



TC04703

Appeal number: TC/2014/04703

EXCISE DUTY - civil evasion penalty- dishonestly engaged in conduct for the purpose of evading duty-appellant liable to penalty relating to all goods involved although others may have been involved- appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LESLEY PEMBERTON

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE BARBARA KING
JOHN WOODMAN**

Sitting in public at North Shields on 13 April 2015

The Appellant did not attend

Georgina Nolan, of counsel, for the Respondents

DECISION

5 1. The Tribunal decided to proceed with the hearing of this appeal in the absence of the appellant. We took into account the following matters:-

(1) In her notice of appeal dated 14 August 2014 the appellant had asked that the hearing of this appeal could be listed in Sunderland. The Tax Tribunal does not have a hearing venue in Sunderland.

10 (2) On 21 January 2015 the appellant informed the Tribunal service that she would be unable to attend a hearing between 5 and 12 March 2015 as she was travelling down to London.

15 (3) Notification of today's hearing in North Shields was sent on 29 January 2015 to the appellant. This notification enclosed a map of the venue for this appeal and a note setting out the Tribunal's policy on requests for postponements. This asks that any request for a postponement should be made within 14 days and warns that following any request for a postponement the party must assume that the hearing of the appeal is going ahead unless the party has been notified otherwise.

20 (4) On 8 April 2015 the respondents received a telephone call from the appellant asking that the appeal be heard in Sunderland. The appellant was told that the respondent had no jurisdiction as to the venue for appeals to the Tribunal.

25 (5) On the morning of this hearing a telephone call was made by the Tribunal clerk to the appellant. The appellant stated that she wanted to attend her appeal but had no money with which to make the journey to North Shields and in any event she did not know where the hearing venue was.

30 2. The Tribunal was satisfied that the appellant had been notified of today's hearing. We went on to consider rule 33 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 as to whether it was in the interests of justice to proceed with the hearing in the absence of the appellant. We considered that the appellant had had plenty of notice about the venue for the hearing and had had time to save up enough money to be able to travel to the venue. The appellant lives in Sunderland and the local Metro system includes Sunderland. There is a Metro station
35 within walking distance of the Tribunal venue in North Shields. We find that the distance is not excessive. We noted that in March the appellant had been able to afford the journey down to London

40 3. We noted that the penalty in this case is high but there is no suggestion that the appellant's liberty is at stake. We took into account that the respondent had attended this hearing with two witnesses.

4. Taking all of the above into account we found that it was in the interests of justice to proceed in the absence of the appellant.

The Issue

5 5. The appeal is against an excise duty evasion penalty of £8,624 and a customs evasion penalty of £1875. These two penalties come to £10,499

6. Travellers from the Canary Islands to the United Kingdom are restricted to limits on the amount of tobacco products which can be brought in without the payment of duty. The personal allowance for tobacco is 200 cigarettes **or** 50 cigars **or** 250 grams of hand rolling tobacco.

10 7. Penalties for the evasion of excise duty are imposed under section 8 of the Finance Act 1994 which provides that in any case where

(a) any person engages in any conduct for the purpose of evading any duty of excise, and

15 (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.

20 8. Penalties for evasion of customs duty are imposed by section 23 of the Finance Act 2003 which provides that in any case where

(a) any 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 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

Evidence

30 9. The appellant 'Ms Pemberton' was stopped at Newcastle airport on 21 May 2013, having arrived from a flight coming from Gran Canaria. She had entered the green channel without any luggage and was then interviewed by a customs officer. Ms Pemberton admitted to having travelled with her daughter and with another person whom she would not name. She further stated that they had been travelling with three bags which at the time of her interview were still in the baggage area. She admitted to having 50 to 60 sleeves of cigarettes but was not sure if that was the amount in total or
35 just in one bag. 10 packets of 20 cigarettes, totalling 200 cigarettes can be referred to as a 'sleeve'.

10. The amount admitted exceeds the personal allowance for one person and indeed for three people. Ms Pemberton was warned that the goods would be seized and as she wished to leave the airport immediately she agreed that the paperwork concerning the seizure could be sent to her by post.

5 11. All three bags were subsequently opened by officers of HMRC and were found to contain a total of 38,200 CK cigarettes (equivalent to 191 'sleeves'), 40 menthol superkings, 350 grams of hand rolling tobacco and 100 Respect cigarettes. The three bags had slightly different amounts of cigarettes in each. There were no other items in the bags.

10 12. Notice of the seizure was sent to Ms Pemberton on 22 May 2013. On 4 February 2014 HMRC wrote to Ms Pemberton asking her for any disclosure she might wish to make about the seized goods. A reminder was sent by HMRC on 18 February 2014. No reply was received from Ms Pemberton to either letter.

15 13. On 8 April 2014 a civil evasion penalty notice was sent to Ms Pemberton giving information about the penalty which at that time was calculated at a total of £10,500. No allowance had been made for 'disclosure' or 'co-operation' as HMRC considered that there had been none.

20 14. In letter dated 10 June 2014 Ms Pemberton admitted that she had been involved in smuggling cigarettes into the country on more than one occasion. She gave some details of another person who she said had got her involved in smuggling in the first place. She claimed that she had only done it because she wanted to make a bit of money and once she started she could not stop because she was being threatened by this other person. Ms Pemberton stated that she was not the one who made money out of the smuggling.

25 15. HMRC did not consider that the information given in this letter answered all of the questions which they had put in their letter of 4 February 2014 and in any event it did not arrive in good time after the earlier letter.

30 16. In her notice of appeal, dated 14 August 2014, Ms Pemberton states that she thinks it is unfair that she should have to pay the penalties because she is a single mother on benefits and the 'people who run smuggling operations should be the ones to pay'.

35 17. In a letter received by the Tribunal service on 21 January 2015, Ms Pemberton states that she and each of her other two travelling companions had one suitcase each. She asks that she be penalised for the contents of one suitcase only. She does not supply any addresses for the other two travelling companions.

Discussion and Finding

18. The Tribunal were satisfied that Ms Pemberton was acting dishonestly when she was involved in the smuggling operation referred to in this appeal.

19. We find that the fact that the goods were not carried through the customs area by Ms Pemberton does not negate the fact that she was involved in a smuggling operation in which there was an intention to evade duty on all the contents of the suitcases.

5 20. The smuggling operation involved three people and three suitcases, but we find that Ms Pemberton was involved in the conduct which involved all three suitcases. We find that the fact neither that none of the suitcases had her name on it, nor that all three had someone else's name on them does not detract from the fact that Ms Pemberton was involved in conduct which involved all three suitcases.

10 21. Where the plan has been to evade duty, the penalty is imposed in respect of all the goods involved. On this trip to Gran Canaria we find that the plan of the smuggling operation was to evade duty on the total quantity of cigarettes and hand rolling tobacco. The penalty is therefore equal to the total duty it was proposed to evade.

15 22. There was no early and truthful disclosure by Ms Pemberton, she delayed giving any information at all and she has not shown any significant degree of cooperation. We find that it is not appropriate to reduce the penalty on the basis of any of these factors.

20 23. The ability of Ms Pemberton to pay any penalty is not a matter which can be considered by this Tribunal.

24. The penalty has been re-calculated. The penalty for evasion of Excise duty amounts to £8624 and the penalty for evasion of Customs duty is £1875. The total penalties amounting to £10,499 are confirmed. The appeal is dismissed.

25 25. 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.

**BARBARA KING
TRIBUNAL JUDGE**

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RELEASE DATE: 7 May 2015