



[2021] UKFTT 0452 (TC)

**TC 08336**

*Penalties – Imports of cigarettes – civil evasion penalties – whether behaviour dishonest – whether reduction granted by HMRC was appropriate – Appeal Dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/1799**

**BETWEEN**

**MR GHULAM NABI AMINI**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE PETER KEMPSTER  
Mr DEREK ROBERTSON JP**

**Sitting in public at Centre City Tower, Birmingham on 22 November 2021**

**Having heard:**

**The Appellant in person**

**Ms Jessica Parlour (HMRC Solicitor's Office and Legal Services) for the  
Respondents**

## DECISION

### INTRODUCTION

1. The Appellant (“**Mr Amini**”) appeals against civil evasion penalties in the total amount of £2,461.00 charged by the Respondents (“**HMRC**”) on 20 February 2019 (“**the Disputed Penalties**”).
2. At the hearing Mr Amini was assisted by an HMCTS appointed interpreter, Mr Tavakoli.

### HMRC’S CASE AND EVIDENCE

3. Ms Parlour for HMRC stated the background as follows:
  - (1) Mr Amini arrived at Birmingham Airport on 18 January 2018 after a flight from Turkey. UK Border Force Officer Donna Routledge stopped Mr Amini in the Green Channel. He admitted having five cartons of cigarettes in his luggage, which exceeded the legal allowance for travellers from Turkey (200 cigarettes per the Travellers’ Allowances Order 1994, SI 1994/955). On examination his luggage was found to contain 10,000 Bahaman cigarettes and 400 Marlboro cigarettes; this was 52 times the legal allowance. The goods were seized and information was given to Mr Amini, including a leaflet stating the legal allowances for import of cigarettes. He was allowed to depart. He did not challenge the seizure, and no criminal prosecution has followed.
  - (2) Mr Amini arrived at Birmingham Airport on 20 April 2018 after a flight from Turkey. UK Border Force again stopped Mr Amini in the Green Channel. On examination his luggage was found to contain 1,000 Bahaman cigarettes; this was five times the legal allowance. The goods were seized and information was given to Mr Amini. He was allowed to depart. He did not challenge the seizure, and no criminal prosecution has followed.
  - (3) HMRC contacted Mr Amini conducting an enquiry into the incidents, and Mr Amini was invited to answer stated questions and provide relevant information. Mr Amini responded and also had a telephone conversation with HMRC. On 20 February 2019 HMRC Officer Steven Robinson issued the Disputed Penalties. Mr Amini appealed the Disputed Penalties to this Tribunal on 18 March 2019.
4. Ms Donna Routledge is the Border Force Officer who intercepted Mr Amini on 18 January 2018. She confirmed and adopted a formal witness statement dated 29 August 2019, and answered questions. She confirmed the events described at [3(1)] above and stated:
  - (1) Mr Amini was intercepted in the “Nothing to Declare” Green Channel.
  - (2) Mr Amini had produced a UK passport.
  - (3) She asked him questions relating to his baggage: were they his own bags?; had anyone given him anything to carry?; was he aware of items illegal to bring into the UK?; was he aware that some items such as cigarettes and tobacco were restricted when travelling into the UK from outside the EU? During these initial questions Mr Amini admitted to having five cartons of cigarettes in his luggage.
  - (4) She then conducted a full baggage search of one hold suitcase covered in cling film, one rucksack as hand luggage covered in cling film, and another small rucksack. A search of the baggage revealed a total of 10,000 Bahman cigarettes and 400 Marlboro cigarettes.
  - (5) The following exchange took place:

(DR) Do you know what your allowances are with regards to cigarettes?

(GA) No

(DR) Have you ever been stopped by Police or Customs before?

(GA) No

(DR) As you have exceeded 200 cigarettes per person allowance the goods you have are to be seized

(GA) Can I have 2 packs?

(DR) No. As you have travelled through the Green Channel you have made a declaration that you only have the allowance. You have by far exceeded the allowance so all the goods are to be forfeited.

(DR) What do you do here in the UK?

(GA) I have a business

(DR) What type of business?

(GA) Pizza. "Sandus Pizza", 35 School Street, Wolverhampton, WV 1

(DR) Because of the amount of Revenue goods you are carrying I will be making a report to HMRC and they may contact you at some stage.

(6) She issued and explained to Mr Amini forms BOR156 (seizure information), BOR162 (warning of seized goods notice), 12A Appeal Notice and Notice 1. All the forms were given without prejudice. Mr Amini signed the paperwork.

(7) The above was recorded in her notebook, which was in evidence. She was satisfied that her notebook correctly recorded the events.

(8) Mr Amini did not request an interpreter, or say that his English was bad. She was satisfied he understood their discussion, and they could not have completed the procedure had he not understood. Border Force had translation facilities available but she did not consider they had been necessary as Mr Amini understood what was going on.

5. Mr Steven Robinson is the HMRC Officer who conducted the enquiry into Mr Amini's excise duties affairs, and issued the Disputed Penalties. He confirmed and adopted a formal witness statement dated 9 July 2019, and answered questions. He confirmed the events described at [3] above and stated:

(1) The calculations of evaded duty were based on HMRC's historical records of manufacturers' recommended retail prices and, where such information was not available, the lowest known UK price (which tended to be favourable to the traveller). The calculations were in evidence, and had been provided to Mr Amini with the notice of the Disputed Penalties.

(2) He concluded that Mr Amini had been dishonest in importing the two lots of cigarettes for the following reasons:

(a) On both occasions that he had goods seized, Mr Amini entered the green "nothing to declare" channel at Birmingham International Airport. On his first seizure on 18 January 2018, Mr Amini was carrying fifty-two times the allowance for tobacco products. On his second seizure on 20 April 2018, Mr Amini was carrying five times the allowance for tobacco products.

(b) The Border Force officer's notebook states that during the first seizure of goods on 18 January 2018, when he was questioned in the green channel by Border Force Officers, Mr Amini stated he was carrying five cartons of cigarettes.

(c) The Border Force officer's notebook states that during his second seizure of goods on 20 April 2018, Mr Amini stated he was carrying "one box of cigarettes". When questioned further, Mr Amini stated again that he only had one box, containing 200 cigarettes.

(d) Mr Robinson concluded Mr Amini had been repeatedly dishonest in his interactions with Border Force and that he was clearly attempting to evade the duty due on the goods that he was carrying.

(e) Although Mr Amini stated that he was not aware of his allowances for tobacco goods due to the signage present at the airport, Mr Robinson reached the conclusion that Mr Amini was indeed aware of the customs allowances and made a dishonest attempt to bring in more than the allowance. It was not credible that Mr Amini believed he was entitled to import such a large amount of tobacco (10,400 cigarettes) without declaring them.

(f) In his disclosure letter to HMRC Mr Amini stated he has travelled frequently between Iran and the UK and provided dates regarding that travel. That disclosure indicated that Mr Amini is an experienced traveller and as such would more likely than not be aware of his allowances for tobacco goods.

(g) The details provided by Mr Amini in his disclosure letter differed greatly from those noted in the Border Force officers' notebooks. This raised a number of concerns regarding the truthfulness of Mr Amini's statements.

(h) Mr Amini's statement dated 28 January 2019 did not mention a friend in Iran.

(i) The second seizure was only three months after the first, when Mr Amini would be aware of the consequences.

(3) The total excise penalties and customs penalties for the two importations totalled £4,103. He had reduced the penalties by 40% to reflect disclosure (20% out of a maximum of 40%) and co-operation (also 20% out of a maximum of 40%). Although Mr Amini had not answered all the questions put to him, he had provided a written statement and had a telephone conversation with Mr Robinson. Mr Robinson had managed to get the remaining necessary information from Border Force's records. When he described the reduction to his authorising colleague, the conclusion was that the 40% reduction was generous to Mr Amini, but it was granted. The reported occupation of Mr Amini was not relevant to his calculation of the penalties, or their assessment or reduction.

6. Ms Parlour for HMRC submitted as follows:

(1) Mr Amini had behaved dishonestly in evading the duties on the cigarettes on two occasions, thus attracting a penalty equal to the amount of the evaded duties: s 8 Finance Act 1994 and s 25 Finance Act 2003. His behaviour was dishonest, using the test set by the Supreme Court in *Ivey v Genting Casinos*, for the reasons given by Mr Robinson in his evidence.

(2) Mr Amini had not appealed the seizure of the goods, and the goods were condemned.

(3) Mr Amini was resident in the UK and should be generally familiar with the permitted allowances on bringing goods to the UK. In any event, it is the responsibility of a traveller to make themselves aware of such allowances before entering the Green Channel, thus declaring that they had nothing to declare. He could have made enquiries

of the Border Force officers on duty, when he would have been directed to the Red Channel.

- (4) When intercepted and questioned Mr Amini had not given full disclosure at the earliest opportunity.
- (5) Ms Routledge's evidence was that Mr Amini never asked for an interpreter.
- (6) The reduction of 40% given by Mr Robinson was appropriate.
- (7) The appeal against the Disputed Penalties should be dismissed.

#### **MR AMINI'S CASE AND EVIDENCE**

7. Mr Amini's case (from his written statement to HMRC dated 28 January 2019 and his oral evidence at the hearing) is as follows:

- (1) He is a law abiding citizen, and a family man with three children.
- (2) He apologised for bringing cigarettes into the country but this was a genuine mistake. He had not been aware of the restrictions on bringing cigarettes into the UK; there were no such rules in Iran. It will not happen again.
- (3) He had not studied English in this country and could not understand the signs at the airport. He told the Border Force officials that his English was not good but he was not offered assistance or an interpreter. He would have explained everything thoroughly if he had been offered an interpreter.
- (4) He said that he was carrying cigarettes but did not say five packs; he had said that he had "plenty of them". When asked who the cigarettes belonged to, he told the officer that they were given to him in Iran to pass to friends in the UK and someone would come and collect them from him, but the officer took away all the cigarettes. The officer's notebook records he said he ran a business called Sandu's Pizza but he was not a shop owner – that cast doubt on the remainder of the contents of the notebook. He had signed the official forms because he was asked to; he did not understand the contents. He did not remember being given a leaflet in January 2018 explaining the legal allowances.
- (5) On the first occasion in January 2018 he had been asked by Mr Haidar Hasani, a friend of his father-in-law resident in Mashhad, Iran, to give the cigarettes to a friend of Mr Hasani who was Norwegian but living near Birmingham, and who was expecting the cigarettes. Mr Hasani was unaware of any limits on bringing cigarettes into the UK. This was supported by a formal statement by Mr Hasani dated 18 July 2019, which was in evidence – a problem with one of the dates in the statement was explained as being due to translation from the Jalaali calendar used in Iran.
- (6) On the second occasion in April 2018 he had been travelling with his brother. Mr Amini only brought two cartons with some loose packets that his brother had put into Mr Amini's suitcase in Istanbul, Turkey by mistake while they were staying in the same hotel. Again, the officer confiscated those, saying that they were more than allowance.
- (7) At the airport he had followed all the other passengers, without looking at the signs. He had opened his bags when requested; he had not attempted to run away.
- (8) Although he and his wife had been smokers, they would not bring in such a large quantity of cigarettes. He was no longer a smoker.

## CONSIDERATION AND CONCLUSIONS

8. We have two matters for determination. First, whether Mr Amini is liable for the Disputed Penalties at all, which is a question of determining whether his conduct involved dishonesty. Secondly, if so, whether the amount of the Disputed Penalties is correct.

### *Dishonesty*

9. The statutory provisions imposing penalties for evasion of duties are contained in s 8 Finance Act 1994 and s 25 Finance Act 2003. In both cases the provision is that, in any case where any person engages in any conduct for the purpose of evading duty, and that person's conduct involves dishonesty (whether or not such as to give rise to any criminal liability), then that person shall be liable to a penalty of an amount equal to the amount of the duties evaded or sought to be evaded.

10. The burden of proof of dishonesty lies on HMRC: s 16(6) Finance Act 1994 and s 33(7) Finance Act 2003. The standard of proof is the ordinary civil standard (being the balance of probabilities): *Khawaja v HMRC* [2013] UKUT 0353(TCC).

11. The applicable test for dishonesty was stated by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 (at [74]):

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

12. We accept Mr Amini's explanation, supported by Mr Hasani's formal statement, that he was requested by Mr Hasani to bring into the UK 10,000 cigarettes. Mr Amini is a UK passport holder, resident in the West Midlands, and is a frequent international air traveller. We do not accept he was unaware that there are legal restrictions on the quantity of tobacco products that can be brought into the UK from abroad without declaration and payment of duty. He deliberately chose to enter the “nothing to declare” Green Channel despite knowing that he was carrying 52 times the permitted quantity of cigarettes. Ms Routledge kept a clear and straightforward record of the questions asked and answers given when Mr Amini was intercepted. We accept Ms Routledge's account of what happened and was said. At no point before his cases were searched did Mr Amini alert Border Force to the fact that he was carrying an enormous quantity of cigarettes. We do not accept that Mr Amini was unaware of what was required of him when he reached the Border Force checkpoint; nor that he did not follow what was happening during his conversation with Ms Routledge. We accept Ms Routledge's explanation that if she had had any doubt about Mr Amini's comprehension then she would have called on the translation facilities available to her; that was not necessary because Mr Amini was, despite what he now says, able to follow events in sufficient detail to appreciate what was occurring. We are satisfied that his conduct in bringing the cigarettes into the Green Channel involved dishonesty.

13. On the second occasion Mr Amini had already been given formal notice of the legal allowances. He had had over 10,000 cigarettes seized just three months previously, and taken away with him a notice which he should have read. We do not accept that he could still have been unaware of the legal allowances. Given his previous behaviour in January 2018 we do

not accept his story concerning his brother's involvement – on which we were not presented with any substantiation from his brother. Again, we are satisfied that his conduct in bringing the cigarettes into the Green Channel involved dishonesty.

#### *Amount*

14. Turning to the amount of the Disputed Penalties, this Tribunal has power to consider the amount: s 8(4) Finance Act 1994 and s 29 Finance Act 2003. Inability to pay is not a relevant factor: s 8(5) Finance Act 1994.

15. HMRC's policy is set out in their Notice 300 "customs civil investigation of suspected evasion":

#### **"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% import duties 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 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% 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."

16. That is HMRC's policy; the Tribunal is not bound by it but we consider it is a reasonable and fair approach to how penalties may be mitigated to recognise the behaviour of the person being investigated. We consider that the 40% reduction given by HMRC is entirely reasonable, taking into account: there were two incidents within three months, Mr Amini did not provide full answers to the questions put to him, he has continued to deny any wrongdoing right up to and including the Tribunal hearing, and Mr Robinson had to piece together much of the necessary information to be able to reach a decision on the penalty position.

#### *Conclusion*

17. It follows from our conclusions stated at [12, 13 & 16] above that we determine Mr Amini is liable for the Disputed Penalties in the amount assessed: £2,461.00.

#### **DECISION**

18. For the reasons stated above, the appeal is **DISMISSED**.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

19. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent

to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JUDGE PETER KEMPSTER  
TRIBUNAL JUDGE**

**Release date: 06 DECEMBER 2021**