted that the Appellant had referred to health problems but stated she had not been provided with any evidence of this nor any evidence to indicate that this had a bearing on either the Appellant’s act of importing the goods or his co-operation and disclosure thereafter. Ms Wright also clarified that she had not taken into account that the goods belonged to others as well as the Appellant as he had taken responsibility for all.

15. The Appellant explained in evidence that he had been on a family holiday to Lanzarote. He had imported cigarettes in the past from Spain but was not aware that Lanzarote was not in the EU as Ms Duffy organised the holiday.

16. The Appellant stated that the goods belonged partly to him, partly to Ms Duffy and partly to her brother. He did not accept the conversation as recorded by Ms Trendall and stated that when his luggage was searched in Lanzarote the officers had spoken in Spanish at all times. The Appellant stated that the flight was a late one and he had been focussing on the children. He had told the officers that he was carrying cigarettes and made no attempt to hide them; in fact he had offered to pay the duty which he believed would be on the £500 he had spent on the goods but when he was told it would be in the region of £2000 he could not afford to pay.

17. The Appellant stated he had not seen the signs at the airport as he was looking after the children, one of whom needs particular care and attention. He stated that he did not recall the conversation with the intercepting officer as he is on a large amount of medication however he denied it had taken place as recorded by the officer.

18. The Appellant explained that the response to Ms Wright’s enquiries had been prepared on his behalf by a solicitor and that Ms Duffy had filled in the Notice of Appeal.

19. The Appellant finally explained that he was on medication to control his behaviour. He suffers from anxiety and depression to such an extent that he has never been employed and we accepted that attending the Tribunal could be stressful for him. However the Appellant had never claimed that his condition and the medication taken to ease his symptoms had any bearing on the events which led to the imposition of the penalty.

### *Discussion and Decision*

20. This appeal is made pursuant to section 16 Finance Act 1994. We have full jurisdiction to consider whether the penalty has been properly imposed and to reduce the penalty if we think it proper to do so, but not on the grounds of inability to pay.  
5 Section 16(6) Finance Act 1994 provides that the burden of proof is on HMRC to establish that the Appellant has engaged in conduct for the purpose of evading VAT and that his conduct involved dishonesty. Otherwise the burden of proof is on the Appellant.

21. The issue for us to determine was whether the Appellant engaged in conduct for  
10 the purpose of evading excise and customs duty and that the conduct was dishonest.

22. We were satisfied that the goods were properly seized as exceeding the allowance available to a traveller from a third country. We also concluded that the Appellant's act of entering the Green Channel and failing to declare the goods was conduct for the purpose of evading excise and customs duty and that the ordinary,  
15 reasonable person would consider this dishonest.

23. In the absence of oral evidence from Ms Trendall the only evidence to support HMRC's case in relation to the seizure is an untested witness statement and her contemporaneous notebook. However in assessing the credibility of the Appellant's evidence we must consider the evidence as a whole, including that of Ms Wright from  
20 whom we did hear.

24. Ms Wright noted that the Appellant had never before claimed that the goods belonged to his co-travellers and whilst he had referred to health issues there was no evidence provided to her to show how this had any bearing on the import or the Appellant's state of mind.

25. We considered this evidence was consistent with that of Ms Trendall who recorded the Appellant as stating that the luggage searched was his own. We concluded that there was no reason for Ms Trendall to have been mistaken on this issue and far less to mislead the Tribunal; as pointed out by Mr Davies a potential penalty for dishonesty would not be the foremost concern of an officer searching  
30 luggage and seizing goods. We therefore accept Ms Trindall's notebook entries even though it has not been tested as a contemporaneous and accurate official record of the interception and seizure.

26. Moreover we noted that the Appellant had never before, until the hearing, sought to challenge the events as recorded. Even accepting, as we do, that the Notice  
35 of Appeal was completed by Ms Duffy and the response to Ms Wright, in the letter dated 29 June 2015, was prepared by a solicitor, we have no doubt that these documents would have been drafted on the Appellant's instructions.

27. In accepting the note of interception and seizure we also find that the Appellant was made aware when searched in Lanzarote that duty was payable on the goods and  
40 his failure to do so was therefore dishonest.

28. We considered the Appellant's account. We found the Appellant's evidence that he did not see the signs at the airport unconvincing. We accept that there were children travelling with the group but there were at least 3 adults present and we do

not accept that the Appellant can have failed to notice the signs. Even if he did fail to see them on this occasion, the Appellant had travelled abroad before and we do not accept that he had failed to see the signs on each and every occasion of travel.

5 29. The fact that the Appellant offered to pay the duty when intercepted supports our conclusion; if he was wholly unaware that there were restrictions on importing the goods or that duty was payable there would have been no reason to offer. We also concluded that an honest person, not knowing if there was any restriction on importing such goods, would have asked for guidance before entering the green channel and we infer from the fact that no guidance was sought that the Appellant did  
10 know of the restrictions and was aware that duty was payable on the goods.

30. In all of the circumstances of the case we were satisfied that the Appellant had dishonestly sought to evade payment of duties and that the penalty was properly imposed. We were also satisfied that the reduction by way of mitigation for co-operation and disclosure was both properly considered and reasonable.

15 31. The appeal is dismissed.

32. 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  
20 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.

25

**JENNIFER DEAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 27 April 2016**

30