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**TC06455**

**Appeal number: TC/2016/05328**

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*Excise and Customs Duty - importation of tobacco products - appeal against Civil Evasion Penalties - s 25(1) of Finance Act 2003 and s 8(1) of Finance Act 1994 - whether penalties correctly imposed - yes - whether allowances given to reduce penalties correct - yes - appeal dismissed*

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**FIRST-TIER TRIBUNAL**

**TAX CHAMBER**

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**SEYED SIROOS AHMADI**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER IAN MALCOLM**

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**Sitting in public at Darlington County Court, Coniscliffe Road, Darlington on 31 October 2017**

**The Appellant in person**

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**Ms Heather Aspinall, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Mr Seyed Siroos Ahmadi (“the Appellant”) against a decision by HM Revenue and Customs (“HMRC”) on 11 July 2016, to issue Excise and Customs Civil Evasion Penalties in the total sum of £1,334 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 **Background**

2. On 7 May 2015 the Appellant’s luggage was delayed and did not arrive with his flight INTO Manchester airport. He completed Form C1422 a “Clearance of Missing or Delayed Baggage for Non EU Arrivals”. The form contains a “warning” which reads as follows:

15 “Baggage is examined by Customs and there are heavy penalties for making false declarations including possible forfeiture of goods.”

The Appellant was asked the following questions, in response to which he ticked “No”:

20 “Does the baggage listed above contain:

- Any prohibited or restricted goods (the main types are listed on the back of this form).
- Any goods which must be declared?
- Any goods which you are claiming as part or all of your duty free and tax free allowance?”

25 3. The Appellant signed the declaration on the form which states:

30 “I declare that I have read “Your Customs Allowances” poster and the warning and that the answers to the questions and the particulars I have given on this form are true and complete.”

4. On 9 May 2015, the Appellant’s baggage (consisting of four bags) arrived at Manchester Airport off flight TK1993 from Iran via Istanbul. Authorisation was given to search all four bags, following receipt of the Appellant’s signed C1422 form. Upon examination Officer Whitehead, a Border Force Officer, found the bags to contain 35 15,000 ‘Bahman’ cigarettes.

5. Iran is a “third country” in respect of which there is a personal allowance of 200 cigarettes for returning travellers. 15,000 cigarettes represented seventy-five times the Appellant’s personal allowance of 200.

40 6. As the goods were over the allowances as set out in the Travellers’ Allowances Order 1994 (as amended) the goods were seized and Notices 1, 12A which advised the Appellant that he could by way of application to the Magistrates Court, challenge

the legality of the seizure within one month, the Notice of Seizure form (BOR156) and Warning Letter (BOR162) which advised the Appellant that HMRC may take action were placed within the luggage. The cigarettes were bagged and sealed under BA01041998 and BA01041200.

5 7. 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 Customs and Excise Management Act 1979.

8. On 14 June 2016, Officer Wright an Officer in HMRC's Customs International Trade and Excise Operations Team, who had received a referral from the Border  
10 Force Unit wrote to the Appellant informing him of the ongoing investigation and the possible imposition of a Civil Evasion Penalty under s 25(1) of the Finance Act 2003 and under Section 8(1) of the Finance Act 1994 for the evasion of Excise Duty. The letter enclosed Public Notice 300 in respect of Customs Duty and Import VAT, Public Notice 160 in respect of Excise Duty and the Human Rights enclosure CC/FS9. The  
15 letter invited any disclosure by the Appellant and made it clear that any reduction in the penalty was contingent on response and co-operation with Respondents enquires. The Appellant was given the opportunity to provide any relevant information which he thought should be taken into account in calculating the amount of the penalty.

9. Officer Wright asked the Appellant to respond to the following within 30 days of  
20 the date of her 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
- 25 • 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  
30 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.
- 35 • Any other information or explanations you think may be of use to this enquiry.

The Appellant was asked to confirm receipt.

10. On 20 June 2016 the Appellant telephoned HMRC regarding the missing  
40 cigarettes taken from his baggage. He said that when he picked up his baggage from Manchester Airport on 9 May 2015, the cigarettes were missing. When he questioned staff at the airport he was advised that they were over the limit. He claimed he had not had the chance to declare them. He was advised to write to HMRC with information.

11. On 29 June 2016 Officer Wright, having received no response to her letter of 14 June 2016, issued a reminder letter to the Appellant.

12. On 30 June 2016, a letter together with the signed receipt dated 28 June 2016 was received from the Appellant, indicating that he had read and understood the enclosures sent with the letter dated 14 June 2016.

13. The Appellant stated in his letter that he and his family travel each year to Iran to visit family and neither he or his wife smoke, so they were not aware of how many boxes of cigarettes they were allowed to bring into the UK and the cigarettes were intended as gifts for friends. He said:

10           “...furthermore, there was no intention of not going through customs and duty once we  
were here...I was not allowed to go inside and I had to wait at arrivals for the luggage to  
be brought out to me. That means I did not have the opportunity to declare anything  
there and obviously the customs itself opened the suitcases and took the cigarettes  
without me even being present and have my say. This was the first and last time I  
15 brought any cigarettes to the country and also there has never been any intention of  
smuggling or any attempts to sale them here in the UK.”

14. Based on the information before her, on 11 July 2016 Officer Wright issued to the Appellant a ‘civil penalty - notice of assessment’ in the sum of £1,334.00 (£263.00 custom civil evasion penalty and £1,071.00 excise civil evasion penalty).  
20 Officer Wright allowed a 35% reduction for disclosure (maximum allowable 40%) and 35% reduction for co-operation (maximum allowable 40%). The total duty evaded/ potential lost revenue of £4,449 was therefore reduced by 70% to reflect the extent of the Appellant’s co-operation and disclosure.

15. On 15 July the Appellant telephoned HMRC as he believed the incorrect price of the cigarettes had been charged. Officer Wright explained that the cheapest RRP had been used as he had not provided purchase receipts; she also explained his rights of a review and appeal.

16. On 5 August 2016 the Appellant requested a review from an Officer not previously involved in the case. The Appellant detailed his reasoning for the request.

17. On 7 September 2016 HMRC wrote to the Appellant to confirm a full independent review had been carried out by an Officer not previously involved in the original decision. In the letter the Reviewing Officer confirmed the amount of the penalty as £1,334.00 and that the decision to charge the penalty be upheld. A full explanation was given to the Appellant of the review and he was fully advised that if he did not agree with the decision he could appeal to the Tribunal within 30 days.

18. On 4 October 2016 the Appellant sent a Notice of Appeal to the Tribunals Service.

### **The Law**

19. The legislation relevant to this appeal is:

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

Penalty for evasion of excise duty.

(1) Subject to the following provisions of this section, in any case where –

- 5 (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.

10 (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  
15 reduction made by the Commissioners. (...)

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

s25 Penalty for evasion.

(1) in any case where

- 20 (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 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. (...)

25 29 Reduction of penalty under section 25 or 26.

(1) Where a person is liable to a penalty under section 25 or 26—

- (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  
30 (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. (...)

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

49(1) Where-

- 35 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,  
those goods shall ...be liable to forfeiture.

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

5 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 may be, or [level 3 on the standard scale], whichever is the greater. (...)

S139 Provisions as to detention, seizure and condemnation of goods

(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.

10 (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

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.

(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, 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.

20 (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;

(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;

30 (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 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.

40 (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.

(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 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' 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 evaded or sought to be evaded.

5 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?

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.

10 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.

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?

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.

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

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.

#### 30 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
- 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.

40 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

20. The Appellant's grounds of appeal as stated in correspondence and his Notice of Appeal are that:

5 a) He paid £162.00 for all the cigarettes that were seized and that this particular brand are only a third of the normal brand of cigarettes. If the penalty is based on size then this should be reflected in the penalty imposed.

b) After a 15 hour flight the last thing that entered his mind was the quantity of cigarettes in the baggage. He was not aware at that particular time that he had signed anything which needed to be declared.

10 c) He feels the penalty is very harsh and unfair.

d) He is not trying to excuse himself from any wrongdoing and is not saying that there should be no penalty, but does not accept that he was dishonest. He states that it was a genuine mistake which arose because he did not know.

15 21. At the hearing, the Appellant gave evidence on oath. He said that when he signed form C1442, he had not read it properly and was not aware that it was a declaration. The flight had been 15 hours long. He was tired and had two small children with him. Had he properly read the form and seen the warning he would have declared that he had cigarettes in his luggage. It was only when HMRC wrote to him about a year later that he realised what he had signed. He was not aware that there were restrictions on  
20 the number of cigarettes he could bring into the UK.

22. Under cross examination the Appellant agreed that he had answered 'No' to the question:

'Does the baggage contain:

- 25
- any prohibited or restricted goods (the main types are listed on the back of this form)?
  - any goods which must be declared?
  - any goods which you are claiming as part all of your duty and tax-free allowance?'

30 23. The Appellant agreed that on the back of the form, tobacco products and cigarettes are specifically mentioned and immediately before the above questions, form C1422 asks the person completing the form to read the "Your Customs Allowances" poster before answering the questions. He also agreed that immediately  
35 after the questions there is a declaration that he had read the "Your Customs Allowances" poster, which contained a warning that baggage would be examined by customs and that there are heavy penalties for making false declarations including possible forfeiture of goods.

24. The Appellant said that 15,000 small Bahman cigarettes was not in his view a lot. They would fit in half a suitcase and consisted of 30 small sleeves.

25. He agreed that he was a frequent traveller and that he goes to Iran every year. He agreed that his English was good. He hadn't taken notice of the signs because he had never brought cigarettes back before.

26. He maintained that he had not been dishonest. There had never been any intention to evade duty. He bought the cigarettes as a gift for friends and family. There was never any intention to sell them. Bahman cigarettes are not readily sellable in the UK

### **HMRC's Case**

27. HMRC's case is that:

- i. It is well known that tax and duty is payable on imported cigarettes.
- ii. The airport has clear signage which describes the allowances. The signage is designed to inform travellers who are not aware of importation restrictions. The Appellant stated that he and his family travel to Iran every year, therefore he is an experienced traveller 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.
- iii. Iran is a non-EU country and so there could be no confusion with the "unlimited for own use" provisions which are applicable when importing from EU countries.
- iv. The Appellant deliberately took the action to positively evade duty and tax. The Appellant's points raised in his Notice of Appeal were fully taken into account in the Review letter to him dated 7 September 2016.
- v. The Appellant deliberately misled UKBF Officers on his signed form C1422. The Appellant has clearly indicated on the form that he had no goods to declare, despite the warning on the form that the luggage would be examined by Border Force. It is clear the Appellant knew the contents of the luggage and by not declaring the cigarettes he intentionally tried to get his luggage with the goods without paying the relevant duty on those goods.
- vi. The Appellant had the opportunity to declare the goods before departing the Airport on 7 May 2015. He chose to tick 'no' to the questions asking whether he had any prohibited or restricted goods, any goods which must be declared or any goods which he was claiming as part or all of his duty and tax free allowance. He signed the declaration confirming he had read the 'Your Customs Allowances' poster and also the warning.
- vii. Under the Finance Act 1994, Chapter 9, s 8 (5) HMRC are unable to consider any hardship implications when making their decision.

viii. The penalty has been calculated correctly. The size of the cigarettes is irrelevant. The lowest retail price has been used pursuant to s 5(1)(b) of the Tobacco Products Duty Act 1979.

5 ix. If the Appellant had not been stopped the loss of Customs and Excise Duty to the Crown would have been £4,449.00 in addition to any potential sale value of the goods.

10 28. Ms Aspinall for HMRC said that HMRC were entitled under s 8(1) of the Finance Act 1994 and s 25(1) of the Finance Act 2003 to issue the Appellant with penalties because he acted dishonestly and deliberately took the action to positively evade duty and tax.

29. The penalties under these provisions require the Appellant to have been dishonest. A finding of dishonesty requires that the act undertaken 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.

15 30. The Appellant's actions demonstrate that he took the action to positively evade duty and tax on a total of 15,000 cigarettes. His completed and signed form C1422 is a clear attempt to obtain the goods without paying any duty.

31. The Tribunal in *Ghandi Tandoori Restaurant* (1989) VATTR 39 considered the meaning of the word 'dishonesty'.

20 "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  
25 with the intention of evading tax, he knew that according to the ordinary standards of reasonable and honest people what he was doing would be regarded as dishonest."

32. 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:

30 "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  
35 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  
40 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.”

33. ‘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* [2005] UKPC 37 and confirmed by the Court of Appeal in *Abu Rahmah v Abacha* [2006] EWCA civ 1492. In the *Barlow* case 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.”

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

35. HMRC exercised its discretion as to the amount of discount to be allowed. A 35% deduction was allowed for early disclosure and a further 35% for co-operation which in the circumstances is considered reasonable. The Officer who undertook the review said that she had not been able to give 40% allowance for either disclosure or co-operation because the Appellant had failed to provide the information requested. She believed it was inherently improbable that the Appellant, having travelled to Iran on a regular basis, believed he was entitled to import 15,000 cigarettes, which represented seventy-five times his allowance.

36. Further, 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 maximum possible benefit in the calculation of Excise Duty. The actual purchase price was used to calculate the Customs Duty and VAT.

37. Ms Aspinall said that the Appellant had not put forward any grounds of appeal which could allow the Tribunal to reduce the penalty as assessed.

### **Conclusion**

38. The Appellant imported the cigarettes from Iran, a non EU country. 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.

39. 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 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 (*Sahib Restaurant v H M Revenue & Customs* and *Tahir Iqbal Khawaja v HMRC* [2008] EWHC 1687 (Ch.), [2009] 1WLR 398 at [25]).

40. In determining the Appellant's culpability we take into account the factors set out in paragraph 27 above.

41. The Appellant was dishonest if he knew:

(i) that there were restrictions on the importation of cigarettes to the UK from Iran, and

(ii) that he 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. 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 European Union and the duty free allowances for excise goods. The Appellant should have been fully aware that he was bringing more cigarettes into the country than he was entitled to without declaring them.

42. Form C1422 is written in clear and unequivocal language and it would have been obvious to the Appellant that he was under a requirement to declare the cigarettes on the form. Notwithstanding this, the Appellant failed to declare the goods.

43. We have to conclude that the Appellant acted dishonestly and deliberately, taking action to positively evade duty and tax. He was aware that there are restrictions. Having travelled to the UK from Iran many times previously he should have been aware of the limits on the amount of tobacco that can be brought into the country.

44. As the Appellant 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.

45. The Appellant has not offered any grounds on which he could successfully challenge the decision to issue the penalty. Hardship is not a valid ground of appeal. Finance Act 1994, Section 8(5)(a) and Finance Act 2003, Section 29(2) and (3)(a) preclude the Commissioners or an appeal Tribunal from taking into account the insufficiency of the funds available to pay when considering reduction of the penalty.

46. 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 as to why the arrears arose. Secondly, there can be a reduction for fully embracing and meeting responsibilities under the enquiry procedure. Taking these factors into account and the fact that the Appellant did not provide all the information requested by Officer Wright in her initial notification of enquiry letter, the penalty has in our view been calculated correctly and reduced appropriately for disclosure and co-operation. A reduction of 35% was given for each aspect, resulting in a total reduction of 70% and penalties of £1,334, being 30% of the revenue potentially evaded.

47. The Appellant has not shown grounds to successfully appeal the decision to issue the penalties. The penalties have been calculated correctly and made to best judgement.

48. The appeal is accordingly dismissed and the penalties totalling £1,334 confirmed.

49. 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**

**RELEASE DATE: 17 APRIL 2018**