



**TC06100**

**Appeal number: TC/2016/05962**

*Excise and Customs Duty - importation of tobacco products - late appeal against Civil Evasion Penalties - s 25(1) Finance Act 2003 and s 8(1) Finance Act 1994 - cross application by HMRC to strike out - merits of appeal considered - whether any reasonable prospect of the Appellant's case succeeding - no - whether dishonesty - yes - whether allowances given to reduce penalties correct - yes - appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX CHAMBER**

**ZAMEER KHAN**

**Appellant**

**- and -**

**HM REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL**

**Sitting in public at 4<sup>th</sup> Floor City Exchange Albion Street Leeds on 20 July 2017**

**The Appellant in person**

**Ms Rebecca Young, Officer of HMRC, for the Respondents**

**DECISION**

1. This is an appeal by Mr Zameer Khan (“the Appellant”) against a decision by the Respondents (“HMRC”) notified on 16 May 2014, to issue Excise and Customs Civil Evasion Penalties in the total sum of £1,344 under s 25(1) of the Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty, and under s 8(1) of the Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty, in that he failed to declare cigarettes and tobacco which he was importing into the United Kingdom above the personal allowance of 200 cigarettes or 250g of tobacco.

2. HMRC make a cross application for the Appellant’s appeal be struck out under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, on the basis that the Appellant has submitted his appeal 2 years and 5 months out of time and the Tribunal does not have jurisdiction to hear the matter or, in the alternative, on the basis that there is no reasonable prospect of the Appellant’s case succeeding.

**20 Background**

3. On 18 October 2013, the Appellant was stopped and questioned by a UK Border Force Officer, on entering the Green ‘nothing to declare’ Channel at Manchester Airport, arriving on a flight from Islamabad, Pakistan.

4. From disembarkation to clearing Customs there are displayed a number of notices advising which countries fall inside/outside the European Union (“EU”) and also the duty free allowances for excise dutiable products acquired outside the EU. Pakistan is not in the EU and therefore, returning travellers, for the purposes of the Travellers’ Allowance Order 1994, have a personal allowance of 200 cigarettes.

5. Despite the notices, which are also situate in the baggage reclaim area and just before the Customs Channel entrances, the Appellant chose to exit through the ‘nothing to declare’ Green Channel, indicating that he had no goods to declare, at which point the Appellant was intercepted by a UKBF Officer.

6. On conducting a search of the Appellant’s luggage, 5,000 Players Gold Leaf cigarettes were found, which was twenty-four times over the Appellant’s personal allowance.

7. As the goods had not been declared and were over the allowances as set out in the Travellers’ Allowances Order 1994 (as amended), the UK Border Force Officer seized the goods as liable to forfeiture under s 139 of the Customs and Excise Management Act 1979 (“CEMA”) and issued the Appellant with Public Notices 1 and 12A, being Seizure Information Notice C156 and Warning Letter BOR162, both of which the Appellant signed.

8. The legality of seizure was not challenged in the Magistrates’ court and the seizure was therefore deemed to be legal pursuant to paragraph 5 schedule 3 CEMA.

5 9. On 8 April 2014, HMRC's Officer P Corbishley of HMRC's International Trade  
and Compliance Unit, wrote to the Appellant at the address he had provided at  
Manchester Airport, informing him that HMRC would be conducting an enquiry into  
the matter and that the imposition of a Civil Evasion Penalty, under s 25(1) of the  
10 Finance Act 2003 and under s 8(1) of the Finance Act 1994 for the evasion of  
Customs and Excise Duty was to be considered. The Appellant was invited to co-  
operate with the enquiry and advised of the action he 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  
15 was contingent on the Appellant's response and co-operation with HMRC's enquires.

10. The letter from Officer Corbishley explained that if the Appellant was willing to  
co-operate with the enquiry he should provide the following within 30 days of the  
date of his letter:

- 20 • "A copy of this letter, signed and dated by you, as acknowledgement that  
you have read and understood Factsheet CC/FS9, Public Notice 160, and  
Public Notice 300. A copy is enclosed for this purpose.
- Confirmation of who was involved in the smuggling or attempted  
smuggling, exactly what they did and why they did it.
- 25 • A full explanation as to how the smuggling or attempted smuggling was carried  
out.
- Confirmation of how many times, and when, alcohol or tobacco  
products were smuggled into the UK, or attempts made to  
smuggle them.
- 30 • Confirmation of the quantities of goods involved on each occasion.
- Evidence of the cost of the goods, such as receipts, invoices, or bank statements.
- Details of all international travel during the period under enquiry,  
including the reasons for travel.
- An explanation of what you did with, or intended to do with, the smuggled  
goods.
- 35 • 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".

11. Officer Corbishley referred the Appellant to Public Notice 300, s 3 where it states  
that a reduction in penalty may be given as follows:

40 "Disclosure

During the investigation an early and truthful admission of the extent of the arrears and  
why they arose will attract a considerable reduction (up to 40 per cent). By the extent  
of the arrears we mean what has happened and over what period of time, along with  
any information about the value involved, rather than the precise quantification.

45 Co-operation

You will receive further mitigation (up to 40 per cent) if you:

- attend all the interviews (where necessary);

- 5
- provide all information promptly;
  - answer all questions truthfully;
  - give the relevant information to establish your true liability;
  - co-operate until the end of the investigation.”

10 12. On 22 April 2014, as Officer Corbishley had not received a response from the Appellant, he issued a reminder letter to prompt a reply. The letter advised that if the Officer did not hear from the Appellant by 9 May 2014, a decision would be made regarding the imposition of a penalty on the basis that the Appellant’s intention was not to help the Officer in the enquiry.

15 13. On 16 May 2014, Officer Corbishley calculated the Excise Duty, Customs Duty and Import VAT that would be due on the cigarettes seized. The amount due was based on 4,800 cigarettes, taking into account the 200 cigarette allowance for duty-free importation. A Civil Evasion Penalty - Notice of Assessment totalling £1,344 (Customs civil evasion penalty £51 and Excise civil evasion penalty £1,293), after  
20 allowing a nil reduction for disclosure and a nil reduction for cooperation.

14. All of HMRC’s correspondence had been sent to 457 Killinghall Road, Bradford BD2 4SD, being the address provided by the Appellant to the UK Border Force on seizure of the goods. The address was confirmed as correct in the Appellant’s subsequent appeal letter.

25 15. On 17 October 2016 HMRC re-sent copies of their correspondence (issued on 8 April 2014, 22 April 2014 and 16 May 2014). The letters were re-sent following a visit to the Appellant's home, by a HMRC Field Force Officer, pursuing collection of the Civil Evasion penalty and telephone conversation with the Appellant who said that he had not received the original letters.

30 16. By an undated letter received by the Tribunal on 5 December 2016, the Appellant appealed the penalty to the First-tier Tribunal.

### **Evidence**

35 17. The combined bundle of documents included a copy of Form BOR 156 Seizure Information Notice and BOR 162 Warning letter both dated 18 October 2013, copy correspondence, the Notice of Assessment, relevant legislation and case law authority. The Appellant also gave evidence under oath to the Tribunal.

### **The Law**

18. The legislation relevant to this appeal is:

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

40 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)

s25 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),

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 any part of the reduction previously made by the Commissioners. (...)

35 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-
  - 40 (i) unshipped in any port,
- 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

5 the value of the thing not declared or of the baggage or thing not produced, as the case may be, or [level 3 on the standard scale], whichever is the greater. (...)

S139 Provisions as to detention, seizure and condemnation of goods

10 (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.

(2) Where anything 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

15 (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.

20 (3) Where the person seizing or detaining anything 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, 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 -

25 (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;

30 (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;

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

35 (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 condemned or forfeited, shall be disposed of in such manner as the Commissioners may direct.

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

(7) If any person, not being an officer, by whom anything 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.

45 (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 states:

5 If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of anything 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' Allowances Order 1994

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

15 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 -

20 (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;

25 (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

30 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.

35 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:

- 40
- 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).
  - The penalty that the law imposes is an amount equal to the relevant tax or duty
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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.

5 3.2 By how much can the penalty be reduced?

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:

- 10
- 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.

15 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

20 2.3 How can penalties be reduced?

It is for you decide whether or not to co-operate 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 co-operate and disclose details of your true liability then you can significantly reduce the amount of any penalties due.

25 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:

- 30
- up to 40% - early and truthful explanation as to why the arrears arose and the true extent of them
  - 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.

35 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**

40 19. In the Appellant's letter of appeal, he does not deny that the amount of tobacco he imported was over the permissible limit. He appeals HMRC's decision to assess the penalty on the following grounds:

- 45
- He did not receive HMRC's original correspondence and was shocked when an Officer visited his house in relation to the matter in October 2016, some two years later. He does say not that HMRC did not issue the



5 letters, but that he did not receive them, for whatever reason, whether they were misplaced in the post or by members of his family

- At the time of the offence he was told that the seizure was a warning and thought nothing else of it.
- 10 • He holds his hands up and accepts that he made a mistake, but the cigarettes were taken from him at the airport and that is punishment enough. He will not do again.
- It was a first time offence and something he did not think anything of at the time as he was bringing cigarettes to smoke for his personal use and was not aware how many cigarettes he was allowed to bring in to the UK.
- 15 • He had the option of mitigating the penalty up to 40% for disclosure and 40% for co-operation, but could not benefit from that as he did not receive the original letters.
- HMRC have asked for the appeal to be struck out on the basis that after receiving the copy of their letters he did not lodge an appeal until some 8 weeks later. However this is not true. On the 6th November 2016 after receiving the re-sent letters, he sent an appeal via email to taxappeals@hmcts, the email address given to him stating his intention to appeal. He was sent a reply on 16th November 2016 stating that he did not include “a copy of the decision appealed against” and his appeal was by then out of time.
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- 25

20. At the hearing, the Appellant repeated these grounds of appeal.

### **HMRC’s Case**

21. On 18 October 2013, by entering the Green ‘nothing to declare’ Channel at Manchester Airport, it was implicit that the Appellant was acting dishonestly and deliberately, taking action to positively evade duty and tax given that:

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- a) The Appellant entered the Green Channel, indicating that he had nothing to declare despite significant signage present.
- b) The Appellant does not deny that the amount of cigarettes imported was over the permissible limits.
- 35 c) The Appellant was carrying 5,000 cigarettes – twenty-four times more than his personal allowance;
- d) A number of notices are visible to passengers entering the UK, both in the baggage reclaim area and at the entrance to Customs Channels. These explain which countries are inside and outside the EU and the duty free allowances for excise goods.
- 40

- 5 e) It is well known that Pakistan is outside the EU for excise purposes. The Appellant should have been fully aware that he was bringing more goods into the country than he was entitled to without declaring them.
- 10 f) Not declaring the goods in the belief that the amount of goods imported was over the allowances constitutes dishonest behaviour. A reasonable and honest person would check the allowances before importing a large amount of cigarettes. Failing to declare under those circumstances constitutes dishonest behaviour.

15 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 he acted dishonestly and deliberately took action to positively evade duty and tax.

23. A finding of dishonesty requires that the act undertaken (entering the Green Channel with an amount of excise goods above the allowance) was dishonest by the standards of an ordinary, reasonable person and that the Appellant realised that what he was doing was, by those standards, dishonest.

20 24. The appropriate standard of proof is the balance of probabilities - see *Re B (Children)* [2008] UKHL 35.

25. The Tribunal in *Ghandi Tandoori Restaurant* (1989) VAT TR 39 considered the meaning of the word ‘dishonesty’.

25 ‘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.’

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35 26. Dishonesty in this context follows 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:

40 ‘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

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5 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.....’

10 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) is found in the case of *Barlow Clowes International Limited (in liquidation) and others v Eurotrust International Limited and others* 120051 UKPC 37. In this case it was held that the test laid down in *Royal Brunei Airlines Sdn Bhd v Tan* 9951 2 AC 378 was the correct test and was summarised as follows:

20 ‘...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.’

28. The Appellant’s actions and his attempt to clear import controls without paying any duties by walking through the Green ‘nothing to declare’ Channel with the concealed cigarettes demonstrates his intent to positively evade duty and tax.

25 29. Consequently 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.

30. 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.

30 31. The penalty is based on the amount of Customs Duties, Import VAT and assessed excise duty that was involved in the offence. In this case the penalty is £1,344, being 100% of the culpable arrears.

35 32. HMRC would have been able to exercise its discretion as to the amount of discount to be allowed. A 40% deduction could have been allowed for early disclosure and a further 40% for co-operation. HMRC have not been able to make an allowance for either disclosure or co-operation because the Appellant failed to provide the information requested or co-operate.

33. The Appellant has not shown grounds to successfully appeal the decision to issue the penalty.

40 34. All the correspondence was correctly addressed and sent to the Appellant at 457 Killinghall Road, Bradford BD2 4SD. This is the same address as the Field Force Officer visited when HMRC speaking to the Appellant regarding the outstanding debt. As none of the letters were returned by the postal authority, it is reasonable to assume they were correctly delivered.

5 35. The Appellant has suggested that his family may not have passed on the post. HMRC do not consider it credible that none of the letters, sent on 8 April 2014, 22 April 2014 and 16 May 2014 were passed to him, nor does the Appellant positively assert that this is what happened.

10 36. HMRC note that their letter of 17 October 2016 was received by the Appellant. This informed him that the debt had been suspended for 30 days, to allow him to lodge an appeal with the Tribunal. That gave him a further 30 day time limit for making an appeal. However it appears to have taken the Appellant around eight weeks to lodge an appeal.

15 37. Morgan J in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) made the following observations regarding the Tribunal's approach when considering extension of time limits:

20 '[34] As a general rule when a Court or Tribunal is asked to extend a relevant time limit, the Court or Tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? And (5) what will be the consequences for the parties of a refusal to extend time? The Court or Tribunal then makes its decision in the light of the answers to those questions.'

38. Addressing each of these in turn:

25 1) The purpose of the time limit is to progress litigation and establish finality so that the parties are entitled to assume a matter is closed.

2) The delay in this appeal is significant - over 2 years and 5 months.

30 3) HMRC do not accept there is a good explanation for the delay. Correspondence was correctly addressed and sent to 457 Killinghall Road, Bradford BD2 4SD. Corroborating evidence has not been provided to support the Appellant's claim that he knew nothing of the debt until visited by HMRC.

35 4) The consequences for the parties of allowing an extension of time are that the Appellant would be permitted to proceed with an appeal which is significantly late. The Commissioners would bear the cost and difficulties of litigating a matter they were entitled to assume had been closed nearly 2.5 years ago. The prospects of success relating to the substantive issue under appeal are low. The Civil Evasion penalty was issued for dishonesty.

40 5) A refusal to extend time would mean that the Appellant would not be able to pursue his appeal and the Commissioners would therefore not bear the cost of litigating the matter. The likelihood is that the Appellant did receive the correspondence from HMRC and was prompted to take action when visited by the Officer pursuing the debt. The case of *BPP Holdings v HMRC* [2017] UKSC 55 emphasises that time limits in the Tribunal are as strict as those in the Court. The Tribunal stated:

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Para 17

[45] - The overriding objective does not require the time limits in those rules to be treated as flexible. I can see no reason why time limits in the UT Rules should be enforced any less rigidly than time limits in the CPR.

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Para 38 - A more relaxed approach to compliance in the Tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary.

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38. If the Appellant is allowed to proceed with his appeal this undermines the purpose of the legal time limit.

### **Conclusion**

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39. The Appellant imported the cigarettes from Pakistan. There are strict limits on the number of cigarettes that can be brought into the UK. It is well known that tax and duty is payable on imported cigarettes. The airport has clear signage which describes the allowances. The signage is designed to inform travellers who are not aware of importation restrictions. Pakistan is a non-EU country and so there could be no confusion with the 'unlimited for own use' provisions which are only applicable when importing from EU countries.

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40. The Appellant had previously travelled to the UK from a non-EU country on at least one occasion and it is more likely than not that he would have been aware of the allowances. In any event, a reasonable person would check the allowances before importing such a large number of cigarettes.

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41. The issue as to whether or not the cigarettes were for personal use does not arise. 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 the issue any further.

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42. The issue in this appeal is therefore whether or not the penalties which have been imposed were properly imposed. That raises the question of whether the Appellant has been dishonest. The test for dishonesty when issuing a civil evasion penalty 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 the civil standard and assessed on the balance of probabilities (*Tahir Iqbal Khawaja v HMRC* [2008] EWHC 1687 (Ch.), [2009] 1WLR 398 at [25]).

40

43. 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. A number of

5 notices are visible to passengers entering the UK, both in the baggage reclaim area  
and at the entrance to Customs Channels. These explain which countries are inside  
and outside the EU and the duty free allowances for excise goods. The Appellant  
should have been fully aware that he was bringing more goods into the country than  
he was entitled to without declaring them. I have to conclude that the Appellant acted  
10 dishonestly and deliberately, taking action to positively evade duty and tax.

44. As the Appellant dishonestly attempted to evade import VAT, Excise and  
Customs duties, penalties are due under s 8(1) Finance Act 1994 and s 25(1) Finance  
Act 2003.

15 45. The Appellant has not offered any grounds on which he could successfully  
challenge the decision to issue the penalty.

46. HMRC can reduce a penalty on the basis of the customer's co-operation and  
disclosure. Given that the Appellant did not co-operate and provide the information  
HMRC requested, the penalty has in my view been calculated correctly and I  
therefore concur with Officer Corbishley's assessment of the penalty.

20 47. I do not accept the representations of the Appellant that he did not receive  
HMRC's correspondence.

48. The Appellant's application to appeal out of time was also late.

49. Taking all these matters into consideration, the appeal is accordingly struck out  
and the penalties, totalling £1,344, confirmed.

25 50. 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  
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"  
which accompanies and forms part of this decision notice.

35 **MICHAEL CONNELL**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 08 SEPTEMBER 2017**