



Neutral Citation: [2024] UKFTT 135 (TC)

Case Number: TC09070

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Appeal reference: TC/2022/12495

*Customs civil evasion penalty – excise civil evasion penalty – whether or not the Appellant acted dishonestly – yes – appeal dismissed*

**Heard on:** 14 September 2023

**Judgment date:** 16 February 2024

**Before**

**TRIBUNAL: JUDGE SUSAN TURNER  
MEMBER SUSAN STOTT**

**Between**

**ESMAT FARSI**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Esmat Farsi in person

For the Respondents: Varuna Jeewon, litigator of HM Revenue and Customs’ Solicitor’s Office

A summary decision was issued to the parties on 16 October 2023. A request for a full decision was subsequently received from the Appellant. This is our full decision in this appeal.

## DECISION

### INTRODUCTION

1. This is an appeal against a Customs Civil Evasion Penalty in the sum of £738 issued by HM Revenue and Customs (HMRC) on 31 January 2022 under s 25(1) Finance Act 2003 and an Excise Civil Evasion Penalty in the sum of £2,568 issued by HMRC on 31 January 2022 under s 8(1) Finance Act 1994. The penalties under appeal total £3,306.

2. At the hearing, we heard evidence from Ms Farsi, given through a Farsi interpreter. We also heard evidence from Officer Trendall (the Border Force Officer who stopped Ms Farsi at Manchester Airport) and Officer Roberts (the decision-making Officer) on behalf of HMRC. We make the following findings of fact based upon the evidence presented at the hearing and the documents made available to us.

### THE FACTS

3. On 28 January 2021, Ms Farsi arrived at Manchester Airport from Iran via Doha, Qatar. A resident of Manchester for around 17 years, Ms Farsi had been in Iran to take care of her dying mother, looking after her until she passed away.

4. As she passed through the green channel at the airport carrying three bags, Ms Farsi was stopped by Border Force Officer Trendall. Ms Farsi told Officer Trendall that she had nothing to declare. She confirmed to him that she was carrying her own luggage, that she had packed the bags herself and that she understood her customs allowances. When asked whether she understood that there were certain items it was illegal to import into the country, she asked Mr Trendall to repeat his question more slowly, which he did. Ms Farsi replied, "I have no drugs, no cigarettes, nothing."

5. Upon searching Ms Farsi's bags, 8,500 foil-wrapped cigarettes were found. This exceeded the permitted personal allowance of 200 cigarettes and 250 grams of tobacco and the goods were seized. Officer Trendall issued Ms Farsi with warning notices 1 and 12A, informing her how to challenge the seizure. Ms Farsi was also issued with and signed form BOR 156 detailing the items seized and a form BOR 162 warning letter.

6. Ms Farsi did not challenge the seizure of the goods and the cigarettes have been deemed to be forfeited in accordance with paragraph 5 of schedule 3 to the Customs and Excise Management Act 1979.

7. On 21 December 2021, Ms Farsi was invited by Officer Roberts of HMRC to disclose any relevant information or documents in connection with a tobacco smuggling compliance check and was notified of the possibility that civil evasion penalties could be issued. Ms Farsi was notified that co-operation with the enquiry could reduce any penalties imposed.

8. Ms Farsi returned a signed copy of the letter on 10 January 2022 but no further information and was subsequently issued with civil evasion penalties in a total amount of £3,306, which included 0% mitigation for disclosure and 5% mitigation for cooperation.

9. Between April 2022 and June 2022, R&A Solicitors corresponded with HMRC on Ms Farsi's behalf, first requesting a review of the penalties and subsequently providing a letter from Ms Farsi's GP setting out details of her medical issues.

10. On 1 July 2022, HMRC accepted the request for review and, on 20 July 2022 wrote to Ms Farsi upholding their original decision.

11. On 15 August 2022, Ms Farsi gave notice of her appeal to this Tribunal, prepared by R&A Solicitors.

12. At the hearing, Officer Roberts noted that Ms Farsi had responded to HMRC and provided relevant information via her solicitor. In acknowledgement of receipt of this further information from Ms Farsi, Officer Roberts offered an additional 15% mitigation of the penalties imposed, making total revised penalties of £2,784.

#### **THE ISSUES**

13. Ms Farsi's grounds of appeal include:

- (1) her struggles with anxiety and depression, exacerbated by her recent bereavement, affecting her decision-making processes and responses at the airport;
- (2) weak English language skills limiting her ability to comprehend information and signage;
- (3) her lack of awareness of relevant import limits; and
- (4) that she is a non-smoker and the cigarettes were for personal use to be distributed to friends and family members.

14. The following issues arise:

- (1) whether or not Ms Farsi acted dishonestly; and
- (2) whether the penalty imposed is at an appropriate level.

#### **THE LAW**

##### ***Excise Duty***

15. Sections 8(1), (4) and (5) of the Finance Act 1994 provide as follows:

“8 Penalty for evasion of excise duty

(1) Subject to the following provisions of this section, in any case where -

(a) any person engages in 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.

(5) Neither of the following matters shall be a matter which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under subsection (4) above, that is to say –

(a) the insufficiency of the funds available to any person for paying any duty of excise or for paying the amount of the penalty;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of duty.”

16. Section 8 of the Finance Act 1994 was repealed by paragraph 21(d)(i) of Schedule 40 of the Finance Act 2008 with the exception of the dishonesty penalty, which was preserved by The Finance Act 2008, Schedule 41 (Appointed Day and Transitional Provisions) Order 2009.

### ***Customs Duty***

17. Sections 25(1) and 29(1)(a) of the Finance Act 2003 provide as follows:

“25 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.

(2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).

(3) Those matters are—

(a) the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty,

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of any relevant tax or duty,

(c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.”

### ***Import Limits***

18. The Travellers’ Allowance Order 1994 provides for the import limits for relevant goods contained in the personal luggage of a person who has travelled from a third country. The limit for tobacco products is 200 cigarettes and 250 grams of smoking tobacco.

### ***Test for Dishonesty***

19. The penalties imposed by HMRC require that the Appellant’s conduct has been dishonest and, in reaching its decision as to dishonest conduct, the Tribunal is required to consider the two-stage test for dishonesty set forth in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords v Genting* [2017] UKSC 67 at [74]:

“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.”

20. The burden of proof in establishing “conduct involving dishonesty” lies with the Respondent and the standard of proof is the civil standard of the balance of probabilities.

## **DISCUSSION**

### ***Dishonesty***

21. Ms Farsi does not dispute that she was carrying 8,500 foil-wrapped cigarettes in her suitcases or that she was passing through the green channel at the airport when she was stopped by Officer Trendall.

22. Ms Farsi told the Tribunal that she knew she had cigarettes in her bags. She submitted that her husband had packed for her the night before she left Iran as she was distressed and unable to sleep and had told her that cigarettes were light and the best gift you could give to friends. However, she told the Tribunal that she was not aware of how many cigarettes there were or how they were packed.

23. We heard evidence from both Officer Roberts and Officer Trendall that cigarettes would be wrapped in foil in order to conceal their presence. HMRC submitted that Ms Farsi had been able to supply no explanation for why the cigarettes were wrapped in foil. We also heard that Ms Farsi was a frequent traveller who should have been aware of permitted personal allowances and relevant airport signage.

24. At the hearing, Ms Farsi told the Tribunal that English was not her first language, that she had not understood the questions put to her by Officer Trendall and that, if she had, she would not have made a false declaration. Ms Farsi told the Tribunal that she had been in a state of distress, having just returned from caring for her mother who had passed away. She was distressed and anxious. She submitted that she had not been aware that she was entitled to an interpreter at the airport and that her concentration was low, interfering with her ability to ask for support or to respond sufficiently to questioning.

25. The Tribunal was shown medical evidence that Ms Farsi did indeed suffer from anxiety and depression. Ms Farsi told the Tribunal that this, combined with her English language difficulties, affected her ability to understand the rules and regulations relating to personal allowances, to comprehend signage at the airport, or to respond accurately to Officer Trendall’s questions.

26. We acknowledge the distress faced by Ms Farsi in connection with her recent bereavement and have sympathy for her ongoing medical issues. However, we find that Ms Farsi did act dishonestly. Ms Farsi did know that she was carrying cigarettes in her suitcase to give to family and friends upon her return to Manchester. From a subjective perspective, even if she did not know precisely the quantity of cigarettes in her suitcases, or the permitted personal allowance, she did know that the amount she was carrying was likely to exceed her personal allowance. As a frequent traveller, she should have been aware of her personal allowances and familiar with airport signage. By proceeding through the green channel, she was intending not to declare the cigarettes in her suitcase. When stopped by Officer Trendall, she told him that she had no cigarettes at all. Even allowing for weak English language skills,

this was clearly a false declaration. From an objective perspective, this was dishonest by the standards of ordinary decent people.

***The Level of the Penalty***

27. Under s 29(1)(a) Finance Act 2003 (in respect of customs duty) and s 8(4)(a) Finance Act 1994 (in respect of excise duty), the Tribunal 'may reduce any penalty to such amount (including nil) as they think proper'.

28. We accept the offer of Officer Roberts to mitigate the penalty by a total of 20% in acknowledgement of disclosure and co-operation. We consider the revised penalty to be at an appropriate level considering the disclosure and co-operation provided by Ms Farsi and do not make any further reductions.

**DECISION**

29. It follows that we DISMISS the appeal and uphold the penalties in a total amount of £2,784.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

30. 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.

**SUSAN TURNER  
TRIBUNAL JUDGE**

**Release date: 16<sup>th</sup> FEBRUARY 2024**