



Neutral Citation: [2024] UKFTT 00080 (TC)

Case Number: TC09045

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Manchester

Appeal reference: TC/2022/11043

CUSTOMS AND EXCISE DUTY PENALTIES - importation of cigarettes and tobacco - penalties imposed for conduct involving dishonesty - appeal dismissed

Heard on: 6 December 2023
Judgment date: 4 January 2024

Before

**TRIBUNAL JUDGE JENNIFER DEAN
MISS SUSAN STOTT**

Between

ASIF PATEL

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Zakirhusen, solicitor for the Appellant

For the Respondents: Mr Barth of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This appeal concerns a civil evasion penalty in the sum of £1,139, issued on 18 May 2021, pursuant to sections 8(1) of the Finance Act ('FA') 1994 and 25(1) FA 2003, as a result of the Appellant's dishonest attempt to evade customs and excise duties on 16 January 2020.

BACKGROUND

2. The following facts were not in dispute.

3. On 16 January 2020, the Appellant arrived at Manchester Airport having travelled from Turkey. He proceeded through the 'green channel' following which he was intercepted and questioned.

4. The Appellant's luggage was searched. Officers found 6 kilograms of Al Fakher Shisha Tobacco ('tobacco') and 1,200 Bon Gold KSF cigarettes ('cigarettes'). The goods were seized on the grounds that they exceeded the personal allowance of either 250g tobacco or 200 cigarettes.

5. HMRC notified the Appellant on 18 May 2021 to advise that it considered his actions dishonest and a penalty of £1,139 had been imposed.

6. The amount of duty evaded was £1,424.

RELEVANT LEGAL PROVISIONS

7. There was no dispute that the following provisions are those relevant to this appeal.

8. Section 8 FA 1994 provides:

Penalty for evasion of excise duty

(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 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

(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.

9. The provisions in relation to customs duties are in materially identical terms and are set out in sections 25 and 29 FA 2003.

10. The Travellers' Allowance Order 1994 provides limits for the importation of relevant goods from third countries (effectively a non-EU country). As set out above, the limit for tobacco products is 200 cigarettes or 250 grams of smoking tobacco.

11. In *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, the Supreme Court held that the test of dishonesty is a two-stage test considering subjective and objective elements, at [74]:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

12. In *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 3 All ER 97, Lord Nicholls stated, at [106]:

“In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless.”

THE APPEAL

13. The Appellant’s grounds of appeal can be summarised as follows:

- He did not have the requisite knowledge regarding customs duties.
- The purpose of his travel was for a holiday.
- He did not seek advice because of anxiety in airports.
- He has nothing to gain from keeping his items, and they were forfeited.

EVIDENCE AND SUBMISSIONS

14. HMRC submit that the Appellant’s conduct was dishonest such that the penalty should be upheld. HMRC rely on, inter alia, the following:

- i) There are numerous signs in Manchester Airport displaying personal allowance information. It is inconceivable that the Appellant did not see any signs.
- ii) Information about personal allowance limits is widely available to the public on the internet.
- iii) If the Appellant was aware of limits but unsure about the amounts, it is inconceivable that he believed the amount of tobacco and cigarettes he was carrying fell within those limits.
- iv) Personal use is not a relevant consideration. The Appellant proceeded through the green channel and had he not been intercepted, he would have evaded paying the duties due on the goods.
- v) The Appellant has failed to provide a full explanation of his actions. A letter from HMRC dated 19 March 2021 requested a full account. In the absence of a detailed response, adverse inferences should be drawn.

15. Mr Loader, an officer of HMRC, provided evidence that he had considered all of the information available to him and concluded that the penalty, which represents 80% of the revenue sought to be evaded is appropriate. No challenge has been made to the quantum. A

reduction was applied to reflect the limited cooperation and disclosure provided by the Appellant.

16. Mr Loader clarified in cross-examination that the signage at the airport regarding allowances is substantial. He could not guess at how likely someone would be to miss the signs. He confirmed that as Turkey is not in the EU, the personal allowance limits is fixed.

17. He stated that the letter dated 19 March 2021 contained 10 bullet point questions which required answers in order that he was given the full picture by the Appellant. The Appellant's response was "threadbare" and failed to answer all of the questions. Based on the answers provided, Mr Loader concluded that the Appellant's actions were dishonest.

18. Mr Patel stated he was unaware of any allowances. He was unwell at the time and wanted to get home. He stated he had followed other people to the exit and had not seen any signs. He believed once the goods were seized that that was the end of the matter.

19. Mr Patel confirmed he had travelled in the past, a couple of times per year, to various places including Europe and the Middle East. He had contacted HMRC upon receiving the letter 19 March 2021 to check it was genuine and believed he had answered the questions raised therein. He agreed that he had still not replied to the letter by the deadline of 20 April 2021, explaining that he had made a request for information which had caused delay, although it may also have been caused by personal issues but due to the passage of time he was unable to recall.

20. Mr Patel agreed that his response to the letter had stated the goods were for personal use and he believed he had covered all relevant information. He agreed that he had not mentioned feeling unwell at the airport nor did he provide details of the trip as requested in HMRC's letter.

21. A record of a telephone call made by Mr Patel to HMRC on 21 May 2021 noted that Mr Patel had stated he was not aware that there were different channels at the airport. He disagreed that this was a different account to his explanation that the goods were for personal use, stating that these were responses to different questions.

22. He agreed that a letter from him (undated but in response to a letter dated 17 June 2021) did not mention personal use, illness at the airport or his lack of knowledge about the green/red channels. He explained that he had already raised these issues in his earlier communications. In relation to his failure to produce a witness statement, Mr Patel explained that he had responded to everything as well as he could and had not deliberately ignored the Tribunal's directions. He reiterated that he had not seen any signs at the airport as he was ill and that he was oblivious to the different channels which he had never noticed on previous occasions at the airport.

23. One ground of appeal relied upon stated:

"Not seeking advice - I am a very anxious person when it comes to airports, I tend to be very reserved due to my preconceptions of Border Force agents after what the Home Office has done to the wind rush generation. I tend not to ask a lot of questions due the way border force agents are dressed, I am scared I would lose my British citizenship. It was neglectful of me to think like this as I now face a penalty."

24. The Appellant did not agree that the ground above suggests that he considered seeking advice but decided against it. He reiterated that he was oblivious to any signs, he did not have any doubts about the goods he was importing and did not want to confront anyone for advice as he was anxious.

25. On behalf of the Appellant, Mr Zakirhusen highlighted that the Appellant arrived at the airport late at night, he was unwell and did not see any signs. He noted that there was no evidence of any previous seizures and many of the questions asked by HMRC in the letter dated 19 March 2021 were irrelevant to the Appellant and HMRC could have sought more information from the Appellant if required.

DECISION

26. We considered all of the evidence, both oral and documentary and we were grateful to Mr Zakirhusen and Mr Barth for their helpful submissions.

27. We found Mr Loader to be a credible witness who had reached his decision on the basis of the limited information before him. We found Mr Patel's evidence inconsistent, and we concluded that it was unreliable.

28. In reaching this decision we noted that Mr Patel had failed to fully respond to HMRC's letter dated 19 March 2021, despite being advised to do so both in the letter and in a telephone call to HMRC on 26 March 2021. The letter clearly set out the information sought as follows:

"If you are willing to co-operate with this enquiry and would prefer to deal with the matter by correspondence, please provide the following within 30 days of the date of this letter:

- A copy of this letter (copy enclosed), signed and dated by you, as acknowledgement that you have read and understood Factsheet CC/FS9, Public Notice 160, and Public Notice 300. If you have any questions regarding any of these, please contact me on the above number
- Confirmation of who was involved in the smuggling (attempt).
- For each person involved, please state exactly what they did.
- For each person involved, please state why they did it.
- A full explanation as to how the smuggling (attempt) was carried out.
- Confirmation as to how many times and when (the dates) alcohol and tobacco products were smuggled (or attempts made to smuggle them) into the UK.
- For each occasion, please state the quantity of goods.
- Details of all international travel during the period under enquiry, including the reasons for travel.
- Any documentation you think will support the information you are providing.
- Any other information or explanations you think may be of use to this enquiry."

29. The only information provided by Mr Patel in response was as follows:

"I can confirm I was stopped at customs back in January 2020 for a routine check and was made aware I have exceeded the allowance stipulated. My understanding was the matter was settled at the time when the products were seized and I would like to make it clear it was purely for personal use."

30. We considered Mr Patel's evidence that he believed he had provided all necessary information. However, there was no mention of feeling unwell or his ignorance of the personal allowance limits in his response and we consider that this undermined his evidence as a whole.

31. There were also a number of inconsistencies in Mr Patel's evidence. The grounds of appeal assert that he had no knowledge of allowances or duty/excise taxes, yet he also stated that:

"I assumed duty/excise was similar to airmiles points for frequent flyers providing a reduced price, it was careless of me not to check."

32. In evidence Mr Patel could not explain what he had meant by the comparison with airmiles or why he had stated this and in our view the statement was inconsistent with the assertion that he was wholly unaware of customs and excise duty.

33. Similarly, Mr Patel asserted that he had not asked advice from Border Force officers due to his anxiety brought about by “my preconceptions of Border Force agents after what the Home Office has done to the wind rush generation”. In our view, this implies that he had given some consideration to the matter and is at odds with his assertion that he was ignorant of any such matters.

34. We considered Mr Patel’s evidence that he did not see any signs about the limits on importation of goods and that he was unaware of the different channels as he had felt unwell and simply followed other passengers to the exit. Even if we were to accept that Mr Patel was unwell on this occasion, the evidence was that he had travelled regularly in the past and we found it implausible that he would not have seen the substantial signage in the airport or the clearly marked channels over the many years of travelling. We note that Mr Patel raised the issue of feeling unwell for the first time at the hearing. We consider that there was no credible evidence as to why this matter had not been mentioned by Mr Patel in earlier communications with HMRC given that this was the reason he relied on for his failure to observe any signs and in those circumstances, we rejected it.

35. In applying the relevant test (see [11] and [12] above), we are satisfied that Mr Patel’s actions were dishonest. We are satisfied that Mr Patel was aware of the limits and deliberately sought to evade the duties due, or at the very least closed his eyes to the fact.

36. We consider that the level of mitigation was appropriate and we see no basis for interfering with it.

37. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO 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.

**JUDGE JENNIFER DEAN
TRIBUNAL JUDGE**

Release date: 4th JANUARY 2024