

[2020] UKFTT 0496 (TC)



**TC07968**

**Appeal number: TC/2019/01799**

*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**

**GHULAM NABI AMINI**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER MARYVONNE HANDS**

**Telephone hearing on 7 September 2020**

**The Appellant in person**

**Mr Thomas Nicholson, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by Mr Ghulam Nabi Amini (“the appellant”) against a decision by the Respondents (“HMRC”) notified on 3 January 2019 and upheld on review on 20 February 2019, to issue Excise and Customs Civil Evasion Penalties in the total sum of £2,461, being a penalty of £540 under s 25(1) of Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty, and £1,921 under s 8(1) of Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty, in that he failed to declare cigarettes which he was importing into the United Kingdom above the personal allowance of 200 cigarettes.
2. At the beginning of this telephone hearing the appellant said that he would like an interpreter as his English was not very good. However there had been no previous request for an interpreter. He had understood the Border Force Officers who intercepted him when the cigarettes were seized and had subsequently corresponded with UKBF without any apparent problem. The appellant has lived in the UK since 2001 and appeared to understand what was being said during the hearing without difficulty. The Tribunal was satisfied that the appellant would be able to fully participate in the hearing and that it was in the interests of justice to proceed.

### **Background**

3. On 18 January 2018, the appellant arrived at Birmingham Airport from Istanbul, Turkey.
4. 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. Turkey 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.
5. 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 he had no goods to declare.
6. At 11:30 hours the appellant was intercepted by UK Border Force Officer Routledge in the ‘Green Channel’. The appellant was escorted into the secondary baggage examination area.
7. Officer Routledge asked the appellant whether he was aware that some items such as cigarettes and tobacco were restricted when travelling into the UK from outside the EU. During these questions the appellant admitted to having five cartons of cigarettes in his luggage.
8. Officer Routledge searched the appellant’s bags and found a total of 10,400 cigarettes.

9. 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 Routledge 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.
10. When asked whether he knew what his cigarette allowances were, the appellant answered "no".
11. On 20 April 2018, the appellant was stopped again by a UK Border Force Officer Kumar Lal at Birmingham Airport, travelling from Iran, returning to the United Kingdom. The appellant was intercepted and questioned by a Border Force Officer on entering the green channel indicating he had nothing to declare.
12. The appellant was asked whether he had any cigarettes or tobacco in his baggage. He replied that he had some cigarettes. When asked whether he was aware of the cigarettes allowance he answered "no", adding that he only had one box. The officer replied that was okay if he had no more than 200 cigarettes and asking whether that was correct. The appellant said "yes".
13. Following a search of the appellant's bags, two sleeves of cigarettes were found each containing 500 Bahman cigarettes, 1,000 in total.
14. The goods were seized as they were over the permitted personal allowance and the appellant was issued with Forms BOR156 and BOR162, Notices 1 and 12A.
15. The legality of the seizures was not challenged in the Magistrates' Court and the seizure was therefore deemed to be legal pursuant to paragraph 5 Schedule 3 CEMA.
16. On 8 January 2018, a post-detection audit officer of HMRC's Individual and Small Business Compliance Unit wrote to the appellant informing him that HMRC would be conducting an enquiry into the matters 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.
17. The appellant was invited to co-operate with the enquiry and advised of the action he 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.
18. The letter from HMRC explained that if the appellant was willing to co-operate with the enquiry he 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.”

19. 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.”

20. On the 16 January 2018 the appellant telephoned HMRC to discuss the matter. The HMRC Officer advised the appellant to send in a written reply answering the questions listed in the letter. The appellant stated on the phone that his English was poor but he would reply in writing.

21. On 22 January 2019, the Officer issued a reminder letter to the appellant informing him that if he wished to co-operate with their enquiries he should provide a response by 7 February 2019.

22. On 28 January 2019, HMRC received a letter from the appellant in which he said:

“...when I was coming back to the UK, I was given lot of cigarettes by one of my friends in Iran to give it to his friend in the UK. I was not aware of the Law. When I entered the UK and the Customs Officer asked me whether I had any cigarettes, and I replied that ‘I had plenty of them’.

The Custom Officer asked me who these cigarettes belong to and I told him that they were given to me in Iran to pass them to their friends in the UK. Someone would come and collect them from me. But the Custom Officer took away all the cigarettes.

On the second occasion, I only brought 2 cartons with some loose packets that brother had put in my suitcase in Istanbul Turkey by mistake while we were staying in the same Hotel. Again, the Custom Officer confiscated those as well, saying that they were more than allowance

I have been travelling to Iran on several occasions after that, and never again brought any cigarettes because I was afraid that being not familiar with Custom and Excise rules, I may make the same mistake again.

These dates are 25.04.17; 26.06.17; 31.08.17; 23.11.17; 8.03.18; 20.04.18; 17.06.18; 09.10.18; 25.10.18 and 24.12.18.

This was a genuine mistake because I was not aware of the rules.”

23. On 20 February 2019, Officer Robinson issued to the appellant a Civil Evasion Penalty in the total sum of £2,461. A reduction of 40% 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 £900 and £3,203 had been mitigated by a 20% reduction allowed for disclosure out of a maximum 40% and a 20% reduction for co-operation out of a maximum of 40%.

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

25. On the 18 March 2019, the appellant appealed to the Tribunal.

### **Evidence**

26. The combined bundle of documents included a copy of each Border Force Officer’s notebook notes and Officer Routledge’s and Officer Robinson’s witness statements. Each gave oral evidence under oath to the Tribunal. The appellant also gave oral evidence to the Tribunal and provided a statement by a Mr Haider Hasani in support of his assertion that he had been given the cigarettes by Mr Hasani to pass to a friend in the UK. 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 19987 shall apply in relation to that thing.

(5) Subject to subsections (3) and (4) above and to Schedule 3 to this Act, anything seized or detained under the Customs and Excise Acts shall, pending the determination as to its forfeiture or disposal, be dealt with, and, if condemned or deemed to have been condemned or forfeited, shall be disposed of in such manner as the Commissioners may direct.

(6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of 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 as set out within his Notice of Appeal are:

- “1. I was unemployed with 2 children living in Wolverhampton.
2. I have been living in the UK since 2001 and never have been in any trouble with the law.

3. HMRC did not take into account the fact that these cigarettes were given to me by one of my friends to pass unto his friend in the UK. He was supposed to have come to the airport to collect the cigarettes and pay whatever tax would be due.

4. Before he could contact me, the customs officer took all the cigarettes from me. The custom office did not get an interpreter as my English was very poor, and I could not explain properly.

5. I was not aware of the excise rules, so did not think I was committing a criminal offence.

6. The reason I went through the incorrect channel, was not because of any malintention, but due to ignorance of the law.

7. The friend who gave me these cigarettes has offered to make a statutory statement to the fact that I was told someone would come and pay the duty and take the cigarettes.”

29. The statutory Declaration by Mr Hasani states:

“I am Haidar Hasani DOB 1971/10/14, Resident of 2 Golboo 36 Street, Mashhad, Iran, do hereby declare that:

I am Afghan National and live in Mashhad, Iran.

I have known Ghulam Amini for some time, as his Father in Law lives in the area. Whenever Ghulam Artni visits Mashhad to his In-laws, we often meet in the nearby Mosque for Prayers. We have become good friends.

On 2018/01/20, I had given my friend Ghulam Amini resident of United Kingdom, who was travelling back to Birmingham (UK) some cigarettes for my friend who lives in near Birmingham.

I had already contacted my friend in Birmingham to inform him to collect the cigarettes from Ghulam Amini. I was not aware about Customs Rules.

I did not know that Ghulam Amini had to declare these cigarettes to the Customs Officer at the Airport. It was a genuine mistake by me and no fault of Ghulam

I hope that this absolves Mr. Ghulam Amini because he was not aware of the Customs Regulations.

To the best of my knowledge and belief this is a true statement

Haidar

Signature date: 18/07/2019 |Witnessed by [AT Solicitors, Mashhad, Iran]”

### **HMRC’s Case**

30. 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.”

31. 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)).

32. 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.

33. 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.”*

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

35. 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.

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

37. The appellant bought 10,400 cigarettes into the UK on the first occasion and 1,000 cigarettes on the second occasion. These both considerably exceeded his personal allowance of 200 cigarettes. By walking through the green channel, the appellant satisfied the test for dishonesty.

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

39. 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 he 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 he mistook either Turkey or Iran as being part of the EU;
- iii. He was importing a significant quantity of cigarettes which was many times over the limit;
- iv. He 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.

40. The appellant has not provided any reason that justifies a further reduction over and above the 40% he has already been given.

## **Conclusion**

41. 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.

42. The appellant imported the cigarettes from Turkey and Iran. 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. Both Turkey and Iran are non-EU countries and so there could be no confusion with the 'unlimited for own use' provisions which are applicable when importing from EU countries.

43. The appellant had travelled abroad on numerous previous occasions and it is more likely than not that he 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.
44. When the appellant was intercepted on 18 January 2018 upon arriving from Turkey, he was carrying 10,400 cigarettes. When intercepted on 20 April 2018 upon arrival from Iran, he was carrying 1,000 cigarettes.
45. On neither occasion did he say to the Border Force Officer that he had been given the cigarettes in the country of departure to pass to another individual in the UK, who would pay the duty at the airport. Even if that was the case, he should have entered the red channel so that he could then contact the individual concerned and arrange for the duty to be paid.
46. The appellant seems to mix up the two interceptions. In his letter of 28 January 2019, he refers to arriving from Iran on the first occasion and that someone would come and collect the cigarettes from him (when in fact he had arrived from Turkey - the Iran arrival was the second interception when he was carrying 1,000 cigarettes). He then refers to arriving from Turkey on the second occasion, saying that his brother had put two cartons of cigarettes in his suitcase by mistake, when in fact that was the first interception and he was carrying 10,400 cigarettes.
47. When intercepted on 20 April 2018 the appellant was asked whether he was aware of his cigarette/tobacco allowance and answered "No", even though only three months earlier he had been stopped in similar circumstances and informed that his allowance was 200 cigarettes.
48. On his first seizure on 18 January 2018, the appellant was carrying fifty-two times the allowance for tobacco products. On his second seizure on 20 April 2018, he was carrying five times the allowance for tobacco products.
49. The Border Force Officer's notebook states that during his first seizure of goods on 18 January 2018, when he was questioned in the green channel by Border Force Officers, the appellant stated he was carrying five cartons of cigarettes, when in fact he was carrying 52.
50. The Border Force Officer's notebook states that during the second seizure of goods on 20 April 2018, when he was questioned in the green channel by a Border Force Officer, the appellant stated he was carrying "one box of cigarettes" containing 200 cigarettes when in fact he was carrying 1,000.
51. Both Border Force Officer notebooks demonstrate that the appellant has 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.
52. 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.

53. 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.

54. 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.

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

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

57. 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: 07 DECEMBER 2020**