



**TC07590**

**Appeal number: TC/2019/01624**

*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 dishonesty - yes - whether allowances given to reduce penalties correct - yes - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JAHANARA ALI**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MICHAEL BELL**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 28  
November 2019**

**The Appellant in person**

**Mr Edward Waldegrave, of Counsel, instructed by the General Counsel and  
Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Ms Jahanara Ali (“the appellant”) against a decision by the Respondents (“HMRC”) notified on 3 January 2019 and upheld on review on 22 February 2019, to issue Excise and Customs Civil Evasion Penalties in the total sum of £1,080, being a penalty of £232 under s 25(1) of Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty, and £848 under s 8(1) of Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty, in that she failed to declare cigarettes which she was importing into the United Kingdom above the personal allowance of 200 cigarettes.

### **Background**

2. On 27 December 2017, the appellant arrived at Heathrow Airport from Dhaka, Bangladesh.

3. 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. Bangladesh is not in the EU and therefore, travellers, for the purposes of the Travellers’ Allowances Order 1994 (as amended) have a personal allowance of 200 cigarettes or 250g of hand rolling tobacco.

4. The appellant, despite the notices, which are also situated in the baggage reclaim area and just before the Customs channel entrances, chose to exit through the ‘nothing to declare’ Green Channel, indicating that she had no goods to declare,

5. At 17:55 hours the appellant was intercepted by UK Border Force Officer Skidmore in the ‘Green Channel’. The appellant was escorted into the secondary baggage examination area.

6. Officer Skidmore searched the appellant’s bags and found a total of 10,100 Benson and Hedges Special filter cigarettes.

7. As the goods had not been declared and were more than 49 times over the personal allowance for tobacco goods when travelling from a non-EU Country as set out in the Travellers’ Allowances Order 1994, Officer Skidmore 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 BOR156 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.

9. On 17 October 2018, Officer Roberts, a post-detection audit officer of HMRC’s Individual and Small Business Compliance Unit wrote to the appellant informing her 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 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.

10. The appellant was invited to co-operate with the enquiry and advised of the action she 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 was contingent on the appellant's response and co-operation with HMRC's enquires.

11. The letter from HMRC explained that if the appellant was willing to co-operate with the enquiry she should provide the following within 30 days of the date of his letter:

- "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.
- 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.
- 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.
- 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."

12. Public Notice 300, s 3 states that a reduction in penalty may be given as follows:

**“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.

**Co-operation**

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

- attend all the interviews (where necessary);
- 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.”

13. On 31 October 2018, as no reply had been received, Officer Roberts wrote to the appellant asking her to provide a response by 16 November 2018. The reminder letter advised the appellant that if she did not reply by this date, HMRC would take this as her intention not to help them with their enquiries.

14. On 8 November 2018 the appellant's daughter, Shahina Ali, wrote to HMRC. She said that she would correspond with HMRC on her mother's behalf. HMRC asked that she provide a formal letter of authority which they received on 18 December 2018.

15. Miss Ali explained that her mother had been to Bangladesh to visit her sick mother who was suffering from dementia. She said that her mother, the appellant, is poorly educated and "mostly illiterate". She also said that the cigarettes had been purchased by her mother for her own use. Her mother was a heavy smoker and she had purchased a substantial quantity so that they would last her "all year round and more" if possible. She did not know that duty was payable on imported cigarettes. She had no idea that there were restrictions on the amount of tobacco that could be brought into the UK. She did not intend to break the law. She had borrowed money to purchase the cigarettes which had been seized and was now very distraught that a penalty may also be levied. She said that surely, seizure of the cigarettes was punishment enough.

16. On 18 December 2018, HMRC received a letter from Mrs Ali dated 6 December 2018 with an authorisation for her daughter to act on her behalf.

17. On 3 January 2019, Officer Roberts issued to the appellant a Civil Evasion Penalty in the total sum of £1,080. A reduction of 70% was awarded for disclosure and co-operation, as the appellant had provided information and assistance in relation to HMRC's enquiries. The civil evasion penalty letter advised that the original penalties of £776 and £2,829 had been mitigated by a 35% reduction allowed for disclosure out of a maximum 40% and a 35% reduction for co-operation out of a maximum of 40%.

18. The Officer also outlined the options available to the appellant if she disagreed and explained the process for requesting a review or appealing directly to the Tribunal.

19. By letter dated 18 January 2019 the appellant's daughter replied saying her mother disagreed with the penalty. She said that her mother:

- i. Was already in debt and financially unable to pay the penalty. It would be an immense burden to her and would leave her in poverty under desperate financial strain.
- ii. Had not purposely entered the Green Channel dishonestly. She does not speak English very well and understood very little of what was happening. She had no idea that there were restrictions on the number of cigarettes she could bring back with her.
- iii. Was very distressed that in addition to the cigarettes being confiscated she was now required to pay a penalty.

20. On 22 February 2019, Officer Baxter treated the letter from the appellant's daughter as an appeal against the penalty, and therefore undertook a review of the decision. She issued the appellant with a Review Conclusion Letter which upheld the decision of 3 January 2019.

21. In the review Officer Baxter said that on the appellant's arrival in the UK from a third country she should have entered the 'Green Channel' only if she was not holding any restricted items, or goods above her personal allowances. She should enter the 'Red Channel', or go to the 'Red Point', if she had any restricted items, had any goods above her personal allowances or was in any confusion over her allowances and restrictions.

22. Officer Baxter said that there is considerable signage within airports which outline restrictions and allowances. These signs are visual aids which include pictures of dutiable goods, including tobacco products. They also highlight the countries that fall within the EU. Officer Baxter acknowledged that the appellant's daughter had provided information that the appellant was mostly illiterate, however the signs include pictures of dutiable goods and if she had been in any confusion, it would have been prudent to question this with an appropriate official, especially upon noting the signs at both the baggage reclaim area and before entering the Customs channels.

23. Officer Baxter said that despite the signs present, the appellant chose to ignore the signs and enter the green 'nothing to declare' channel, carrying goods well in excess of her permitted allowance and was therefore satisfied that she acted dishonestly by attempting to evade the duties due.

24. In the grounds for review the appellant advised that the cigarettes were for personal consumption and she bought the cigarettes abroad as she struggles financially to purchase them in the UK. It was evident from her disclosure that she was clearly aware of the considerable taxes due on tobacco products in the UK. Officer Baxter said that she did not find it credible that the appellant could honestly have thought that her customs allowance was over 10,000 cigarettes.

25. On 10 March 2019, the appellant lodged a notice of appeal with the Tribunal.

### **Evidence**

26. The combined bundle of documents included a copy of Officer Skidmore's witness statement and notebook notes and Officer Robert's witness statement. Each gave oral evidence under oath to the Tribunal. The appellant also gave oral evidence to the Tribunal through an independent appointed interpreter and assisted by her daughter, Rubina Ali. We were provided with copy correspondence, copy relevant legislation and case law authorities.

### **The Law**

27. 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 -
- (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. (...)

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

s25 Penalty for evasion.

- (1) in any case where
- (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and
  - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),

that person 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-
- (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. (...)

#### 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-
    - (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 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.

(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

(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 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-

(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;

(c) nothing in [section 31 of the Police (Northern Ireland) Act 1998] 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 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.

(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:

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

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

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-

(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;

(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

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.

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:

- 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.

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.

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.

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.

#### 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.

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**

28. The Appellant's grounds of appeal are as set out within her Notice of Appeal.

## **HMRC's Case**

29. Section 16(6)(a) of the Finance Act 1994 states in relation to the burden of proof:

“On an appeal under this section the burden of proof as to -

- (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,

Shall lie upon the Commissioners; but it shall otherwise be for the Appellant to show that the grounds of which any such appeal is brought have been established.”

30. The penalty is civil in nature, and therefore the standard of proof is on the balance of probabilities (*Revenue and Customs Commissioners v. Khawaja* [2008] STC 2880 (and *N'Diaye v. Revenue and Customs Commissioners* TC04562)).

31. The burden of proof in establishing “conduct involving dishonesty” lies with HMRC as provided under s 16 (6) of FA 1994 in respect of excise duty and s 33(7)(a) of FA 2003 in respect of customs duty and import VAT.

32. The correct test to be applied when establishing dishonesty is laid out in *Ivey v Genting Casinos (UK) Limited t/a Crockfords* [2017] UKSC 67, at:

*“62 ... 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 state of the law and their Lordships agree.*

*63. Although the House of Lords and Privy Council were careful in these cases to confine their decisions to civil cases, there can be no logical or principled basis for the meaning of dishonesty (as distinct from the standards of proof by which it must be established) to differ according to whether it arises in a civil action or a criminal prosecution. Dishonesty is a simple, if occasionally imprecise, English word. It would be an affront to the law if its meaning differed according to the kind of proceedings in which it arose.”*

*And*

*“74. The test of dishonesty is as set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* and by Lord Hoffmann in *Barlow Clowes*: see para 62 above. 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.”*

33. The definition of dishonesty set out in *Ivey* applies equally to civil proceedings and to criminal proceedings.

34. It is first necessary to establish the actual state of the individual’s knowledge or belief as to the facts. 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.

35. Once HMRC has established this burden of proof, the onus falls on the taxpayer to provide evidence to rebut HMRC’s case.

36. The appellant bought 10,100 cigarettes into the UK. This considerably exceeded her personal allowance of 200 cigarettes. By walking through the Green Channel the appellant satisfied the test for dishonesty.

37. As the appellant acted dishonestly and attempted to evade import VAT, excise and customs duties, a penalty is due under sections 8(1) and 8(4) Finance Act 1994 and s 25(1) Finance Act 2003.

38. Applying the test as set out in *Ivey*, HMRC submits that the actions of the appellant in failing to declare the cigarettes were dishonest for the following reasons:

- i. The appellant entered the Green Channel indicating that she had nothing to declare despite significant signage present indicating which countries fall outside the EU and the duty-free allowances for excise dutiable products;
- ii. It is inherently unlikely that she mistook Bangladesh as being part of the EU;
- iii. She was importing a significant quantity of cigarettes which was 50 times over the limit;
- iv. She does not deny that the cigarettes and tobacco are over the permissible limits;
- v. A reasonable and honest person would check the allowances before importing such a large quantity of cigarettes.

39. The appellant has not provided any reason that justifies a further reduction over and above the 70% she has already been given.

### **Conclusion**

40. The issue in this appeal is 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, as HMRC say, an objective one and involves assessing whether the actions of the taxpayer were dishonest by the standards of ordinary and honest people. The test to be applied is as stated in *Ivey*. The burden of proof for dishonesty in a civil evasion penalty case is the civil standard and assessed on the balance of probabilities.

41. The appellant imported the cigarettes from Bangladesh. There are strict limits on the number of cigarettes that can be brought into the UK from non-EU countries. 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. Bangladesh 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.

42. The appellant had travelled abroad on several previous occasions and it is more likely than not that she would have been aware of the allowances for importing tobacco and cigarettes. In any event, a reasonable person would check the allowances before importing such a large number of cigarettes.

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. Applying the test in *Ivey* and by the standards of ordinary decent people, we have to conclude that the appellant acted 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, a penalty is due under s 8(1) Finance Act 1994 and s 25(1) Finance Act 2003.

45. HMRC can reduce a penalty on the basis of the customer's co-operation. No challenge has been brought as to the calculation of the duties and level of mitigation. 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.

46. We accept that the appellant cooperated fully with HMRC after her daughter's letter to HMRC on 26 November 2018. Prior to that she had not responded promptly as she should have done to HMRC's letter of 17 October 2018. It was only after a reminder letter that she contacted HMRC.

47. The penalty has in our view been calculated correctly and reduced appropriately for co-operation and disclosure.

48. The appellant said that she would find it difficult to pay the penalties. Hardship is not a valid ground of appeal. Finance Act 1994, s 8(5)(a) and Finance Act 2003, s 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.

49. The appeal is accordingly dismissed and the penalties confirmed.

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 "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 FEBRUARY 2020**