



Neutral Citation: [2022] UKFTT 00399 (TC)

Case Number: TC08627

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/16581

*Penalties for civil evasion of excise duty and customs duty – whether Appellant dishonest –  
yes – appeal dismissed*

**Heard on:** 12 September 2022  
**Judgment date:** 24 October 2022

**Before**

**TRIBUNAL JUDGE MARK BALDWIN  
MR CHRISTOPHER JENKINS**

**Between**

**RAHUL MANUBHAI PATEL**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS  
Respondents**

**Representation:**

For the Appellant: Mr Zakirhusen Member of Bluewater Accountants Ltd

For the Respondents: Mr Joshua Carey of counsel, instructed by the General Counsel and  
Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. On 21 January 2020 the appellant, Mr Rahul Manubhai Patel (“Mr Patel”), was stopped in the “Green Channel” of Manchester Airport, when his suitcase was found to contain 13.35kg of hand-rolling tobacco, some 53 times the allowable limit, and little else. In consequence, he was issued with a customs duty civil evasion penalty of £528 and an excise civil evasion penalty of £939, so £1,467 in total. This is Mr Patel’s appeal against those two penalties. The only issue in the appeal is whether the appellant was dishonest.

### THE LAW

2. There was no dispute before us as to the law, which we summarise briefly as follows.
3. The personal allowances for importing tobacco products into the UK from outside the European Union were set out in the Travellers Allowances Order 1994 and the amount of hand rolling tobacco in Mr Patel’s possession was more than 53 times the relevant allowance.
4. Section 8(1) Finance Act 1994 (“FA 1994”) provides that HMRC may issue penalties, equivalent to the amount of duty evaded, where a person has engaged in conduct for the purpose of evading any duty of excise and that person’s conduct involves dishonesty. Section 25(1) Finance Act 2003 (“FA 2003”) provides that HMRC may issue penalties, equivalent to the amount of duty evaded where a person has engaged in conduct for the purpose of evading customs duty and that person’s conduct involves dishonesty. Section 8(4) FA 1994 and section 29(1) FA 2003 allow HMRC to reduce these penalties as they see proper. The total amount of (customs and excise) duty evaded by Mr Patel was £4,892 and the penalties imposed on him were reduced by 70% to £1,467 on account of his disclosure and co-operation.
5. Mr Patel did not dispute that he had significantly more hand-rolling tobacco with him than was allowed and that he had gone through the “Green Channel” with it. He did, however, dispute HMRC’s assertion that he had been dishonest. In essence, his case was that he was simply unaware of the relevant rules.
6. Section 16(6) FA 1994 (for excise duty) and Section 33(7)(a) FA 2003 (for customs duty) provide that the burden of proof is on HMRC to establish that the Appellant has engaged in conduct for the purpose of evading the duty or VAT and that his conduct involved dishonesty. The standard of proof is the ordinary civil standard, namely proof on a balance of probabilities.
7. The test of dishonesty in the civil penalty regime has been discussed in a number of cases. In *Sahib Restaurant Limited v HMRC*, Case Number M7X 090, Judge Pelling QC (sitting as a judge of the High Court) stated, at [40]:

“...In my view in the context of the civil penalty regime at least the test for dishonesty is that identified by Lord Nicholls in [*Royal Brunei Airlines Sdn Bhd v Tan*, [1995] 2 AC 378] as reconsidered in [*Barlow Clowes International Ltd v Eurotrust International Ltd*, [2005] UKPC 37]. The knowledge of the person alleged to be dishonest that has to be established if such an allegation is to be proved is knowledge of the transaction sufficient to render his participation dishonest according to normally acceptable standards of honest conduct. In essence the test is objective - it does not require the person who is alleged to have been dishonest to have known what normally accepted standards of honest conduct were.”

8. Judge Pelling QC was distinguishing the civil concept of dishonesty from the criminal one, which also requires the individual to have realised that what they were doing was dishonest according to the ordinary standards of reasonable and honest people; *R v Ghosh*, [1982] 1 QB 1053. The criminal test of dishonesty is, therefore, much more subjective. Nevertheless, the

concept in civil penalty cases is not wholly objective as the individual's behaviour falls to be assessed on the basis of what they actually knew (as distinct from what a reasonable person would have known or appreciated) at the time regarding the facts which (objectively) point towards dishonesty in the case in question. As Lord Millett observed in *Twinsectra Limited v Yardley*, [2002] UKHL 12 at [121]:

“In my opinion Lord Nicholls [in *Tan*] was adopting an objective standard of dishonesty by which the defendant is expected to attain the standard which would be observed by an honest person placed in similar circumstances. Account must be taken of subjective considerations such as the defendant's experience and intelligence and his actual state of knowledge at the relevant time. But it is not necessary that he should actually have appreciated that he was acting dishonestly; it is sufficient that he was.”

9. In *Ivey v Genting Casinos (UK) Ltd*, [2017] UKSC 67, the Supreme Court considered this passage from the judgment in *Ghosh*:

“Take for example a man who comes from a country where public transport is free. On his first day here he travels on a bus. He gets off without paying. He never had any intention of paying. His mind is clearly honest; but his conduct, judged objectively by what he has done, is dishonest. It seems to us that in using the word ‘dishonestly’ in the Theft Act 1968, Parliament cannot have intended to catch dishonest conduct in that sense, that is to say conduct to which no moral obloquy could possibly attach.”

The Supreme Court considered that,

“... the man in this example would inevitably escape conviction by the application of the (objective) first leg of the *Ghosh* test. That is because, in order to determine the honesty or otherwise of a person's conduct, one must ask what he knew or believed about the facts affecting the area of activity in which he was engaging. In order to decide whether this visitor was dishonest by the standards of ordinary people, it would be necessary to establish his own actual state of knowledge of how public transport works. Because he genuinely believes that public transport is free, there is nothing objectively dishonest about his not paying on the bus. The same would be true of a child who did not know the rules, or of a person who had innocently misread the bus pass sent to him and did not realise that it did not operate until after 10.00 in the morning. The answer to the court's question is that “dishonestly”, where it appears, is indeed intended to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the facts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts”

10. Drawing all this together, the question for us is whether HMRC have satisfied us that, taking into account Mr Patel's experience and intelligence and his actual state of knowledge at the relevant time, he was behaving in a way which was dishonest according to normally acceptable standards of honest conduct. But, if he was so behaving, it is not necessary that he should actually have appreciated that he was acting dishonestly; it is sufficient that he was.

11. Presciently, in view of the Mr Patel's arguments in this case, the First-Tier Tribunal in *Zuned Osman v HMRC*, [2016] UKFTT 524 (TC), put the point like this:

“In reaching a judgment as to alleged dishonesty in civil penalty cases the tribunal must have regard to the fact that while the test is primarily objective,

the tribunal's fact-finding responsibilities in relation to the taxpayer's knowledge are critical. For example, by normally accepted standards proceeding through the green channel while in possession of goods on which duty is clearly due might well be indicative of dishonesty by those objective standards. But what if the person did not understand the difference between the green and red channels, and could not read the relevant customs warnings at the airport?"

#### **THE EVIDENCE**

12. HMRC were represented by Mr Joshua Carey of counsel, who called evidence from Border Force Officer Preti Patel ("Officer Patel") and Mr Daniel Hall ("Mr Hall"), an officer of HMRC. Mr Patel was represented by Mr Zakirhusen Member of Bluewater Accountants Ltd and gave evidence himself. All three witnesses had previously submitted a witness statement on which they were cross-examined, in Mr Patel's case at some length.

#### *Officer Patel*

13. Officer Patel explained that at Manchester Airport the "Red Channel" is not a separate physical "channel" travellers walk through. The "Red Channel" is a desk with a 'phone next to the Blue and Green Channels (for EU and non-EU arrivals). Before entering a channel there are signs drawing travellers' attention to the need to make a customs declaration if they are importing more than the permitted amount of dutiable goods and directing them to use the 'phone to do so. There are also prominent signs visible as passengers exit and at each baggage carousel there are boards as large as the carousel which indicate travellers' allowances and tell them to use the red 'phone if they have anything to declare. These signs use pictures (illustrating the various items where there are limits on what can be imported without payment of duty) as well as words.

14. At around 0200 hours on 21 January 2020 Officer Patel was on duty in Manchester Airport Terminal Two when she stopped Mr Patel in the Green Channel. He was travelling alone and had with him a medium-sized suitcase and a small rucksack. She asked Mr Patel a number of questions and then placed his bags in an X-Ray machine. The images showed small thin strip shapes all uniform in size and at that point she went on to ask him the following questions (this account coming from Officer Patel's notebook which was exhibited to her witness statement):

P PATEL: Is this all your baggage?

R PATEL: Yes.

P PATEL: Did you pack it yourself?

R PATEL: Yes.

P PATEL: Are you aware of the contents of your baggage?

R PATEL: Yes.

P PATEL: Have you purchased or obtained anything outside the UK?

R PATEL: Yes, just a little tobacco.

P PATEL: You came through the Green Channel, do you know what that means?

R PATEL shrugged his shoulders and gave no reply to this question.

P PATEL: It means you have nothing to declare. Are you aware of your customs allowances?

R PATEL offered no reply to this question.

After a few more questions Officer Patel searched Mr Patel's baggage and found 13.35kg of Golden Virginia branded hand rolling tobacco in 50g packets. She noted that there was no clothing in the baggage and, other than the tobacco, his baggage contained only a small wallet, a 'phone charger and nothing else. She asked Mr Patel some further questions, including the following (again, coming from her notebook):

P PATEL: As you are over your allowance.

R PATEL: How much is allowance?

P PATEL: From outside the EU, it is 250grams of tobacco.

R PATEL: Is that it? I didn't know.

P PATEL: As you are excessively over your allowance, the whole amount will be seized as you came through the green nothing to declare channel.

In answer to further questions from Officer Patel, Mr Patel said he was a heavy smoker. He would smoke about two packets a day of this tobacco and cigarettes sometimes too. This quantity would last him about 3 months.

*Mr Hall*

15. Mr Hall adopted his witness statement and explained the process from the receipt of a report from the Border Force through to the assessment of the penalties which are the subject of this appeal. Meaning no disrespect to Mr Hall, his evidence did not assist us in determining the issue before us.

*Mr Patel*

16. Mr Patel explained that he had travelled alone to Agadir, returning on 21 January 2020. He took few clothes with him but threw them away so as to have more room to bring back tobacco, because it was so much cheaper than in the UK. He had found cheap Golden Virginia rolling tobacco. As he is a heavy smoker, he bought a significant amount of this tobacco. He was not aware of the duty and VAT implications of bringing products from outside the EU or of his allowances. Due to his lack of knowledge, he "assumed the word custom or duty is something similar to Tesco club card point". When he entered the Green Channel at Manchester Airport, he did not have any knowledge of doing anything wrong. He admitted that he was careless in not asking Border Force agents, but he said he found them intimidating as they walked around like police officers with handcuffs and truncheons. He remembered their treatment of the Windrush Generation and this made him reserved and scared to approach them. He shrugged in response to Officer Patel's questions about allowances and whether he knew what it meant to go through the Green Channel because he did not know; that was all he meant by that gesture.

17. Under cross-examination Mr Patel accepted that this was his fourth trip abroad on an aeroplane, although the previous trips had been some while ago. On all four times he had flown back through a UK airport, but he did not recall seeing information about customs import limits. On this particular occasion he did not see the large electronic signs by the baggage carousel. He was rushing to get out and following other passengers. He was tired; he had not slept during the flight, as he was seated next to a passenger who was "weird". He just wanted to get home quickly. On being pressed by Mr Carey that he must have seen customs signs after he collected his bag or on previous trips, Mr Patel repeated that he had not seen or noticed anything.

18. In response to Mr Carey's questioning, Mr Patel accepted that he had been to Morocco before, but said that he had not bought any cigarettes there. He had taken a few packets of cigarettes with him. Mr Carey suggested that, given that he smoked the equivalent of 20 cigarettes a day, Mr Patel would be short of tobacco and so he must have bought tobacco on his previous trip. Mr Patel replied that he did not understand Mr Carey's question.

19. Mr Patel agreed that his suitcase had been largely empty when he left the UK. Shopping had been one of the reasons for his trip; he had intended to buy some leather items, possibly a jacket, but found them too expensive. At the airport he found a duty-free shop selling tobacco and had a discussion with the shopkeeper about how much tobacco he could buy. In correspondence with HMRC, Mr Patel had observed that the shopkeeper had not informed him of any customs limits. Mr Patel later explained that, when he discussed with the shopkeeper

how much tobacco he could buy, he had not been asking for customs duty information. In fact, he had been asking how much tobacco was for sale, as the quantity on display in the shop was less than he would have liked to acquire. The tobacco cost around £1,100 and the quantity he purchased would give him around 6 months' supply. This was a very good deal and it was there that he emptied his suitcase to make room for the tobacco. He paid for the tobacco by credit card. Mr Patel said that he earned around £1,600 a month as a school security officer and taxi driver.

20. Mr Carey took Mr Patel to the record of his discussions with Officer Patel. He suggested to him that his statement that he had "just a little tobacco" (see [14] above) was designed to mislead Officer Patel given the quantity of tobacco in the suitcase and the fact he had thrown away clothes to make room for it. Mr Patel denied this. Mr Carey suggested to Mr Patel that he had not answered Officer Patel's subsequent questions because he did not want to lie to her. He had answered all her questions up to now, but why not these? Mr Patel said that he was tired, had drunk alcohol on the flight and didn't have good English. Mr Carey suggested to Mr Patel that he only asked Officer Patel about his allowances once she had completed her search as he was now trying to pretend that he didn't know the rules.

21. Towards the end of his cross-examination Mr Patel said that he had taken his suitcase onto the aeroplane as hand luggage. When asked why he had answered Mr Carey's questions about the signs by the baggage carousel by saying he had not gone to the carousel to collect his luggage, Mr Patel said he had not understood Mr Carey's questions. Mr Carey challenged Mr Patel that he would not have been allowed to take a medium-sized rigid suitcase into the cabin, but Mr Patel said he had been. Officer Patel's notes were not detailed enough to cast any light on the point; as she used the term "medium sized", it could describe an item of luggage at the very upper end of what would be allowed as cabin baggage.

22. In re-examination, Mr Patel said that as he went through the Green Channel he was talking with someone who was asking where the taxi were. It was then that Officer Patel called him over. He didn't reply to Officer Patel's questions because he was tired and didn't understand what she was asking. He had no idea about what going through the Green Channel meant.

#### **HMRC'S CASE**

23. Mr Carey submitted that Mr Patel's evidence was riddled with inconsistency and, whenever he was confronted by that, his answer was simply that he had not heard or understood the point. Issues arose late in his evidence. The suggestion that he had been drinking appeared for the first time in the hearing before us. Late in his evidence his story about the signs at the baggage carousel seemed to change from him not noticing the signs to his never having been beside the carousel at all. He had flown three times previously. How likely is it that he did not notice anything about customs limits? He had been to Morocco before and, just from the amount of tobacco he needed to buy, he must have known how much cheaper tobacco was there. He lied to Officer Patel. Clearly, there was more than "a little tobacco" in his suitcase. He tried to go through the Green Channel without drawing attention to himself. Once he had been stopped, he tried to avoid incriminating himself for as long as possible. It was clear from the way he gave evidence that he has a good command of English. It was not that he did not understand questions, so much as he did not want to answer them.

24. In short, Mr Patel had gone to Morocco to buy a large quantity of tobacco because he knew it was cheap. He also knew from his previous travels that the UK has customs and excise duties and travellers' allowances. He knew he was importing more than was allowed and so he was dishonest.

## **MR PATEL'S CASE**

25. Mr Member pressed us with Mr Patel's central point, that he was not aware of the UK customs limits. He had visited Morocco before and bought tobacco, but had not brought any to the UK. He wanted to bring back as much tobacco as he could because he found it to be cheaper than in the UK and was not aware of any import limits. There were lots of signs at the airport, but why would he take any notice of them if he did not realise there were import limits and they were irrelevant? Although there was a "Red Desk", there was no Red Channel, only one exit, and that is why, given that he was tired and keen to get home, Mr Patel just went out through that exit without stopping. He was anxious when he was pulled over and had no knowledge of what he was being asked about. That was why he said he only had a little tobacco and shrugged his shoulders. His suitcase was small and had been allowed into the cabin.

26. In short, Mr Patel had gone to Agadir for shopping and relaxation, found that his intended purchases were too expensive and bought as much cheap tobacco as he could instead. He was not aware of his obligations, and so was more likely to make a mistake. Mr Patel may have been careless in not exploring whether there were any applicable rules, but he had not been dishonest.

## **DISCUSSION**

27. As we explained above, there is only one issue in dispute before us, which is whether Mr Patel was dishonest, by which we mean, taking into account Mr Patel's experience and intelligence and his actual state of knowledge at the relevant time, was he was behaving in a way which was dishonest according to normally acceptable standards of honest conduct? If he was so behaving, whether he appreciated this or not is neither here nor there.

28. We regret to say that we did not find Mr Patel to be a particularly consistent or compelling witness. We have noted inconsistencies in his evidence. For example, between the reasons he gave for being tired on arrival, from being unable to sleep on the flight because of a "weird" passenger to having been drinking himself (which was itself a new suggestion). Also, he told us that the quantity of tobacco he purchased would give him around 6 months' supply, whereas he told Officer Patel that the supply would last him 3 months. Assuming he smoked 100g a day (as he told Officer Patel) it would last him 4 months. Mr Patel's assertion that he smokes 100g of tobacco a day seems hard to square with his earning £1,600 a month. Finally, we have the change in his account of why he did not notice the signs by the baggage carousels from being tired and the writing being small to never having been beside the baggage carousel in the first place. His explanation of a number of matters being that he did not understand what was being said is hard to accept. We found Mr Patel's command of spoken English to be more than adequate when it came to participating in these proceedings. A letter he wrote to HMRC in the trial bundle would suggest his command of written English is perfectly adequate too. We therefore approach Mr Patel's assertion that he was unaware of the broad effect of the UK customs and excise importation rules with a degree of circumspection.

29. Turning to other matters, this was the fourth occasion on which Mr Patel had flown back into a UK airport. We find it most unlikely that on none of those occasions had he noticed anything at all that would suggest the UK has limits on what can be imported without paying duty. Whatever the answer to the question whether Mr Patel had ever stood by the baggage carousel and seen the signage there, there were (as Officer Patel explained) other prominent signs drawing attention to the UK importation limits. We find it most unlikely that he did not see any of these signs as he made his way through the airport. They made their point with pictures as well as words and their import must have been clear to him, even if his command of written English was not as good as that of spoken English. We also find it hard to accept, given the sheer quantity of tobacco (over 53 times the limit) Mr Patel was importing and the large price differential between the UK and Morocco, that the question why this might be and

whether there were any limits on what he was doing would not have occurred to him. Most importantly, his behaviour when confronted by Officer Patel also strongly suggests that he knew there were importation limits (even if he did not know exactly what they were) and that he was on the wrong side of them. Until her questions got to his understanding of the Green Channel and customs allowances, Mr Patel had answered all Officer Patel's questions and then suddenly he had nothing to say for himself. His answer to her previous question, describing a suitcase almost entirely filled with 13.5kg of tobacco (on any basis, several months' supply at a significant cost for someone on his salary) as "a little tobacco", appears to us to be far from honest and designed to try to throw Officer Patel off the scent.

30. The cases on civil dishonesty indicate that choosing not to pay attention, or sufficient attention, to warnings does not negate dishonesty. As Lord Nicholls stated in *Royal Brunei Airlines Sdn Bhd v Tan*, [1995] 2 AC 378 (at [106]):

"Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless."

We are not sure how that point, which was picked up by the First-Tier Tribunal in *Zuned Osman v HMRC*, [2016] UKFTT 524 (TC), would play out in a relatively simple situation like this. It is hard to see how someone could deliberately close their eyes to a simple sign about straightforward importation limits without already knowing about the limits. In any event, it was not argued before us that Mr Patel had an inkling that there might be customs limits and chose not to interest himself in them. HMRC's case is that he knew full well that there were such limitations and that he was on the wrong side of them.

31. For the reasons set out above (in particular paragraphs [28] and [29]), HMRC have satisfied us on the balance of probabilities, and so we find as facts, that:

(a) as Mr Patel went through the Green Channel at Manchester Airport he knew that there were limits on the amount of tobacco he could bring into this country without paying duty and that the amount of tobacco he had with him was in excess of the relevant limit; and

(b) despite that, he chose to go through the Green Channel without using the red 'phone or doing anything else to indicate that he had duty to pay.

On any basis, whether he realised this was the case or not (and his behaviour rather suggests that he did), Mr Patel's behaviour was dishonest.

32. This tribunal has power under Finance Act 2003 and Finance Act 1994 on an appeal against a customs duty or excise duty penalty to quash or vary any decision and substitute its own decision for any decision quashed and to mitigate a penalty. There was no suggestion before us that the quantum of either penalty should be varied.

#### **DISPOSITION**

33. This appeal is dismissed and the total amount charged (£1,467) is confirmed.

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

34. 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.



**MARK BALDWIN  
TRIBUNAL JUDGE**

**Release date: 24<sup>th</sup> OCTOBER 2022**