



[2021] UKFTT 161 (TC)

TC08130

EXCISE DUTIES – import of 14,800 cigarettes from Bulgaria – duty assessed and penalty imposed – Appellant claimed “own use” but had not challenged legality of seizure and gave evidence that he was buying for others – Appellant did not speak English and had not been provided with an interpreter when stopped at airport – assessment upheld but penalty reduced to allow full mitigation – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/06275

BETWEEN

YULIAN AVRAMOV

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE JEANETTE ZAMAN
SHEILA CHEESMAN**

The hearing took place on 6 May 2021. With the consent of the parties, the form of the hearing was a video hearing on the Kinly video platform. A face to face hearing was not held because of ongoing restrictions in relation to the COVID-19 pandemic. The documents to which we were referred are described in the decision notice.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Appellant in person

Matthew Donmall, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION AND SUMMARY

1. This is an appeal by Mr Avramov against an excise duty assessment of £4,457 which was issued on 13 July 2018 and a wrongdoing penalty of £1,715 (which was reduced to £935 upon review). He had been stopped by Border Force on 20 March 2018 at Stansted Airport in the blue channel having arrived from Bulgaria and was found to be carrying 14,800 cigarettes of several different brands (the “Cigarettes”). The Cigarettes were seized by UK Border Force. Mr Avramov did not challenge the legality of the seizure of the Cigarettes within 30 days.

2. Mr Avramov has appealed against the assessment and the penalty. His grounds of appeal include that the Cigarettes were for personal use (explaining that they were for him, other family and drivers who worked for him), he does not speak English and was not provided with an interpreter when he was stopped so was not able to explain the position and did not understand what he was signing, he feared being deported and the events infringed his human rights.

3. For the reasons explained below, we have concluded that:

(1) Mr Avramov’s appeal against the assessment of £4,457 must fail.

(2) A penalty is due but full mitigation for the quality of disclosure should be allowed such that the penalty is imposed at the lowest amount within the statutory range (for non-deliberate behaviour, with prompted disclosure) at 20% of the amount of the duty, this being £891.

4. This means that Mr Avramov must pay £5,348.

5. The right to appeal (and time limit for doing so) is set out in the final paragraph of this decision notice.

HEARING AND EVIDENCE

6. The hearing took place by way of a remote video hearing. Mr Avramov was accompanied by his wife. An interpreter was provided by the Tribunal who logged in to the hearing separately.

7. We had a hearing bundle of 107 pages (largely comprised of the Notice of Appeal, HMRC’s Statement of Case and correspondence between the parties including the various forms which had been issued to Mr Avramov), a bundle of authorities of 200 pages (plus two further cases) and HMRC’s skeleton argument. A hard copy of these had been sent to Mr Avramov at his home address ahead of the hearing.

8. At the hearing we heard from Mr Avramov, who gave evidence in chief and was cross-examined. We found him to be credible, and accept that he has very limited understanding of English. He was reliant upon the interpreter for participation in the hearing, and in other contexts it appears that his wife (who is also Bulgarian but does speak English) assists with matters which require a working use of English, eg she had written the letters to HMRC and the Tribunal. Mrs Avramov had not been present when Mr Avramov was stopped at the airport.

9. We had witness statements from Border Force Officer Tracy Delaney and Officer Joseph Archer of HMRC. They both attended the hearing and were cross-examined. We found them to be credible witnesses.

10. We wish to record our thanks to Mrs Zarova, the interpreter who attended the hearing, for her assistance throughout the hearing, and also to Mr Donmall, who assisted the panel by putting some questions to his own witnesses on Mr Avramov’s behalf in addition to the questions put to them by the panel.

BACKGROUND

11. The description of the facts set out below was common ground. There were areas where the evidence of the parties differed, and these are addressed separately under “Disputed Facts” below where we make our findings in relation thereto.

12. Mr Avramov is a Bulgarian national who had been living in the UK for three years at the time he brought the Cigarettes into the UK.

13. Mr Avramov, his wife and a cousin run a transport company. The drivers they use are also Bulgarian. The drivers wanted more cigarettes and asked Mr Avramov to buy them for them; otherwise, they would have travelled to Bulgaria themselves, and this would have affected the business’ ability to continue to make the required deliveries on time. Mr Avramov decided that he would buy the Cigarettes for himself, his wife (who at that time was his fiancée) and the drivers. Afterwards he realised that this was a mistake and he shouldn’t have done this.

14. On 20 March 2018 Mr Avramov arrived at Stansted Airport on his return to the UK from Bulgaria where he was stopped by Officer Delaney of Border Force. Officer Delaney asked Mr Avramov some questions through a translation sheet. The only questions which Mr Avramov agreed were asked using a translation sheet were “Are those suitcases yours?” and “Do you know what is inside them?” Mr Avramov confirmed yes to both. Further questions were asked but it was not agreed whether they were also on the translation sheet.

15. Officer Delaney searched his bags and he was found to be carrying 14,800 mixed branded cigarettes (6,000 Davidoff Classic, 2,600 Dunhill, 2,000 Davidoff Gold, 3,800 Karelia Slim and 400 Karelia Blue).

16. Officer Delaney read the commerciality statement to Mr Avramov. That statement is as follows:

“You have excise goods in your possession, which appear not to have borne UK duty. Goods may be held without payment of duty providing they have been acquired and are held for your own use. I intend to ask you some questions to establish these goods are held for a commercial purpose. If no satisfactory explanation is forthcoming or if you do not stay for questioning it may lead me to conclude that the goods are held for a commercial purpose and your goods may be seized as liable to forfeiture. Do you understand? Do you wish to stay for questioning or leave? You are not under arrest.”

17. The parties did not agree whether this was set out in Bulgarian on the translation sheet.

18. Mr Avramov said he would “Leave”. Officer Delaney seized the Cigarettes as imported for a commercial purpose. Mr Avramov signed Officer Delaney’s notebook.

19. Mr Avramov was given forms BOR156 (Seizure information notice), BOR162 (warning letter about the seized goods), Notice 1 (travelling to the UK) and Notice 12A (what you can do if things are seized by HMRC or UKBF). He signed the BOR162 and BOR156.

20. Mr Avramov was not provided with an interpreter, and the questioning, search and seizure took place in the blue channel itself. There was no separate interview room used for this purpose.

21. Mr Avramov did not challenge the legality of the seizure within 30 days.

22. On 14 June 2018 Officer Archer of HMRC issued a preliminary notice letter to Mr Avramov informing him that HMRC intended to issue an excise duty assessment in the amount of £4,457 and a penalty £1,715. This letter also invited Mr Avramov to send any relevant information to HMRC by 14 July 2018. The letter was accompanied by copies of CC/FS9 “Human Rights Act and penalties”, CC/FS1d General information about compliance checks

into excise matters, CC/FS12 “Penalties for VAT and Excise wrongdoings” and a penalty explanation schedule. The penalty explanation schedule explained that the penalty was proposed on the basis that the behaviour was deliberate, disclosure was prompted and 90% mitigation was allowed.

23. On 1 July 2018 Mr Avramov sent a letter to HMRC challenging the assessment and penalty. He said that he had bought the cigarettes in Sofia airport at the original price, for him, his fiancée, his cousin and wife, and a couple of drivers in his transport company and stating “I can insure you that those cigarettes were not for any commercial purpose as they were only for my own and personal use”.

24. On 13 July 2018, Officer Archer issued the excise duty assessment for £4,457 and an excise wrongdoing penalty for £1,715, together with the required factsheets.

25. On 30 July 2018, HMRC received a letter from Mr Avramov, dated 25 July 2018, requesting a review by an officer not previously involved with his case. In this letter Mr Avramov stated that when he was stopped he had told the officer that he cannot speak English very well and Border Force did not take any action (such as providing an interpreter) to enable him to understand his rights. He said he was given an ultimatum either to sign the documents (which he did not understand) and leave the cigarettes so he could go home or be handcuffed and deported. He was not taken somewhere private but was exposed to people passing by and was stressed and this harmed his self-esteem. He said that this infringed his human rights.

26. By a review conclusion letter of 6 September 2018, Officer Christopher Dakers of HMRC upheld the assessment, but reduced the wrongdoing penalty to £935, concluding that there was not sufficient information to demonstrate that Mr Avramov had acted deliberately, and so calculated the penalty at 21% (which was a 90% reduction on the difference between the maximum non-deliberate penalty of 30%, and the minimum penalty of 20%). The maximum reduction was given for helping and giving, but only 20% (rather than 30%) for telling, as Officer Dakers said “You have given your reasons as to why you should not be liable for an assessment and penalty, but you have offered little disclosure in relation to the goods themselves.” Officer Dakers did not consider that there was any reasonable excuse, nor that the representations and circumstances allowed the application of special circumstances.

27. On 25 September 2018 Officer Reed wrote to Mr Avramov informing him that he had now reduced the wrongdoing penalty to £935 and enclosed the necessary documents.

28. On 2 October 2018 the Tribunal received Mr Avramov’s appeal against the 6 September 2018 review decision.

DISPUTED FACTS

29. The matters of fact where the parties did not agree concerned (so far as relevant to this appeal) the events when Mr Avramov was stopped at Stanstead Airport.

30. Whilst the parties agreed that some questions were put to Mr Avramov by Officer Delaney using a translation sheet and that no interpreter was provided, the parties did not agree as to whether all questions were on such a sheet or if the commerciality statement was also set out in Bulgarian on a translation sheet.

31. Officer Delaney confirmed that she does not speak any Bulgarian and that if there were difficulties communicating with Mr Avramov she would have used the translation sheet and gestures. The hearing bundle did not include an example of a translation sheet and Officer Delaney’s evidence was that she had not been able to check whether the Bulgarian translation sheets used at Stanstead Airport included a translation of the commerciality statement.

32. Officer Delaney’s notebook records as follows:

00.06	I asked the following questions through a translation sheet
TD	Are these your bags?
YA	Yes
TD	Did you pack them yourself?
YA	Yes
TD	Are you aware of the contents?
YA	Yes
TD	Has anyone asked you to bring anything into the UK?
YA	No
TD	Are you aware it is illegal to bring certain things into the UK such as firearms, offensive weapons, controlled drugs and indecent and obscene material?
YA	Yes
TD	Do you live here?
YA	Yes, 3 years Reading
00.22	Baggage search conducted

33. Officer Delaney was not able to recall whether the question about whether he lived here was on the sheet or if it was asked only in English.

34. Based on the evidence from Officer Delaney's notebook, which refers to the use of a translation sheet (which was acknowledged by Mr Avramov) and is a contemporaneous record of the events, we have concluded that the questions recorded above were all set out on the sheet which was shown to Mr Avramov.

35. Officer Delaney's notebook then describes the cigarettes which were found and continues "Read commerciality statement". There is no reference, unlike earlier, to having used a translation sheet for this purpose and Officer Delaney's evidence was that she could not be certain.

36. We have concluded that the commerciality statement was not translated on a translation sheet which was shown to Mr Avramov. Mr Avramov denied that it had been, Officer Delaney's notebook makes no reference to using a translation sheet for this purpose (whereas she had referred to its use for the questions prior to the search of the bags), her evidence was that sometimes it was included and sometimes it wasn't.

37. Mr Avramov has said that he didn't understand his options at this time. He realised he was being given a choice (from Officer Delaney's gestures and body language) but thought this was between signing the documents, leaving the Cigarettes and leaving (in circumstances where he did not understand what he was signing) or being deported. He feared being handcuffed as he has a disability with his right hand (since birth) and this causes him a lot of pain and to be handcuffed would be incredibly painful for him but he was not able to explain this to Officer Delaney.

38. HMRC have not challenged Mr Avramov's evidence as to his disability (which we accept) but Officer Delaney denied that Mr Avramov was at risk of being deported, referring both to the language of the commerciality statement and the fact that Mr Avramov lived in the

UK. She also explained that her handcuffs would have been clipped to her uniform throughout. Furthermore, Officer Delaney denied that Mr Avramov had asked for an interpreter. If he had done so she said she would have written this in her notebook. Border Force would not have been able to provide one, but the interview would have stopped and Mr Avramov could have returned within 30 days with an interpreter for questioning.

39. On the basis of the evidence and in particular our finding as to the absence of a translation of the commerciality statement, we find that Mr Avramov did not understand the options which were being given to him by Border Force – he did not know he was not under arrest, he did not know there was no risk of being put on a plane back to Bulgaria and he did fear that if he didn't leave the airport then he might be handcuffed.

RELEVANT LAW

40. Excise duty is charged on tobacco products by the Tobacco Products Duty Act 1979. regulation 14 of the Tobacco Products Regulations 2001 provides that the duty is due at the excise duty point.

41. Where goods have been released for consumption in another Member State (as in this case), the Excise Goods (Holding Movement and Duty Point) Regulations 2010 (the “HMDP Regulations 2010”) provide, by regulation 13:

(1) If the goods are held for a commercial purpose in the UK, then there is an excise duty point at the first point when the goods are so held (regulation 13(1));

(2) Regulation 13(3)(b) provides that excise goods will be held for a commercial purpose if they are held by a private individual except where the excise goods are for P's “own use”;

(3) Regulation 13(4) provides that for determining whether goods are for own use, regard must be taken of various things, including whether the quantities exceed, in the case of cigarettes, 800 cigarettes; and

(4) Regulation 13(2) provides that the person holding the goods at the excise point is liable to pay the duty.

42. Under s12(1A) Finance Act 1994 (“FA 1994”), where a person has become liable to excise duty and the Commissioners can ascertain the amount due, the Commissioners may assess the amount of duty due.

43. Part 11 of the HMDP Regulations 2010 regulates the import of excise goods after release for consumption in another Member State (save for when imported for that person's own use). Commercial importation is possible, but there are a number of requirements, including that there must be an accompanying document, and (under regulation 69) before the importation of the goods HMRC must be informed of the expected dispatch, and a guarantee for securing payment of the duty provided, and then excise duty be paid on or before the excise duty point. Provision is also made for the approval and registration of commercial importers.

44. Regulation 19(5) provides that a failure to comply with regulation 69 will constitute a contravention.

45. Regulation 88 provides that where there is a contravention of the regulations in relation to excise goods in respect of which duty was due but not paid, those goods are liable to forfeiture.

46. Section 139 of Customs and Excise Management Act 1979 (“CEMA 1979”) provides that any thing liable to forfeiture may be seized. Section 139(6) provides that Schedule 3 to that Act shall have effect. Schedule 3 to CEMA 1979 then provides:

“(3) Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice or seizure...give notice of his claim in writing to the Commissioners...

...

(5) If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners...the thing in question shall be deemed to have been duly condemned as forfeited.”

47. Paragraph 5 of Schedule 3 provides that if no such notice is given, the thing in question shall be deemed to have been duly condemned as forfeited.

48. Paragraph 4 of Schedule 41 to Finance Act 2008 (“FA 2008”) provides for a penalty for handling goods subject to unpaid excise duty: a penalty is payable where after the excise duty point, a person is concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods, and at that time, a payment of duty is outstanding.

49. The calculation of the penalty is determined under Schedule 41:

(1) Paragraph 5(4) provides that P's acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been deferred is (a) "deliberate and concealed" if it is done deliberately and P makes arrangements to conceal it, and (b) "deliberate but not concealed" if it is done deliberately but P does not make arrangements to conceal it.

(2) Paragraph 6B provides that the penalty payable under paragraph 4 for an act which is not deliberate is 30% of the potential lost revenue.

(3) Paragraph 10 provides that the potential lost revenue is the amount of excise duty due on the goods.

(4) Paragraph 12 and 13 provides for reductions in penalties under paragraph 4 where the person discloses a relevant act or failure:

“(2) P discloses a relevant act or failure by-

(a) Telling HMRC about it,

(b) Giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and

(c) Allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

(3) Disclosure of a relevant act or failure-

(a) Is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and

(b) Otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.”

(5) The penalty range for a non-deliberate prompted disclosure is 20%-30% of the potential lost revenue.

(6) Paragraph 14 provides that “if HMRC think right because of special circumstances, they may reduce a penalty.” Inability to pay cannot amount to a special circumstance.

(7) Paragraph 20 provides that liability to a penalty under paragraph 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or (or on appeal,

the Tribunal) that there is a reasonable excuse for the act or failure. This provision only applies to acts or failures which are not deliberate.

50. In respect of the penalty under Schedule 41 FA 2008, paragraph 17 provides that P may appeal against a decision that a penalty is payable, or the amount of such penalty, and paragraph 18 provides the appeal shall be treated in the same way as an appeal against an assessment to the tax concerned. The Tribunal's powers on appeal are set out at paragraph 19:

“(1) On an appeal under paragraph 17(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 17(2) the tribunal may –

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 14 –

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.

(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.”

GROUND OF APPEAL

51. Mr Avramov in his correspondence with HMRC and his letter of appeal to the Tribunal dated 30 September 2018, which was received by the Tribunal on 2 October 2018, raised the following:

(1) The Cigarettes were imported for his own personal use. He works for a transport company and brought the Cigarettes back for some of his drivers as well as his family.

(2) When he was stopped at Stanstead Airport he was not provided with the help of an interpreter, he did not understand his rights, he did not understand what he was signing, and he feared he was at risk of deportation.

(3) The experience of being searched and questioned in the blue channel with other passengers walking by was stressful and humiliating and infringed his human rights.

(4) He only found out “too late for me to act” that he had 30 days to challenge the legality of the seizure.

(5) He had bought the Cigarettes legally at Sofia airport.

DISCUSSION

52. Mr Avramov is appealing against both the excise duty assessment and the wrongdoing penalty. The burden of proof is on HMRC to establish that they were validly issued. If they discharge that burden, Mr Avramov must then show that his grounds of appeal are made out such that the assessment and/or penalty should be cancelled, or the amount of the penalty varied. The standard of proof is the balance of probabilities.

Assessment

53. In accordance with the HMDP Regulations 2010, if the goods are held for a commercial purpose in the UK then there is an excise duty point at the first point when the goods are so

held, and goods are held for a commercial purpose if they are held by a private individual except where the excise goods are for that person's own use.

54. Mr Avramov appeals on the basis that the goods were for his own use.

55. In *HMRC v Jones* [2011] EWCA Civ 824, the Court of Appeal concluded at [71]:

(1) The goods must be taken as "duly condemned" if the owner does not challenge the legality of the seizure under paragraph 3 of Schedule 3 CEMA 1979.

(2) That deeming process would limit the scope of the issues before the Tribunal on a restoration appeal:

"The FTT had to take it that the goods had been 'duly' condemned as illegal imports. It was not open to it to conclude that the goods were legal imports illegally seized by HMRC by finding as a fact that they were being imported for own use".

(3) The deeming provisions were compatible with Article 1 of the First Protocol and Article 6 ECHR, because there were provisions enabling the legality of the seizure to be challenged.

(4) Deeming something to be the case (such as that the imports had been legally seized) "carries with it any fact that forms part of the conclusion".

56. In short, the Court of Appeal in *Jones* concluded at [73] that the Tribunal had no power to re-open and re-determine the question of whether or not the seized goods had been legally imported for personal use. The Upper Tribunal confirmed in *HMRC v Race* [2014] UKUT 331 (at [26] and [39]) that the reasoning and analysis in *Jones* did not depend on the fact that that case concerned restoration of goods, and not assessment to duty, and the Upper Tribunal held (at [33] and [39]) that it was equally not open to the Tribunal in an appeal against either the assessment to excise duty, or against a penalty assessment, to go behind the deeming effect of paragraph 5 of Schedule 3.

57. In the present case, as no appeal was made against the legality of the seizure and the Cigarettes have been duly condemned under paragraph 5 of Schedule 3 CEMA 1979, we cannot find otherwise than that they were legally seized, which necessarily imports the fact that they were held for a commercial purpose. We cannot now consider Mr Avramov's claim that they were for personal use.

58. In any event, we are not satisfied, on the basis of the explanation provided by Mr Avramov and the facts as we have found them, that the Cigarettes were for his own use. His own evidence was that he had decided to travel to Bulgaria to buy Cigarettes for his drivers.

59. Furthermore, whilst Mr Avramov has complained about the events when he was stopped at Stanstead Airport, in relation to which we have made our findings of fact above, the liability for excise duty arose when Mr Avramov imported goods for a commercial purpose without having paid the duty due on them. These events (occurring after the excise duty point) are not relevant to the making of the assessment or the appeal against the same.

60. The excise duty assessment was calculated on the basis of a rate of £217.23 per 1,000 cigarettes plus 16.5% of recommended retail price, in accordance with Schedule 1 of the Tobacco Products Duty Act 1979. Mr Avramov did not challenge the calculation of the duty and in any event we consider that it was correctly calculated.

61. The appeal against the assessment is dismissed.

Penalty

62. As regards the appeal against the penalty appeal, again as a result of the facts that are deemed by way of the condemnation of the Cigarettes as liable for seizure, Mr Avramov cannot challenge his liability to a penalty under Schedule 41 FA 2008, because the deemed facts are that he was carrying the goods for a commercial purpose with duty unpaid.

63. Officer Archer imposed the penalty on the basis that Mr Avramov's behaviour was deliberate but not concealed and the disclosure was prompted. The penalty range was therefore 35%-70% of the potential lost revenue ("PLR"), which in this case was the amount of the duty assessed. He allowed mitigation of 90%, allowing 20% out of a maximum of 30% for telling, and the maximum for helping and giving. The penalty explanation schedule set out in relation to telling:

"You have not yet had the opportunity to admit any wrongdoing to us therefore I have not awarded the maximum possible reduction available for this element."

64. Upon review, Officer Dakers concluded that there was not sufficient information to demonstrate that Mr Avramov had acted deliberately. This resulted in the penalty range being at a lower level, of 20%-30% of the PLR, and he also allowed mitigation of 90% and explained that he allowed 20% rather than 30% for telling as "You have given your reasons as to why you should not be liable for an assessment and penalty, but you have offered little disclosure in relation to the goods themselves."

65. On an appeal against a penalty the Tribunal may affirm HMRC's decision or substitute another decision that HMRC had power to make.

66. Mr Donmall's submissions focused on defending the reduced penalty of £935. He did not put it to Mr Avramov that his conduct had been deliberate or that he was dishonest. In the circumstances, whilst the Tribunal may make its own decision about the amount of the penalty, we do not consider it is open to us to consider imposing a penalty on the basis that the behaviour was deliberate.

67. We agree with HMRC that the disclosure was prompted – the existence and quantity of Cigarettes was only disclosed after Mr Avramov had entered the blue channel and been stopped by Border Force.

68. We therefore focus on the mitigation allowed for the quality of the disclosure, ie its timing, nature and extent.

69. Mr Avramov did have difficulty explaining his position and did not understand the matters set out in the commerciality statement. This was directly relevant to the timing of his explanations (he did not want to stay, when presented with an option to leave, as there was no interpreter and he did not know that he was not under arrest and would not be deported).

70. Whilst Officer Delaney considered that he had sufficient grasp of English to have understood this, we disagree with this conclusion. There was no evidence that Mr Avramov's understanding of English was anything other than very basic, and the language used in this commerciality statement would require a greater understanding of vocabulary and legal concepts, eg "forthcoming", "seized", "forfeiture".

71. We have concluded that full mitigation should be allowed for the quality of the disclosure, and that the penalty should be assessed at 20% of the PLR.

72. Liability to a penalty under paragraph 4 does not arise in relation to an act or failure which is not deliberate if a person satisfies HMRC or (or on appeal, the Tribunal) that there is a reasonable excuse for the act or failure.

73. We are of the view that the authority of *Jones* and *Race* does not prevent us from considering whether arguments made by Mr Avramov as to the Cigarettes being for his own use may constitute a reasonable excuse within the meaning of paragraph 20 of Schedule 41. However, we are not satisfied that Mr Avramov could have had a genuine belief which was objectively reasonable that the purchase of 14,800 cigarettes for himself, his family and drivers he employed in his transport business was for own use and not commercial.

74. Officer Drakers did consider whether there were special circumstances which may merit further reduction of the penalty. He concluded that there were none. We do not consider that this decision was flawed; and in any event we agree.

75. We have concluded that the penalty should be reduced to 20% of the PLR, ie £891.

CONCLUSION

76. The appeal against the assessment is dismissed.

77. The amount of the penalty shall be reduced to £891. The appeal against the penalty is thus allowed in part.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

78. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

RELEASE DATE: 18 MAY 2021