



TC05315

Appeal number: TC/2014/06547

***EXCISE DUTY - Excise Goods (Holding, Movement and Duty Point)
Regulations 2010, regs 6(1)(b) and 10(1) - assessment in respect of duty
unpaid goods - whether the Appellant was a person liable for the assessment***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN BOYLE

Appellant

- and -

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

**TRIBUNAL: JUDGE CHRISTOPHER STAKER
MR TONY HENNESSEY FCA**

Sitting in public at Belfast on 9 March 2016

Mr D McNamee of McNamee McDonnell Duffy, solicitors, for the Appellant

**Miss J Vicary, instructed by the General Counsel and Solicitor to HM Revenue
and Customs, for the Respondents**

DECISION

Introduction

1. The Appellant appeals against an assessment under s 12(1A) of the Finance Act
5 1994 dated 29 August 2014, upheld in a HMRC review decision dated 18 November
2014, raising an assessment for excise duty in the sum of £25,540.

Factual background

2. On 23 April 2013, the Police Service of Northern Ireland conducted a search of
the Appellant's home address in Ballymoney. In the course of the search they
10 discovered 105,400 cigarettes upon which UK duty had not been paid. The cigarettes
were discovered within an enclosed trailer belonging to the Appellant which was
located in an outbuilding at the property.

3. The same day, HMRC seized the cigarettes and issued a Seizure Information
Notice and Notice 12A.

4. On 4 July 2013, HMRC officers arrested the Appellant at the property on
15 suspicion of being knowingly concerned in the fraudulent evasion of excise duty.
Later that day the Appellant was interviewed under caution by HMRC in the presence
of his solicitor.

5. The Appellant did not challenge the seizure of the cigarettes by condemnation
20 proceedings nor seek restoration of the goods.

6. On 29 August 2014, HMRC issued the notice of assessment that is challenged
in this appeal. This assessment was for excise duty on the seized cigarettes.

7. On 22 September 2014, the Appellant pleaded not guilty to two counts with
which he was charged, namely:

25 (1) being knowingly concerned in the harbouring, keeping or concealing of
goods as defined in s 170(1)(a)(i)-(iii) of the Customs and Excise
Management Act 1979 ("CEMA") (namely 105,400 cigarettes) with the
intention to defraud HMRC of duty payable on the goods; and

30 (2) being knowingly concerned in the fraudulent evasion of duty chargeable
on the said goods contrary to s 170(2)(a) CEMA.

8. On 18 November 2014, the challenged assessment was upheld in an HMRC
review decision.

9. On 2 December 2014, following a Crown Court trial, a jury returned guilty
verdicts on both counts.

35 10. On 19 January 2015, the Appellant was sentenced by the Crown Court (Judge
Kerr) to 9 months imprisonment, suspended for a period of 2 years. During the course
of the sentencing, Judge Kerr's comments included the following:

5 ... Mr Boyle it is always a tragedy for the court when someone see's
someone of your age with virtually no previous conviction suddenly
deciding whether it's through greed or simple laziness to decide to start
offending and offending in this way. ... I consider that you are a
person who voluntarily with knowledge that illegal activity was to take
place allowed someone to use your premises and your trailer for
financial benefit. And I also consider from the tenor of your
admissions in the probation service that this was not just a one off
enterprise. Accordingly I consider you to be what has been described
10 in the English categorisation as someone of what would be a medium
culpability. I say medium because you're not a leading person in the
conspiracy to defraud the government, you weren't an organiser of it.
... although you now express remorse, you decided to contest the case.
I have my doubts about whether you would have ever expressed
15 remorse but for the fact that the jury decided to convict you. I give you
very little credit for the remorse that you now show.

11. The sentencing Judge then referred to various mitigating factors, and stated as follows:

20 In addition to that I've had regard to the fact on my request the
prosecution have informed me that financially you're never going to
benefit from this activity. The reason being that you are going to be
pursued and have been pursued and the Revenue are going to pursue
you for a, for a sum of over £20,000 which on the available
information I can see that you do not have in a bank and you're going
25 to have to satisfy that by placing your residence in danger no doubt by
a second mortgage or if your house doesn't have a mortgage by a loan
on your property. That's one of the strongest mitigatory features in this
case.

12. By a notice of appeal dated 5 December 2014, the Appellant commenced the
30 present Tribunal appeal against the assessment. The grounds of appeal in the notice
of appeal are as follows:

35 The Appellant states that he is not liable for the duty on the goods
herein. He was not holding them for the purpose of the legislation. He
had no knowledge whatsoever of the presence of the cigarettes in the
trailer. He has never in relation to his civil liability been asked to
provide an explanation of the presence of the cigarettes on the premises
occupied by himself and his family and within the building which was
accessed by and used by many persons and social groups.

40 There is no evidence that the Appellant ever had even possession of the
cigarettes let alone held them for the purpose of the legislation.

This present assessment is fundamentally misconceived.

Applicable legislation

13. Regulation 5 of the Excise Goods (Holding, Movement and Duty Point)
Regulations 2010 (the "2010 Regulations") provides:

Subject to regulation 7(2), there is an excise duty point at the time when excise goods are released for consumption in the United Kingdom.

14. Regulation 6(1) of the 2010 Regulations provides:

- 5 (1) Excise goods are released for consumption in the United Kingdom at the time when the goods—
- (a) leave a duty suspension arrangement;
 - (b) are held outside a duty suspension arrangement and UK excise duty on those goods has not been paid, relieved,
10 remitted or deferred under a duty deferment arrangement;
 - (c) are produced outside a duty suspension arrangement; or
 - (d) are charged with duty at importation unless they are placed, immediately upon importation, under a duty suspension arrangement.

15 15. Regulation 10 of the 2010 Regulations provides:

- (1) The person liable to pay the duty when excise goods are released for consumption by virtue of regulation 6(1)(b) (holding of excise goods outside a duty suspension arrangement) is the person holding the excise goods at that time.
- 20 (2) Any other person involved in the holding of the excise goods is jointly and severally liable to pay the duty with the person specified in paragraph (1).

16. Section 170(2) CEMA provides:

- 25 (2) Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion—
- (a) of any duty chargeable on the goods;
 - (b) of any prohibition or restriction for the time being in force
30 with respect to the goods under or by virtue of any enactment; or
 - (c) of any provision of the Customs and Excise Acts 1979 applicable to the goods,
- 35 he shall be guilty of an offence under this section and may be arrested.

17. Section 12(4) of the Finance Act 1994 provides:

- (4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say—

- (a) subject to subsection (5) below, the end of the period of 4 years beginning with the time when his liability to the duty arose; and
 - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;
- but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.

The hearing

18. No witnesses were called at the hearing. The relevant documentary evidence in the hearing bundle is set out below. Both parties presented submissions.

19. At the hearing, the Appellant raised a new argument that the challenged assessment was made outside the time limit provided for under s 12(4) of the Finance Act 1994. HMRC objected to this ground being considered, on the basis that it was raised for the first time at the hearing. The Tribunal reserved its decision on whether to allow this argument to be relied on by the Appellant.

20. After the hearing, HMRC filed a further written submission, directing the Tribunal’s attention to two additional authorities (referred to in paragraph 35 below). The Tribunal issued a direction giving the Appellant 14 days to submit any objection to the Tribunal receiving the additional HMRC submission and any submission in response. The Appellant responded with a document objecting to the Tribunal receiving additional HMRC submission, on the ground that there is “no proper procedural basis” for such a post-hearing submission. The Appellant contended that if further submissions are permitted, there should be a further oral hearing, and that the Appellant should be entitled to the costs of such a hearing. This document also provided some substantive response to the HMRC further submissions, but emphasised that it was not a full response.

21. The Tribunal does not accept that post-hearing written submissions are procedurally improper. In some cases, the Tribunal gives permission at the hearing for post-hearing submissions to be filed. Where the Tribunal does not do so at the hearing, any post hearing submissions require permission to be granted before they are considered by the Tribunal. The Tribunal should only grant permission where this is procedurally fair in all the circumstances, which will almost inevitably require giving the other party an opportunity to respond. The additional submission in this case merely drew the Tribunal’s attention to two additional authorities. The Tribunal considers it to be in the interests of justice for all relevant authorities to be put before the Tribunal. The Appellant has been given an opportunity to respond, and has not given any reason why the Appellant was unable to provide in full whatever response the Appellant wished to make. In the circumstances, the Tribunal has decided to grant

permission to HMRC to file the post-hearing submission, and receives the Appellant's written response.

22. Given that HMRC has been permitted to file additional submissions following the conclusion of the hearing, the Tribunal considers it to be appropriate to permit the Appellant to rely on his new argument concerning the time limit in s 12(4) of the Finance Act 1994.

The Appellant's evidence

23. A witness statement of the Appellant dated 15 January 2016 relevantly states as follows. On 23 April 2013, HMRC found cigarettes in a trailer at a storage building at his property. The storage building had been leased out to various members of the public. The Appellant was convicted of being knowingly concerned in the fraudulent evasion of duty on cigarettes. The Appellant's participation was limited solely to allowing other parties to store their cigarettes on the Appellant's premises. The Appellant had no ownership or control over the cigarettes and was not holding them for the purposes of the 2010 Regulations.

The HMRC evidence

24. A witness statement of HMRC Officer Natrass dated 4 February 2016 relevantly states as follows. Investigations revealed that the trailer in which the cigarettes were found was sold to the Appellant on 23 February 2013 by Mr Frank McCaughan who is the owner of FMC Auctions Ltd. The inference taken from this by HMRC was that the trailer was purchased by the Appellant for the purpose of storing or transporting non-duty paid goods, and as the owner he was responsible for the trailer and its contents.

25. A witness statement of Mr Frank McCaughan dated 9 January 2014, which was prepared for purposes of the criminal proceedings, confirms that Mr McCaughan sold the trailer to the Appellant on 23 February 2013.

26. A witness statement of HMRC Officer Thompson dated 19 July 2013, which was prepared for purposes of the criminal proceedings, relevantly states as follows. At the time of seizure of the cigarettes, Officer Thompson conducted a voluntary interview with Mrs Maeve Boyle, who is said to be one of the owners of and residents at the property. She said that she had nothing to do with the sheds and did not know who has access to them. She did not know who owned the trailer or the cigarettes. She responded "No comment" when asked if the sheds were rented out.

27. There is a transcript of the interview under caution conducted by HMRC with the Appellant on 4 July 2013. The Appellant was advised by his solicitor not to answer any of the questions put in that interview. The Appellant's solicitor made a statement on the Appellant's behalf, in which he said that the Appellant did not own the cigarettes and knew nothing about them, that the premises where the cigarettes were found was not locked or secured and was open to and used by various members

of the public, and that a number of people would park lorries, cars and a boat in the shed.

The Appellant's submissions

28. The following submissions were made on behalf of the Appellant.

5 29. The Appellant does not dispute that no duty was paid on the cigarettes, nor does he dispute that the cigarettes were duly forfeited. He did not challenge the seizure or seek restoration because he was not the owner of the goods. The only issue is whether the Appellant is a person who is liable to pay the excise duty.

10 30. The person liable to the duty is the person who was holding the goods at the point in time at which the duty point arose. If the goods were imported into the UK from abroad, then the duty point arose at the point in time that the goods were brought into the UK through the port of importation. The Appellant could only be liable to the duty if he was holding the goods at that particular point in time. There is no evidence as to how, when or where the goods were brought into the UK. No-one knows how
15 many hands the goods passed through before reaching the property of the Appellant. It is not the case that anyone holding goods at any time on which duty has not been paid will be liable to the duty.

20 31. The factual basis on which the Appellant was convicted does not establish such liability. A conviction under s 170(2) CEMA does not of itself establish that the convicted person is liable to pay the duty to which that conviction related (reliance was placed on *R v Mackle* [2014] AC 678, [2014] UKSC 5 ("*Mackle*"); *R v White* [2010] EWCA Crim 978, [2010] STC 1965; *R v Chambers* [2008] EWCA Crim 2467). The fact that the Appellant's criminal sentence was mitigated due to the sentencing judge's assumption that he would be liable to pay the duty does not mean
25 that he is in fact liable to pay the duty.

32. The 29 August 2014 assessment was made outside the time limit under s 12(4)(b) of the Finance Act 1994. HMRC had the information on which the assessment was based on 23 April 2013, the day that the cigarettes were seized. The 9 January 2014 witness statement of Mr McCaughan added nothing of substance.

30 **The HMRC submissions**

33. The following matters have already been judicially determined in the criminal proceedings: (1) on 23 April 2013 105,400 cigarettes upon which UK duty had not been paid were found on the Appellant's premises within a concealed trailer owned by him; (2) the Appellant knew that the cigarettes were located on his property; (3)
35 the Appellant knew that duty had not been paid on the cigarettes; (4) the Appellant intended to defraud HMRC of the duty payable on the cigarettes; and (5) this was not the only occasion upon which the Appellant had engaged in illegal activity of this nature. This Tribunal should make corresponding findings.

34. The Tribunal should have regard to the fact that the Appellant's sentence was reduced by reason of the fact that he would be ordered to pay the outstanding duty within these proceedings.

35. Regulation 6(1)(a), (c) and (d) of the 2010 Regulations provide for a duty point that arises at a specific point in time. However, the effect of regulation 6(1)(b) is ongoing. Under regulation 6(1)(b), if goods are held outside a duty suspension arrangement and UK excise duty on those goods has not been paid, any person who at any time holds those goods becomes liable to the duty. Any other interpretation would defeat the purpose of the legislation: in a case where a person is found in possession of goods on which duty has not been paid, it will often be impossible to trace the chain of possession back to the person who held the goods at the time of importation. Even if the person found in possession of the goods knew who the importer was, that person may be unwilling to provide that information to HMRC. Reliance was placed on *Nolan v Revenue & Customs* [2014] UKFTT 240 (TC) ("*Nolan*") and *B & M Retail Ltd v Revenue & Customs* [2014] UKFTT 902 (TC) ("*B&M*").

36. The Appellant was holding the cigarettes at the time the duty point arose and, as such, in accordance with regulation 10(1) of the 2010 Regulations is the person liable to pay the duty. It is sufficient that the Appellant knew that there were cigarettes contained within a concealed trailer on his property upon which duty had not been paid, as opposed to being an entirely innocent agent (reliance was placed on *R v Taylor and Wood* [2013] EWCA Crim 1151 and *Williams v Revenue & Customs* [2015] UKFTT 330 (TC)).

37. The line of authority culminating in *Mackle* concerned the effect of legislation that has now been repealed (regulation 13 of the Tobacco Products Regulations 2001). Any argument that the assessments are disproportionate, or that the cigarettes were never consumed because they were forfeited, should be rejected (reliance was placed on *Staniszewski v Revenue & Customs* [2016] UKFTT 128 (TC)).

The Tribunal's findings

38. The Appellant's primary argument is that the duty point arose at the moment in time when the goods were first held outside a duty suspension arrangement in the UK, and that the person who is liable to pay the duty is the person who was holding the goods at that particular moment in time (regulations 5, 6(1)(b) and 13(1) of the 2010 Regulations). Thus, for instance, if the goods were imported on a lorry arriving in the UK by ferry, the duty point would arise at the moment in time that the lorry drives through the customs checkpoint at the ferry port, and the person liable to the duty would be the person holding the cigarettes at that particular point in time. According to the Appellant, as it is not known in this case when or where the cigarettes were first held outside a duty suspension arrangement in the UK, or who was holding the cigarettes at that time, it cannot be known who is liable to pay the duty: it certainly cannot be known that the Appellant was a person so liable.

39. However, HMRC contend that the Appellant's argument is contradicted by *Nolan* and *B&M*, the two cases referred to in HMRC's post-hearing submissions.

40. The facts of *Nolan* bear some similarity to those of the present case. In that case, HMRC had information that a consignment of duty unpaid cigarettes were to arrive at Heathrow. HMRC officers followed a van that took the consignment from Heathrow to that appellant's home. Further duty unpaid cigarettes were then found at the Appellant's home. The assessment in that case applied only to the cigarettes that were found at the appellant's home, not to those carried in the van from Heathrow. The Tribunal in that case rejected an argument that HMRC could have found an earlier duty point on the assessed goods. The Tribunal found at [29] that because the appellant had refused to disclose from where he had obtained the cigarettes, HMRC *could* not have identified an earlier duty point, irrespective of whether they should have done so if they could. At [33] the Tribunal then said that "if no earlier duty point had arisen, the goods were subject to duty under [regulation 6(1)(b) of the 2010 Regulations] as, when present in Mr Nolan's home they were 'outside a duty suspension arrangement' and duty had not been paid".

41. *Nolan* therefore appears to support the proposition that if duty unpaid goods are at any time being held outside a duty suspension arrangement and UK, the holder of the goods at that time will be liable to the duty, at least if it is not possible at that time to identify any earlier duty point.

42. The facts of *B&M* were that HMRC had made an assessment against a commercial trader, some of whose stocks of alcohol were found to be duty unpaid. The trader in question had purchased the alcohol from suppliers under terms of trade which required the latter to supply only duty paid goods. However, HMRC established that the supply chains traced back to missing or de-registered traders.

43. The Tribunal accepted the Appellant's argument that there can be only a single duty point, stating at [56] that:

Had it been intended to establish more than one release for consumption (and therefore more than one excise duty point) it seems to me that the 2008 Directive and 2010 Regulations would have used clear and unequivocal language. The 2010 Regulations identify four separate events, each of which constitute a situation whether of long or short duration, that sets the time at which goods are released for consumption. I conclude that each event represents a single event in time. Furthermore I find force in the Appellant's argument that as Articles 7(2)(a), (c) and (d) of the 2008 Directive and Regulations 6(1)(a), (c) and (d) of the 2010 Regulation represent specific points in time, it follows that Article 7(2)(b) ("*the holding*") and Regulation 6(1)(b) ("*are held*") are also intended to identify a point in time.

44. The Tribunal in that case went on to say that because there is only a single duty point, a duty point cannot arise under regulation 6(1)(b) of the 2010 Regulations if an identified duty point has previously already arisen pursuant to one of regulations 6(1)(a), (c) or (d). However, the Tribunal appeared to consider that *Nolan* was correctly decided, on the basis that where there is no earlier identifiable release for

consumption, the earliest identifiable holder of the goods under regulation 6(1)(b) will be liable for the duty: see at [68] where the Tribunal speaks of the 2010 Regulations being construed “in a manner ... in order to ensure the collection of tax where no other (earlier) release for consumption (and therefore duty point) had been identified”.
5 *B&M* therefore also appears to support the conclusion in paragraph 41 above.

45. However, HMRC has not referred the Tribunal to any authority on this question higher than these two First-tier Tribunal decisions, one of which is apparently subject to a pending appeal to the Upper Tribunal. Furthermore, the cases relied on by the Appellant (such as *Mackle*) involved different legislation. The Appellant’s primary
10 argument does therefore seem to be one on which there is no clear binding authority.

46. In the circumstances, the Tribunal proposes to consider certain other issues first, in order to determine whether it is necessary in this case to reach any conclusions on the above issues discussed in *Nolan* and *B&M*.

47. The Appellant’s case is that (1) it was a person other than the Appellant who
15 first held the cigarettes outside a duty suspension arrangement and UK, and (2) it is that other person and not the Appellant who is liable, as the holder of the goods at that time, to pay the duty under regulations 6(1)(b) and 10(1).

48. However, even if those two propositions were correct, that other person would not necessarily be the *only* person who is liable to pay the duty. Regulation 10(2)
20 provides that additional persons may also be liable, namely “Any other person involved in the holding of the excise goods”. At the hearing the Tribunal expressly raised the question of the effect of regulation 10(2) and gave the parties the opportunity to address it, although it did not feature prominently in either party’s submissions.

49. Regulation 10(2) does not further define what will amount to being “involved
25 in” the holding of goods. However, from context it is apparent that a person who does not actually hold goods may nonetheless be “involved in” the holding of those goods.

50. The Appellant in this case was convicted by a jury of two offences, one under
30 s 170(1)(b) CEMA and the other under s 170(2)(a) CEMA. This means that the jury was satisfied that all of the elements of both offences had been proved beyond a reasonable doubt.

51. The offence under s 170(1)(b) CEMA was one of being knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with duty unpaid goods with intent to defraud the revenue of the duty.

52. The offence under s 170(2)(a) CEMA was one of being knowingly concerned in
35 any fraudulent evasion or attempt at evasion of any duty chargeable on the goods.

53. If the two propositions at paragraph 47 above were correct, it may be true that it would be possible for both of these offences to be committed only after the goods in question had already passed the relevant duty point. However, the Tribunal must
40 consider the evidence in this particular case.

54. Judge Kerr’s sentencing remarks in the criminal proceedings include the comment that “you are a person who voluntarily with knowledge that activity *was to* take place allowed someone to use your premises and your trailer for financial benefit” (emphasis added). This language is indicative of the Appellant being aware, even before the fraudulent evasion of duty took place, of the intention to commit the offence.

55. Judge Kerr also said that “I ... consider from the tenor of your admissions in the probation service that this was not just a one off enterprise”. This is a further indication that the Appellant was aware in advance that the fraudulent evasion of duty on this occasion was to take place, since such activity was taking place on a continuing basis.

56. Judge Kerr said that the Appellant was “not a *leading* person in the conspiracy to defraud the government”, and that he was not “the *organiser* of [the conspiracy]” (emphasis added). This implies that the Appellant was nonetheless *a* member of a conspiracy to evade the duty on the cigarettes.

57. Judge Kerr described the Appellant as being of medium culpability, indicating that his involvement was more than purely peripheral.

58. The burden of proof is on HMRC. However, if the limited evidence before the Tribunal is sufficient to draw certain inferences on a balance of probability, the Tribunal may make findings accordingly, in the absence of any evidence from the Appellant to rebut those inferences.

59. It is unfortunate that the Tribunal does not have more information about the evidence presented in the criminal proceedings, and in particular, of the judge’s summing up to the jury. However, on the basis of the evidence, the Tribunal draws the following inferences, and makes the following findings of fact.

60. The Appellant was aware before the cigarettes passed a relevant duty point that they would be fraudulently brought past a duty point without the applicable duty being paid. Furthermore, the Appellant was a party to a conspiracy that this would occur. The person holding the cigarettes at the time that they passed the duty point was also a member of the conspiracy. (Although the origin of the cigarettes is unknown, the case was argued on the assumption that they were brought to the UK from abroad. Thus, to put it simply, the Appellant knew in advance that cigarettes were to be smuggled into the UK, was party to a conspiracy that this would occur, and the person who held the cigarettes at the time of the smuggling was a co-conspirator.)

61. On the basis of these findings, the Tribunal concludes that even if the two propositions at paragraph 47 above were correct, the Appellant, through his membership of this conspiracy, was nonetheless “involved in” the holding of those goods within the meaning of regulation 10(2).

62. Furthermore, if the argument of HMRC at paragraphs 35-36 above is correct, or if the propositions at paragraphs 41 and 44 above are correct, the Tribunal has no doubt at all that the Appellant was at the very least *involved in* the holding of the

cigarettes at the time that they were discovered on his property by HMRC, within the meaning of regulation 10(2).

63. It is accordingly unnecessary to reach any conclusion on the Appellant's primary argument referred to in paragraphs 30 and 38 above. Whether the Appellant's or HMRC's argument on this point is correct, the Tribunal finds that the Appellant is liable to pay the duty for the reasons above.

64. The Tribunal next considers the argument that the 29 August 2014 assessment was made outside the time limit under s 12(4)(b) of the Finance Act 1994. The Tribunal considers that the burden is on the Appellant to show that the assessment was made outside the time limit specified. The correct approach for the Tribunal to adopt is (i) to decide what were the facts which, in the opinion of the officer making the assessment on behalf of HMRC, justified the making of the assessment, and (ii) to determine when the last piece of evidence of these facts of sufficient weight to justify making the assessment was communicated to the commissioners. The period of one year runs from the date in (ii). (The test to be applied by the Tribunal was not addressed by the parties in argument, but see *Rasul v Revenue and Customs* [2016] STI 1474 at [7].)

65. The material before the Tribunal demonstrates the following. On the day of the seizure, HMRC interviewed Mrs Maeve Boyle, who said that she did not know who has access to the sheds or who owned the trailer or the cigarettes. On 4 July 2013 HMRC interviewed the Appellant under caution, and the Appellant's solicitor stated on the Appellant's behalf that he knew nothing about the cigarettes, and that various members of the public had access to the shed.

66. A signed witness statement of Officer Natrass states that it was only on 9 January 2014 that Mr McCaughan confirmed that it was the Appellant who had purchased the trailer. An unsigned witness statement from Mr McCaughan confirms this. The Appellant's representative made something of the fact that Mr McCaughan's statement is unsigned, but Officer Natrass's statement is signed. Officer Natrass says at paragraph 5 of his statement that HMRC only received this new information on 9 January 2014, and drew from this new information an inference that the Appellant had purchased the trailer for the purpose of storing or transporting duty unpaid goods and was therefore responsible for the trailer and the duty unpaid goods.

67. A "warning of liability to prosecution" notice dated 8 January 2014 (that is, the day before Mr McCaughan gave the new information to HMRC) indicates that HMRC at that stage had still not decided whether or not to prosecute the Appellant.

68. From the material before it, the Tribunal draws the inference that it was at the earliest on 8 January 2014, when HMRC in the course of its investigation received the additional information from Mr McCaughan, that HMRC had the last piece of evidence to justify making the assessment. The assessment was made within 12 months of that date. The Tribunal therefore rejects the Appellant's argument that the assessment was out of time.

Conclusion

69. For the reasons above, the appeal is dismissed.

70. 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.

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**DR CHRISTOPHER STAKER
TRIBUNAL JUDGE**

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RELEASE DATE: 10 AUGUST 2016