[2016] UKFTT 0339 (TC)

TC05096

Appeal number: TC/2015/02159

Customs and Excise duties – imported goods – seizure – civil evasion penalties – whether honest and innocent mistake – no – penalties upheld – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GAVIN PATRICK BRACE **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT
MEMBER: JOHN WOODMAN

Sitting in public at Kings Court, Earl Grey Way, North Shields on Monday 9 May 2016

No appearance by or for the Appellant

Mr A Senior, Counsel, instructed by the Solicitor for the Respondents

DECISION

Preliminary matter

1. The appellant did not appear and was not represented. Mr Senior appeared for the respondents ("HMRC") and was present with two witnesses, namely Susan Cunningham, an Officer of Border Force and Philip Dawson of HMRC. HMRC wished to proceed.

2. This straightforward appeal has an unusually long procedural history. On 11 September 2015 an "Unless Direction" was issued stating that if the appellant did not comply with Directions then the proceedings might be struck out. That prompted a response by email by the appellant authorising his partner Samantha Snowdon, a teacher, to act on his behalf. The address given was 14 Westhall Close, Sunderland SR2 05U. On 8 October the said "Unless Order" was issued to Ms Snowdon by post requesting compliance within 14 days of that date. On 16 October 2015 Ms Snowdon responded saying that previous correspondence had not been received and reiterating the address to which correspondence should be sent. On 11 November 2015 the Tribunal wrote to Ms Snowdon at the given address confirming that the Directions had been sent to the appellant at the email address given by the appellant not only on the Notice of Appeal but also on the email appointing her as a representative. Exceptionally further copies of all relevant information were issued by both email and post.

3. On 24 November 2015, Ms Snowdon responding saying that she found the information received to be far too technical and wished simple instructions. On 26 November 2015 she was sent guidance notes. She responded on 2 December 2015 saying she did not understand that and wished to obtain advice by telephone. The Tribunal responded by email early on 4 December 2015 asking for her telephone number and she finally responded on 10 December 2015 asking if she could be called after 5.30pm. Obviously that is not possible and HMCTS wrote and emailed to her on 16 December 2015 stating that HMCTS had endeavoured to contact her twice within business hours. She was asked to respond as a matter of urgency since compliance was well overdue.

4. The compliance in question is by no means complicated. The appellant had been directed to notify dates to avoid for a hearing, identify any witnesses to be called and list any documents to be used in evidence.

5. She responded on 21 December 2015 having spoken to the Tribunal and requesting a further extension of time which was granted until 5 January 2016. At 1609 hours on 5 January 2016 she confirmed that she did not know what documents she would be producing and therefore would produce none. She then stated that since she and the appellant both worked full-time and had no holiday allocation they would not be available to attend a Tribunal and they were also due to have a baby in February 2016. HMCTS took that to be application for postponement and requested dates to avoid for April-June 2016. It was made explicit that "Insofar as the appellant suggests that in the absence of holiday entitlement means that he is never available for a hearing, the

Tribunal will not postpone a hearing in these circumstances". The appellant produced no dates to avoid.

6. On 29 February 2016 the appeal was listed for hearing on Monday 9 May 2016 and that Notice of Hearing was sent to Ms Snowdon by both email and post. There has been no response. In all of these circumstances we take the view that considerable latitude has been extended to the appellant and his partner/representative and that no further latitude is appropriate. We are required to deal with appeals both fairly and justly and that means to both parties. HMRC have been put to considerable time and expense, as indeed has HMCTS. In those circumstances it is not appropriate to further adjourn this hearing.

7. We had due regard to Rules 2 and 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") and we decided that the appellant had had notice of the hearing and that it was in the interests of justice to proceed with the hearing in his absence.

The appeal

8. This appeal is against HMRC's decision to maintain an assessment for Excise and Custom Civil Evasion Penalties in the sum of £807 notified to the appellant by letter dated 10 December 2014. That decision had been upheld on review on 28 January 2014. The appellant's Notice of Appeal was lodged with HMCTS on 19 February 2015.

Findings in Fact

9. At 1420 hours on 20 April 2014, Officer Cunningham intercepted the appellant and a female passenger in the Green Nothing To Declare channel as they returned from a flight from Tunisia. Following questioning, the Officer recorded in her Notebook that the appellant confirmed that he was returning from Tunisia and that he was not carrying anything for anyone else in his luggage. He was asked whether he understood the allowances for cigarettes, alcohol, tobacco and other goods and confirmed that he did. He confirmed that he did have cigarettes in his luggage and although the allowance was only 200 cigarettes he confirmed that he had "about 18 cartons".

10. His baggage was searched and 6,400 Lambert & Butler KFS cigarettes and 400 Silk Cut KFS cigarettes were found.

11. The appellant stated that the goods were for his use and he took responsibility for them. The Officer showed him her notebook but he declined to read the Notebook but he did sign the Notes of Interview therein.

12. The appellant also signed Form BOR156 headed "Seizure Information Notice" which confirmed that a total of 6,800 cigarettes had been seized and that the Notice 1, Warning Letter and Notice 12A had been issued. The cigarettes were identified by type and number.

13. The appellant also signed the "Warning Letter about seized goods". That stated that the 6,800 cigarettes had been seized under Section 139 of the Customs & Excise Management Act 1979 and that that was without prejudice to any further action that might be taken against him in connection with that matter including the issue of an assessment for any evaded tax or duty and a wrongdoing penalty.

14. The seizure has not been challenged.

15. On 20 November 2014 HMRC wrote to the appellant informing him of an ongoing investigation for the imposition of a Civil Evasion Penalty under Section 25(1) Finance Act 2003 for the evasion of Customs Duty and Import VAT and under Section 8(1) of Finance Act 1994 for the evasion of Excise Duty. That letter invited disclosure by the appellant and made it clear that any reduction in the penalty was contingent on response and cooperation with HMRC's enquiries.

16. The response to that letter was sent by both Samantha Snowdon and the appellant. It stated that "An honest innocent mistake was made as the quantity of cigarettes allowed to be brought back into the country was not known". The cigarettes were purchased for personal use and also for personal gifts. The appellant complained that no-one had warned him when making the purchases that he had exceeded his allowance. He could not recall the total number of cigarettes involved but estimated it at approximately 25 sleeves of cigarettes.

17. On 10 December 2014 HMRC issued a Civil Evasion Penalty being a Notice of Assessment in the sum of £807 being the total of £148 Customs Civil Evasion Penalty and £659 Excise Civil Evasion penalty. The Notice of Assessment explained how the penalty had been calculated and advised that a reduction of 60% of the maximum penalty had been made to reflect the degree of disclosure and cooperation given by the appellant in the course of the enquiry. The maximum possible reduction is 80% of the total duty evaded of £2,018.

18. On 16 December 2014 Samantha Snowdon, on behalf of the appellant, wrote to HMRC seeking a review of the penalty on the basis that the reduction should have been 80% as opposed to 60% because it had been a "genuine, honest mistake where the allowance of goods was not known".

19. The review upheld the original decision on the basis that the appellant had entered the green channel in the knowledge that the quantity of cigarettes in his possession exceeded the traveller's allowance of 200 cigarettes and that therefore constituted dishonesty. (The review incorrectly stated that the appellant had told Officer Cunningham that he was carrying 8 "sleeves" of cigarettes, rather than 18, but that is not material).

20. The Notice of Appeal lodged by the appellant again focussed on the 60% discount rather than 80%. The appellant alleged that he had been told at the airport that there would be no further action and therefore he had destroyed the paperwork. He had therefore estimated that there were 25 cartons of cigarettes. He also

complained that HMRC had sent correspondence to the wrong address and since that trip he had been targeted in the airport and stopped.

Discussion

21. This Tribunal has no jurisdiction to consider whether or not the appellant has been stopped since this incident, whether HMRC wrote to the correct or wrong address or why HMRC issued the Assessment seven months after the event. Our jurisdiction is limited to ascertaining the facts and applying the relevant law.

22. We do not accept that the appellant was told that there would be no further action when he was at the airport. As we indicate above, it is quite clear that the quantity of cigarettes was identified after a search, he took responsibility for those and he signed the documentation saying that he knew that further action might be taken. If he chose not to read what he signed, that is his choice.

23. We do not accept that it was a simple honest mistake. The alleged ignorance of the limits on the basis that "no-one" in the airport or on the flight told him the limits is unlikely. It is very well publicised that the limit for import of cigarettes from outwith the EU is very small at 200 cigarettes. The quantity carried by the appellant being 6,800 cigarettes is a very large quantity even if it had been sourced in the EU.

24. He now states that he did not declare a quantity of cigarettes to Officer Cunningham prior to the search of his luggage. If he did not then there was a failure in co-operation. We find that he did say that he was carrying 3,600 cigarettes.

25. In summary, the only point in issue was the amount of the penalty. We find that the appellant's actions were dishonest, in that he was carrying 34 times his personal allowance in his luggage and entered the green channel passing signs indicating limits. In any event ignorance of the limits is not an excuse. It is for the taxpayer to ascertain what limits apply.

26. Even now the appellant is not co-operating since he says he does not know how many cigarettes he was carrying. There has never been complete disclosure even if we accept that he did disclose the 3,600 cigarettes at the airport.

27. Accordingly the appeal is dismissed and the Penalty Assessment confirmed.

28. 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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 13 APRIL 2016