



Neutral Citation: [2024] UKFTT 00641 (TC)

Case Number: TC09246

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2023/00352

***CUSTOMS & EXCISE – civil evasion penalty – whether appellant’s conduct dishonest –
Section 8 Finance Act 1994 – Section 25 Finance Act 2003 – appeal dismissed***

Heard on: 8 July 2024

Judgment date: 18 July 2024

Before

**TRIBUNAL JUDGE ROBIN VOS
JULIAN STAFFORD**

Between

ADEBIYI SHONUBI

Appellant

and

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

Representation:

The Appellant, Adebisi Shonubi appeared in person by video link

For the Respondents: Jonathan Metzger of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against Customs and Excise civil evasion penalties totalling £18,568 imposed by HMRC as a result of the appellant (Mr Shonubi) attempting to bring 62,000 cigarettes into the UK from Nigeria in October 2021.
2. The penalties are only payable if Mr Shonubi was dishonest. He says that he was not.
3. HMRC's decision was upheld on review on 20 December 2022. Mr Shonubi notified his appeal to the Tribunal on 23 January 2023 which is four days outside the 30 day time limit within which any appeal should be notified to the Tribunal (s 33F Finance Act 2003 and s 16 Finance Act 1994).
4. HMRC did not object to the late appeal. Given that the appeal was notified to the Tribunal only four days outside the statutory time limit and that the relevant period included Christmas and the New Year, we gave permission for the appeal to be notified outside the statutory time limit.
5. Mr Shonubi was not able to attend the hearing venue as he was unwell on the day of the hearing. However, he was willing to participate by video, which HMRC agreed to. The hearing therefore took the form of a hybrid hearing with all of the participants other than Mr Shonubi in the Tribunal hearing room and with Mr Shonubi appearing by video link using the Tribunal's video hearing system.

CUSTOMS AND EXCISE CIVIL EVASION PENALTIES – LEGAL FRAMEWORK

6. The legislation authorising the imposition of Customs civil evasion penalties is contained in s 8 Finance Act 2003 ("FA 2003"). The provisions relating to Excise civil evasion penalties are in s 25 Finance Act 1994 ("FA 1994").
7. In both cases, a penalty is only payable if a person engages in any conduct for the purpose of evading the relevant duty and that conduct involves dishonesty.
8. It is up to HMRC to show dishonesty (s 33(7) FA 2003; s 16(6) FA 1994).
9. The maximum penalty is equal to the amount of the duty in question. However, both HMRC and the Tribunal have power to reduce the amount of the penalty (s 29 FA 2003; s 8(4) FA 1994). In both cases, no reduction can be made due to the taxpayer having insufficient funds to pay the duty.
10. Schedule 1 to the Travellers' Allowances Order 1994/1995 confirms that the duty-free allowance is 200 cigarettes. Any cigarettes in excess of this are subject to duty.
11. Where duty has not been paid when it should have been, the goods in question are liable to forfeiture (Regulation 88 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010). Goods which are liable to forfeiture may be seized (s 139 Customs & Excise Management Act 1979). If the seizure is not challenged within one month, the seizure is deemed to be lawful (paragraph 5 of Schedule 3 to the Customs & Excise Management Act 1979).
12. Mr Shonubi accepts that the quantity of cigarettes which he had with him was in excess of the relevant allowance and that they were therefore liable to duty. He did not contest the seizure of the cigarettes. He also does not challenge the calculation of the penalty nor the amount of the reduction in the penalty which has been allowed by HMRC.

13. The only questions which we therefore need to determine are whether Mr Shonubi engaged in conduct for the purpose of evading duty and, if so, whether his conduct involved dishonesty.

14. The approach to be taken in determining dishonesty was confirmed by the Supreme Court in *Ivey v Genting Casinos (UK) Limited* [2017] UKSC 67 at [74]. The first stage is to determine (subjectively) the actual state of the individual's knowledge or belief as to the facts. There is no requirement that any belief must be reasonable, but the reasonableness of the belief is a factor to be considered in determining whether that belief is genuinely held.

15. The second stage is to determine (objectively) whether, based on the individual's subjective state of mind as to knowledge or belief of the relevant facts, their conduct was honest or dishonest applying the standards of ordinary decent people. The question as to whether the individual considered themselves to have acted dishonestly is irrelevant.

16. As we have said, it is for HMRC to establish dishonesty. As this is a civil matter rather than a criminal matter, the standard of proof is the ordinary civil standard of the balance of probabilities (see for example the comment of the Court of Appeal in *Han v HMRC* [2001] EWCA Civ 1048 at [12] which was cited with approval by Mann J in *HMRC v Khawaja* [2008] EWHC 1687 (Ch). Although *Han* related to an appeal against a penalty imposed under s 60 Value Added Tax Act 1994, we consider that the same principles are applicable given the similarity in the wording of that provision and the provisions which are relevant in this case).

EVIDENCE

17. We had a bundle of documents and correspondence prepared by HMRC. This included witness statements from the HMRC Officer who issued the penalty assessments (Mr Crozier) and from a Border Force Officer who was involved in the seizure (Officer Maglione).

18. Mr Crozier and Officer Maglione gave oral evidence at the hearing. Mr Crozier's evidence was not really relevant to the question of dishonesty and Mr Shonubi had no questions for him.

19. Officer Maglione's evidence was much more relevant. His witness statement was, in effect, a transcript of the notes which he had made in his notebook approximately 2½ hours after the events in question.

20. Unsurprisingly, after a gap of almost three years, it was clear from Officer Maglione's oral evidence that he had little recollection of the specific events other than what he recorded in his notebook.

21. In addition, he was somewhat evasive at times. For example, when asked whether Mr Shonubi and his friend who was stopped at around the same time, Mr Ogedengbe, were similar in appearance, he suggested that he had only seen Mr Ogedengbe briefly despite the fact that he confirmed in his evidence that Mr Shonubi and Mr Ogedengbe were being questioned at the same time in his presence and in the same room at tables opposite each other.

22. For both of these reasons, we place limited reliance on Officer Maglione's evidence to the extent that this is not corroborated by his contemporaneous notes.

23. Mr Shonubi also gave oral evidence at the hearing. He was a somewhat difficult witness in that he took exception to the way in which questions were put to him by Mr Metzger and, on a couple of occasions, refused to answer any further questions although, for the most part, did answer the questions put to him.

24. Some of the evidence which Mr Shonubi gave was inconsistent with the record contained in Officer Maglione's notebook and with correspondence which passed between Mr Shonubi and HMRC prior to the appeal to the Tribunal. In reaching our conclusions, we have taken account of these inconsistencies as well as Mr Shonubi's explanation for the inconsistencies.

BACKGROUND FACTS

25. By way of background, we set out here findings of fact in relation to which there is no significant dispute as well as mentioning one particular point in respect of which there is a significant difference between the recollections of Mr Shonubi and Officer Maglione.

26. Mr Shonubi runs a management company in the entertainment industry looking after creators and musicians.

27. In October 2021, Mr Shonubi (who was then aged 21) travelled with a number of family and friends to Nigeria for a one week holiday. One of the friends with whom he was travelling was Mr Ogedengbe.

28. Whilst Mr Shonubi was in Nigeria he purchased 62,000 Benson & Hedges cigarettes for the equivalent of approximately £8,000. He packed these into three suitcases which were provided to him by his family in Nigeria. Mr Ogedengbe (who was aged about 18) purchased a similar quantity of cigarettes.

29. The party arrived back at Heathrow at approximately 6:30am on 17 October 2021. After collecting his baggage, Mr Ogedengbe entered the red channel but stated that he had nothing to declare. He was searched and 61,000 cigarettes were found. Mr Ogedengbe was questioned by Officer Maglione's female colleague, Officer Campbell and he mentioned that he was travelling with a friend.

30. The evidence from Officer Maglione's notebook (confirmed in his oral evidence) is that Officer Maglione, Officer Campbell and Mr Ogedengbe entered the baggage area to locate Mr Ogedengbe's friend, that Officer Campbell identified Mr Shonubi on the basis that his suitcases were similar to those of Mr Ogedengbe and that Officer Maglione then approached Mr Shonubi and escorted him to the green channel where he questioned him.

31. The significant difference in recollection is that Mr Shonubi believes that it was Officer Campbell who approached him in the baggage hall and that Officer Campbell questioned him as his recollection is that he was questioned by a lady and not by a man. He accepts that Officer Maglione was present in the green channel when he was questioned but his memory is that Officer Maglione was just supervising.

32. In our view, it is more likely than not that Mr Shonubi is mistaken in his recollection. The main reason for this is that the notes made by Officer Maglione in his notebook are a contemporaneous record of what took place. There is no obvious reason for him to say that he approached Mr Shonubi in the baggage hall if this was not what happened. Similarly, there is no reason for him to say that he was the person who questioned Mr Shonubi if, in fact, it was Officer Campbell. Given the passage of time, these notes are, in our view, the most reliable record of the events which took place.

33. Mr Shonubi suggested that Officer Maglione may have mixed up Mr Shonubi and Mr Ogedengbe as both of their passports were taken at the same time and that Officer Maglione may in fact have been interviewing Mr Ogedengbe and not Mr Shonubi. However, we do not consider this to be plausible given that, with one minor exception, Mr Shonubi agreed at the hearing that the record of the interview contained in Officer Maglione's notebook was accurate. It is difficult to see how Officer Maglione could have made an accurate record of the interview if he was not the person who conducted it.

34. We therefore conclude that, despite Mr Shonubi's recollection, it was Officer Maglione who approached Mr Shonubi in the baggage hall, who escorted him to the green channel and who then interviewed him.

35. We would however observe that, in our view, nothing significant turns on the question as to whether these actions were taken by Officer Maglione or by Officer Campbell given that Mr Shonubi did not seriously dispute any of the events which took place or the contents of the interview.

36. At no time did Officer Maglione ask Mr Shonubi if he had anything to declare, nor did he ask him whether he wished to enter the green channel or the red channel. When asked if he knew what was contained in his suitcases, Mr Shonubi confirmed that they contained cigarettes.

37. Whilst in the green channel, Mr Shonubi's luggage was searched and 62,000 cigarettes were found. The cigarettes were seized, along with the three suitcases in which they were packed.

38. Nothing further happened until September 2022 when HMRC got in touch with Mr Shonubi to say that they were considering charging civil evasion penalties and asked him to provide information about the events in question. Following a reminder, Mr Shonubi explained that he "generally was not aware of the limit of tobacco".

39. HMRC concluded that Mr Shonubi had acted dishonestly and so issued a civil evasion penalty assessment on 1 November 2022. The duty in question would have been £26,527 but HMRC reduced the penalty by 30% to reflect their assessment of Mr Shonubi's disclosure and co-operation so that the total of the penalties charged was £18,568.

40. Mr Shonubi made further representations on 7 November 2022 where he noted that he was not aware of "it being a crime" and explained that he was proposing to use the cigarettes for a music video.

41. Mr Shonubi requested an independent review on 16 November 2022. In this context, he provided some additional information on 5 December 2022. He reiterated the fact that he was not aware that travelling with too many cigarettes "was going to be an issue as they are both legal in the UK and legal in Nigeria". He also mentioned that he did not have the funds to pay the penalty.

42. HMRC concluded their review on 20 December 2022. This upheld the original decision to charge the penalty.

43. Mr Shonubi's appeal to the Tribunal was made on 23 January 2023. In the Notice of Appeal, Mr Shonubi mentions that he could not afford to take legal advice and that he could not pay the penalty as he had no job and no source of income.

44. With this background in mind, we now turn to the main issue which is whether Mr Shonubi's conduct involved dishonesty.

DISHONESTY

45. As a preliminary point, we note that the relevant legislation requires a person to engage in "conduct for the person of evading" any relevant duty. Although it is not a point raised by Mr Shonubi, we have briefly considered whether, in circumstances where a person is approached in the baggage hall and does not voluntarily enter one or other of the customs channels, there can be said to be conduct for the purposes of evading any duty given that the individual has not had an opportunity to declare the relevant goods.

46. Our conclusion however is that if there is an attempt to evade duty (whether or not successful) the relevant conduct would include all steps taken up to and including the detection of the relevant goods including for example the purchase of the goods, the arrival in the UK with those goods, the choice of which custom channel to go through (if there is such a choice) as well as any conduct after being stopped by the Border Force but before any seizure takes place.

47. There is therefore, in our view, conduct by Mr Shonubi which engages the relevant legislation even though he did not choose to enter the green channel as opposed to the red channel voluntarily. The question is whether that conduct involved dishonesty which is of course closely linked to the question as to whether the conduct was for the purpose of evading any duty.

48. Mr Shonubi's position is that he was not dishonest. He says that he was not aware that there were restrictions on bringing cigarettes into the UK, nor what any limits were. He also made the point that he was intercepted in the baggage hall, was taken to the green channel and was not given any opportunity to declare the cigarettes. His evidence was that, had he been given the opportunity, he would have declared the cigarettes and paid the duty.

49. Mr Shonubi also relies on the fact that it would make no sense for him to smuggle cigarettes into the UK as he had no use for the cigarettes (not being a smoker at the time) and was too busy with his own business to sell them in order to make a profit. He says that the cigarettes were for use in a music video for one of the artists which he looks after which would involve a police chase and then the police confiscating and burning the cigarettes.

50. Mr Metzger, on behalf of HMRC, invites the Tribunal to find that Mr Shonubi was dishonest. In support of this, Mr Metzger refers to the following:

(1) Given the sheer quantity of cigarettes imported by Mr Shonubi (310 times the allowance) it is implausible that he genuinely believed that he could bring those cigarettes to the UK without any restriction.

(2) There were signs at the airport which informed travellers of the relevant allowances.

(3) Mr Shonubi did not ask any Border Force Officer whether he needed to make a declaration. Mr Metzger suggests that the Tribunal should infer from this that Mr Shonubi knew that the quantity of cigarettes he had was in excess of any allowance and that he did not intend to make a declaration.

(4) When initially asked by Officer Maglione in the baggage hall whether he and Mr Ogedengbe were travelling together, Mr Shonubi did not answer the question. Mr Metzger submits that this is suggestive of evasive behaviour.

(5) Mr Shonubi gave answers to the questions he was asked in the green channel which he knew were incorrect.

(6) Given that Mr Shonubi was aware that the price of the cigarettes in Nigeria was much less than the cost in the UK, he had a strong motive for attempting to smuggle the cigarettes into the UK.

(7) Mr Shonubi did not voluntarily declare the cigarettes when he had the opportunity to do so (for example in the baggage hall when he was first intercepted or in the green channel when he was being questioned). Mr Metzger submits that the Tribunal should infer from this that Mr Shonubi had no intention to declare the cigarettes.

(8) In addition, Mr Metzger notes that Mr Shonubi had not suggested prior to giving evidence at the hearing that he ever intended to make a declaration (for example in the correspondence with HMRC in October-December 2022).

51. As we have already said, this is a civil and not a criminal matter. We are required to make a finding in relation to Mr Shonubi's honesty based on the evidence before us and whether, based on that evidence, we think it is more likely that Mr Shonubi was dishonest than not.

52. Based on these principles and applying the test for dishonesty explained by the *Supreme Court in Ivey* which we have set out in paragraph [13] above, our conclusion is that Mr Shonubi was dishonest. We will now summarise our reasons for coming to this conclusion.

53. The first thing we need to consider is Mr Shonubi's knowledge or belief as to the facts. In the context of this case, we consider that the relevant questions in this respect are whether he knew that there was a limit on the amount of cigarettes which he could bring into the UK without making a declaration and, if so, whether he knew or believed that the amount of cigarettes he was carrying was in excess of any limit.

54. As far as Mr Shonubi's knowledge that there might be a limit on the number of cigarettes he could import is concerned, when Mr Shonubi was asked by Officer Maglione if he knew his customs allowance for cigarettes, his answer was "no – not sure".

55. In his subsequent correspondence with HMRC, Mr Shonubi made the following statements:-

"I generally was not aware of the limit of tobacco."

"I was not aware of this being a crime."

"I was not aware of travelling with that many cigarettes was going to be an issue as they are both legal in the UK and legal in Nigeria."

56. The statements could be interpreted as meaning that Mr Shonubi did not know that there was any restriction at all on bringing cigarettes from Nigeria to the UK. However, they could also be consistent with Mr Shonubi knowing that there was some limit but not knowing exactly what that limit was.

57. At the hearing, Mr Shonubi somewhat changed his position. When he was asked by Mr Metzger whether, if he had any doubt as to whether the cigarettes needed to be declared, he should have asked for advice, his response was that he had never said that he did not need to declare the cigarettes and that, in fact, he intended to do so but just did not have the opportunity. Indeed, Mr Shonubi made the point that he did not have the opportunity to declare the cigarettes a number of times during his evidence and submissions.

58. Mr Shonubi's evidence was however inconsistent. Later on, when Mr Metzger put to him that he knew that he needed to declare the cigarettes, Mr Shonubi did not accept this. However, when asked by the Tribunal about his intentions, his response was that he would have declared the cigarettes. When asked specifically by the Tribunal about his response to Officer Maglione that he was not sure of his allowance, he confirmed that the response sounded correct and that he did not know if there was a restriction.

59. In the light of all of this evidence, our conclusion is that it is more likely than not that Mr Shonubi did know that there was a limit on the amount of cigarettes which a traveller

could bring into the UK. He may not have known exactly what the limit was but he understood that there was some sort of limit.

60. This is apparent in his response to Officer Maglione that he was not sure what the limit was. In addition, Mr Shonubi's suggestion that he would have made a declaration had he been given the opportunity to do so only makes sense if he knew that there was a limit on the amount of cigarettes which he could bring into the UK. As will be apparent from what we say below, we do not accept that Mr Shonubi in fact had any intention of making a declaration but the fact that he should even put this forward as an argument in support of his challenge to the penalties indicates to us that he did in fact know that there was a limit.

61. Although it is not a factor on reaching our conclusion on this point, we consider that the conclusion is supported by the fact that it is inherently unlikely that a traveller to the UK would not be aware that there is some sort of limit on the goods that can be imported.

62. As Mr Metzger says, there will normally be signs at the airport explaining what the allowances are. Although we accept that Mr Shonubi may not have seen any signs when he arrived at Heathrow (particularly bearing in mind that he had just got off a flight at 6.30 in the morning), it seems unlikely that anybody could fail to notice that there were two options for exiting from the baggage hall, one being a red channel where there were goods to declare and one being the green channel where there is nothing to declare. Admittedly this says nothing about specific restrictions in relation to tobacco products but it makes it less likely in our view that Mr Shonubi genuinely believed that there were no restrictions on the import of cigarettes.

63. Having concluded that Mr Shonubi was aware that there was a limit on the number of cigarettes that could be brought into the UK, the next question is whether, knowing that there was a limit, Mr Shonubi knew or believed that the quantity he was carrying exceeded that limit. Again, our conclusion is that, on the balance of probabilities, the evidence shows that he was.

64. As Mr Metzger notes, if a person knew there was a limit but was not sure what it was, they might be expected to ask for advice as to whether the quantity of cigarettes they were carrying exceeded any limit and therefore needed to be declared.

65. There is no evidence that Mr Shonubi did so, whether before he boarded the flight or after he disembarked. Mr Shonubi's explanation for this is that he was young and was not thinking about any rules or regulations. However, this is inconsistent with his suggestion that he intended to declare the cigarettes but did not have the opportunity to do.

66. In addition, we accept Mr Metzger's submission that it is implausible that somebody carrying 62,000 cigarettes could have thought that this quantity was below any relevant limit in circumstances where they were aware that there was a limit.

67. We also consider that Mr Shonubi's conduct when being interviewed supports the conclusion that he knew that he had cigarettes in excess of any limit. For example, when asked to open the suitcases, he claimed not to know the combination for the locks on the suitcases. The result of this was that the Border Force had to cut open the locks.

68. At the hearing, Mr Shonubi explained that he did in fact know the combinations and that he was "messing" with the border force as a result of the way in which he was being treated by them (effectively being treated as a criminal).

69. Mr Shonubi also told Mr Maglione that his bags had been packed by his cousin in Nigeria (although accepted that he knew they contained cigarettes). At the hearing, Mr

Shonubi again said that he had just been messing with the Border Force due to the way he had been treated and in fact had packed the suitcases himself.

70. Whilst we accept that Mr Shonubi may have been upset about the way he was being treated, his answers to Officer Maglione's questions are, in our view, more likely explained by the fact that he knew that he had been caught doing something wrong and was not simply a reaction to his treatment by the Border Force.

71. We consider that our conclusion is also supported by the fact that Mr Shonubi did not tell Officer Maglione that the number of cigarettes he was carrying was over the limit when Officer Maglione told him that the allowance was only 200 cigarettes.

72. In addition, we accept Mr Metzger's submission that the fact that Mr Shonubi did not answer when asked in the baggage hall whether he and Mr Ogedengbe were travelling together carries an inference that he had something to hide. This again indicates that he knew there was a limit to the quantity of cigarettes he could import and that he was carrying cigarettes in excess of that limit.

73. We should note that Mr Shonubi could not recall being asked this question. However, given the passage of time, we consider Officer Maglione's notebook to be the most reliable evidence of the events which took place and so we accept that the question was put to Mr Shonubi (and Mr Ogedengbe) in the baggage hall and that neither of them answered the question.

74. Our findings therefore are that Mr Shonubi knew that there was a limit on the number of cigarettes he could bring into the UK from Nigeria and that the quantity of cigarettes he was carrying exceeded whatever that limit was.

75. There cannot be any doubt that, given Mr Shonubi's state of knowledge or belief, he acted dishonestly unless he intended to declare the cigarettes on arrival in the UK but was unable to do so as a result of being intercepted in the baggage hall and taken to the green channel.

76. We do not however accept that Mr Shonubi had any intention of declaring the cigarettes.

77. As Mr Metzger points out, this is not a point which Mr Shonubi had raised prior to the hearing. Had he genuinely intended to declare the cigarettes but just had no opportunity to do so, we do not think it is credible that he would not have mentioned this in the various representations he made to HMRC (on three separate occasions) between October-December 2022.

78. Mr Shonubi's explanation for this omission was that he was waiting to understand the process and was trying to move on with his life. However, this does not explain why he would not mention, when asked by HMRC for an explanation of the events, a key reason for his actions such as the fact that he had an intention to declare the cigarettes had he been given the opportunity to do so.

79. As we have said, in those representations, Mr Shonubi relied only on the fact that he was not aware of the limits to what he could bring into the UK and the fact that bringing the cigarettes into the UK was not a crime.

80. In addition, if Mr Shonubi did intend to declare the cigarettes, it is in our view likely that he would have immediately said something to the Border Force Officer who intercepted him in the baggage hall, for example by saying that he intended to go through the red channel and declare the cigarettes.

81. The fact that Mr Shonubi was stopped in the baggage hall and taken straight to the green channel would not, in our view, have prevented him from making such a statement. That he had an opportunity to at least say something is apparent from the fact that he was asked in the baggage hall whether he and Mr Ogedengbe were travelling together but did not answer the question.

82. We accept that Mr Shonubi was never asked whether he had any goods to declare but, if he genuinely intended to declare the cigarettes, we would expect him to have volunteered this whether or not he was asked.

83. One explanation Mr Shonubi gave for not saying that he had cigarettes which he intended to declare was that it would make it look as if he had done something wrong. However, that makes no sense as declaring the cigarettes would be doing the right thing. It is failing to say anything which is wrong.

84. We also accept that Mr Shonubi may have felt that he was being dealt with in a way which was disrespectful or patronising and which made him feel like a criminal and that this had an effect on the way in which he reacted to the Border Force. However, if Mr Shonubi genuinely intended to declare the cigarettes on arrival in the UK, we would not expect that this would have had such a significant effect that he would not have said anything about this when he was being interviewed. It also does not explain why he did not say anything about it in his correspondence with HMRC.

85. Mr Shonubi's evidence was that the cigarettes had cost him approximately £8,000. He was not asked (and did not volunteer an explanation) as to where the funds for the purchase had come from. We know from HMRC's calculations that the duty which would have been payable had the cigarettes been declared would have been in the region of £26,000.

86. Mr Shonubi's own evidence in his correspondence with HMRC and in his Notice of Appeal to the Tribunal is that he has limited means. Whilst these documents date from late 2022 and early 2023 and so we have no evidence as to Mr Shonubi's means in October 2021, it is in our view reasonable to infer that his financial situation one year earlier (when he was only 21) is unlikely to have been significantly different.

87. Although we do not place any great weight on this point, this is, in our view, another factor which tends to support the conclusion that Mr Shonubi had no intention of declaring the cigarettes (and therefore having to pay the duty).

88. Mr Shonubi mentioned more than once in his evidence and his submissions that cigarettes are not an illegal substance and that he was not thinking about all the "legal stuff". Whilst this may be true, it seems to us that these statements are inconsistent with any intention to declare the cigarettes on arrival in the UK.

89. We should mention one final point which, in our view, supports the overall conclusion that Mr Shonubi acted dishonestly. This relates to his explanation as to what he intended to do with the cigarettes.

90. As we have said, Mr Shonubi says that he intended to use the cigarettes in a music video, in the course of which they would be burned. In his explanation to HMRC, he referred to a music video involving Stormzy which in fact did not involve cigarettes at all. In the light of this and considering Mr Shonubi's apparent financial position and the consequences of destroying of cigarettes which had cost him around £8,000 (and which were worth over £30,000 based on UK prices), the explanation given by Mr Shonubi is, in our view, implausible.

91. As Mr Metzger submits, we think it is significantly more likely that Mr Shonubi in fact intended in some way to profit from purchasing for £8,000 cigarettes in Nigeria which, in the UK, would be worth about four times that amount.

92. Given our finding that Mr Shonubi did not intend to declare the cigarettes on arrival in the UK, we have no doubt that his conduct was dishonest by the standards of ordinary, decent people.

REDUCTION OF THE PENALTIES

93. As we have said, Mr Shonubi does not challenge the calculation of the penalties or the 30% reduction which HMRC had applied. We have considered whether a higher reduction should be given but, for the reasons explained by Mr Crozier in his witness statement, we do not think that a greater reduction is appropriate.

DECISION

94. For the reasons which we have explained, we accept that Mr Shonubi engaged in conduct for the purpose of evading duty and that his conduct involved dishonesty. HMRC were therefore entitled to assess the penalties.

95. The 30% reduction granted by HMRC is appropriate in the circumstances.

96. The penalty assessments are therefore upheld and the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

97. 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.

**ROBIN VOS
TRIBUNAL JUDGE**

Release date: 18th JULY 2024