



Neutral Citation: [2025] UKFTT 00242 (TC)

Case Number: TC09435

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[By remote video hearing]

Appeal reference: TC/2023/10091

CUSTOMS DUTIES – Appellant in possession of 90,000 cigarettes at London City Airport, in excess of 200 cigarettes permitted for customs and excise relief - whether Appellant’s conduct involved dishonesty – yes – whether the reductions given by HMRC were fair – yes - Travellers’ Allowance Order 1994, sections 8 and 13 Finance Act 1994 and sections 25, 29 and 31 Finance Act 2003. Appeal dismissed.

Heard on: 20 January 2025
Judgment date: 20 February 2025

Before

**TRIBUNAL JUDGE RUTHVEN GEMMELL WS
TRIBUNAL MEMBER PATRICIA GORDON**

Between

IZZY IRIEKPEN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: The Appellant represented himself.

For the Respondents: Paul Marks, Litigator of HM Revenue and Customs’ Solicitor’s Office (“Counsel for the Respondents/HMRC”).

DECISION

INTRODUCTION

1. The form of the hearing was by video, and all parties attended remotely. The remote platform used was the Teams video hearing system. The documents which were referred to comprised of a Hearing bundle of 336 pages, an Authorities Bundle of 377 pages and a report from Ilsa Birmingham, a registered psychotherapist dated 17 December 2024 and submitted to the Tribunal Service on 20 January 2025 (“the medical report”).
2. The bundle contained the witness statements of Border Force (“BF”) Officer Graham Head (hereinafter “Officer Head”) and HMRC Officer Lesley Espie (hereinafter “Officer Espie”) who were all examined and cross-examined and who were credible witnesses.
3. The tribunal (hereinafter “the tribunal/we”) also heard evidence from Izzy Iriekpen, the Appellant (“hereinafter “the Appellant”) who was also cross examined by the Respondents (hereinafter “the Respondents”/“HMRC”) and whom we considered provided on occasions evasive answers to questions and contradictory evidence which consequently affected our assessment of his credibility.
4. The Appellant failed to attend the hearing at the start time of 1000. Attempts were made to contact him. He stated he was receiving hospital treatment on his finger/hand, but he had made no attempt to contact the Tribunal Service to advise them that he would be unable to join the hearing at the start time/date. On being advised that the hearing was set for a full day, he stated he would be available at 1300. The tribunal consented to this change but the time available for the hearing was consequently truncated.
5. 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 to observe the proceedings. As such, the hearing was held in public.
6. The Appellant appealed against the Respondents’ decision to issue a joint Customs Civil Evasion Penalty and Excise Civil Evasion Penalty in the sum of £25,583 (comprised of £5,664 Customs Civil Evasion penalty and £19,919 Excise Civil Evasion penalty) in relation to a seizure on 23 June 2022. This was notified to the Appellant by letter on 25 May 2023 (“the assessment”) in accordance with section 8(1) Finance Act 1994 and section 25(1) Finance Act 2003.
7. The Appellant does not accept that he was dishonest in attempting to enter the UK with 89,800 cigarettes and at the hearing disputed some of the statements he had made previously.

POINTS AT ISSUE

8. Whether the Appellant attempted to evade Excise and Customs duties due on 89,800 cigarettes by conduct involving dishonesty on 23 June 2022, and whether he is liable to a joint civil evasion penalty totalling £25,583.

BURDEN OF PROOF

9. The burden of proof in establishing 'conduct involving dishonesty' lies with HMRC as provided under s16(6) of Finance Act 1994 in respect of excise duty and s33(7)(a) of Finance Act 2003 in respect of customs duty and import VAT.
10. The test to be applied when establishing dishonesty is laid out in *Ivey v Genting Casinos (UK) Limited t/a Crockfords* [2017] UKSC 67 (“Ivey”), at [62]:

“62. Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whether an action was honest or dishonest...Successive cases at the highest level have decided that the test of dishonesty is objective. After some hesitation in *Twinsectra Ltd v Yardley* [2002] UKHL 12 ; [2002] 2 AC 164, the law is settled on the objective test set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 : see *Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37 ; [2006] 1 WLR 1476, *Abou-Rahmah v Abacha* [2006] EWCA Civ 1492; [2007] Bus LR 220; [2007] 1 Lloyd’s Rep 115 and *Starglade Properties Ltd v Nash* [2010] EWCA Civ 1314 ; [2011] Lloyd’s Rep FC 102. The test now clearly established was explained thus in *Barlow Clowes* by Lord Hoffmann, at pp 1479- 1480, who had been a party also to *Twinsectra*:

“Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.”

63. Although the House of Lords and Privy Council were careful in these cases to confine their decisions to civil cases, there can be no logical or principled basis for the meaning of dishonesty (as distinct from the standards of proof by which it must be established) to differ according to whether it arises in a civil action or a criminal prosecution. Dishonesty is a simple, if occasionally imprecise, English word. It would be an affront to the law if its meaning differed according to the kind of proceedings in which it arose.

and

74...The test of dishonesty is as set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* and by Lord Hoffmann in *Barlow Clowes*: see para 62 above.

When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

11. *Ivey* sets out that it is first necessary to establish the actual state of the individual’s knowledge or belief as to the facts. Once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.

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

13. The standard of proof is the civil standard on the balance of probabilities.

LEGISLATION

14. **Finance Act 1994, Sections 8(1), 8(4) and 8(5), Section 12(1A, 4, 5, 5A) and Section 13(1)**

(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 any conduct for the purpose of evading any duty of excise, and

(b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability), that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.

(...)

(4) Where a person is liable to a penalty under this section —

(a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and

(b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners.

(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.

(12) Assessments to excise duty

1A) Subject to subsection (4) below, where it appears to the Commissioners—

(a) that any person is a person from whom any amount has become due in respect of any duty of excise; and

(b) at the amount due can be ascertained by the Commissioners, the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.]

(4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say—

(a) subject to subsection (5) below, the end of the period of [4 years] beginning with the time when his liability to the duty arose; and

(b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;

but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.

(5) Subsection (4) above shall have effect as if the reference in paragraph (a) to [4 years] were a reference to twenty years [in any case falling within subsection (5A) (a) or (b)].

[(5A) The cases are —

(a) a case involving a loss of duty of excise brought about deliberately by the person assessed (P) or by another person acting on P's behalf, and

(b) a case in which P has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of duty of excise.]

13(1) Assessments to penalties

15. **Finance Act 2003, Sections 25(1), 29(1)(a), 30 and 31**

25 Penalty for evasion.

(1) In any case where —

(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. (...)

30 Demand for penalties

(1) Where a person is liable to a penalty under this Part, the Commissioners may give to that person or his representative a notice in writing (a “demand notice”) demanding payment of the amount due by way of penalty.

(2) An amount demanded as due from a person or his representative in accordance with subsection (1) is recoverable as if it were an amount due from the person or,

as the case may be, the representative as an amount of customs duty. This subsection is subject to —

(a) any appeal under [section 33] (appeals to tribunal); and

(b) subsection (3).

(3) An amount so demanded is not recoverable if or to the extent that —

(a) the demand has subsequently been withdrawn; or (b) the amount has been reduced under section 29.

31 Time limits for demands for penalties

(1) A demand notice may not be given—

(a) in the case of a penalty under section 25, more than 20 years after the conduct giving rise to the liability to the penalty ceased, or

(b) in the case of a penalty under section 26, more than 3 years after the conduct giving rise to the liability to the penalty ceased.

(2) A demand notice may not be given more than 2 years after there has come to the knowledge of the Commissioners evidence of facts sufficient in the opinion of the Commissioners to justify the giving of the demand notice.

16. **Customs and Excise Management Act 1979, Sections 78(3) and 139**

78 Customs and excise control of persons entering or leaving the United Kingdom.

(...)

(4) Any person failing to declare anything or to produce any baggage or thing as required by this section shall be liable on summary conviction to a penalty of three times the value of the thing not declared or of the baggage or thing not produced, as the case may be, or [level 3 on the standard scale], whichever is the greater. (...)

139 Provisions as to detention, seizure and condemnation of goods, etc

(1) Anything liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's armed forces or coastguard.

(2) Where anything is seized or detained as liable to forfeiture under the customs and excise Acts by a person other than an officer, that person shall, subject to subsection (3) below, either —

(a) deliver that thing to the nearest convenient office of customs and excise; or

(b) if such delivery is not practicable, give to the Commissioners at the nearest convenient office of customs and excise notice in writing of the seizure or detention with full particulars of the thing seized or detained.

(3) Where the person seizing or detaining anything as liable to forfeiture under the customs and excise Acts is a constable and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under those Acts it may, subject to subsection (4) below, be retained in the custody of the police until

either those proceedings are completed or it is decided that no such proceedings shall be brought.

(4) The following provisions apply in relation to things retained in the custody of the police by virtue of subsection (3) above, that is to say —

a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as to that thing, shall be given to the Commissioners at the nearest convenient office of customs and excise;

b) any officer shall be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police;

c) nothing in [section 31 of the Police (Northern Ireland) Act 1998] shall apply in relation to that thing.

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

(6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of anything as being forfeited, under the customs and excise Acts.

(7) If any person, not being an officer, by whom anything is seized or detained or who has custody thereof after its seizure or detention, fails to comply with any requirement of this section or with any direction of the Commissioners given thereunder, he shall be liable on summary conviction to a penalty of [level 2 on the standard scale].

(8) Subsections (2) to (7) above shall apply in relation to any dutiable goods seized or detained by any person other than an officer notwithstanding that they were not so seized as liable to forfeiture under the customs and excise Acts.

17. Travellers' Allowance Order 1994 – as amended by SI 1995/3044, SI 2008/3058 and SI 2009/3172

1. This Order may be cited as the Travellers Allowances Order 1994 and shall come into force on 1st April 1994.

2. –

(1) Subject to the following provisions of this Order a person who has travelled from a third country shall on entering the United Kingdom be relieved from payment of value added tax and excise duty on goods of the descriptions and in the quantities shown in the Schedule to this Order obtained by him in a third country and contained in his personal luggage.

(2) For the purposes of this article —

(a) goods shall be treated as contained in a person's personal luggage where they are carried with or accompanied by the person or, if intended to accompany him,

were at the time of his departure for the United Kingdom consigned by him as personal luggage to the transport operator with whom he travelled;

(b) a person shall not be treated as having travelled from a third country by reason only of his having arrived from its territorial waters or air space;

(c) “third country” –

(i) shares the definition that applies to that expression for the purposes of Council Directive 2007/74/EC (this is termed “outside country” below) (see both indents of Article 3(1) of the Directive) (value added tax and excise duty exemptions for travellers from outside the Member States of the European Union, etc); but

(ii) it incorporates the definition that applies for the purposes of that Directive to “territory where the Community provisions on VAT or excise duty or both do not apply” (this is termed “outside territory” below) (see both indents of Article 3(2) of that Directive); but

(iii) any outside territory where those “Community provisions on VAT” do apply (or where that Directive regards them as applying) is not a third country for value added tax purposes; and

(iv) any outside territory where those “Community provisions on ... excise duty” do apply (or where that Directive regards them as applying) is not a third country for excise duty purposes

(3) Where the person's journey involved transit through an outside country, or began in outside territory, this Order applies if that person is unable to establish to an officer of Revenue and Customs that the goods contained in that person's personal luggage were acquired subject to the general conditions governing taxation on the domestic market of a member State and do not qualify for any refunding of value added tax or excise duty

1. The reliefs afforded under this Order are subject to the condition that the goods in question, as indicated by their nature or quantity or otherwise, are not imported for a commercial purpose nor are used for such purpose; and if that condition is not complied with in relation to any goods, those goods shall, unless the non-compliance was sanctioned by the Commissioners, be liable to forfeiture.

[That condition is complied with, for example, where an occasional importation consists exclusively of goods intended as presents, or of goods for the personal or family use of the person in question.

No relief shall be afforded under this Order to any person under the age of 17 in respect of tobacco products [alcoholic beverages and alcohol].

Schedule -

Tobacco products 200 cigarettes, or 100 cigarillos, or 50 cigars, or 250 grams of smoking tobacco. Notes: (k) Each respective amount represents 100% of the total relief afforded for tobacco products;(l) For any one person, the relief applies to any combination of tobacco products provided that the aggregate of the percentages

used up from the relief the person is afforded for such products does not exceed 100%.

18. **HMRC Notice 300 Customs civil investigation of suspected evasion**

2.4 Penalty for evasion of the relevant tax or duty

A penalty may be imposed in any case where:

- a person engages in any conduct for the purpose of evading any relevant tax or duty; and
- his conduct involves dishonesty (whether or not such as to give rise to any criminal liability).

The penalty that the law imposes is an amount equal to the relevant tax or duty evaded or sought to be evaded.

The penalty can be mitigated (reduced) to any amount, including nil. Our policy on how the penalty can be reduced is set out in Section 3.

3.2 By how much can the penalty be reduced?

You should tell us about anything you think is relevant during the investigation. At the end of the investigation we will take into account the extent of your co-operation.

The maximum penalty of 100 per cent import duties evaded will normally be reduced as follows:

- Up to 40 per cent - early and truthful explanation as to why the arrears arose and the true extent of them.
- Up to 40 per cent - fully embracing and meeting responsibilities under the procedure by, for example; supplying information promptly, providing details of the amounts involved, attending meetings and answering questions.

In most cases, therefore, the maximum reduction obtainable will be 80 per cent of the value of import duties on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a complete and unprompted voluntary disclosure.

19. **HMRC Notice 160 Compliance checks into indirect tax matters**

2.3 How can penalties be reduced?

It's for you to decide whether or not to co-operate with our check, but if you do, you should be truthful. If you make a statement to us you know to be false during our check, you could face prosecution.

If you choose to co-operate and disclose details of your true liability, then you can significantly reduce the amount of any penalties due.

You should tell us about anything you think is relevant when we are working out the level of the penalty. At the end of the check we will take into account how much you have co-operated.

2.3.1 Reductions under Civil Evasion Penalty Rules

The maximum penalty of 100% tax evaded will normally be reduced as follows:

- up to 40% - early and truthful explanation as to why the arrears arose and the true extent of them
- up to 40% - fully embracing and meeting responsibilities under this procedure by, for example, supplying information promptly, quantification of irregularities, attending meetings and answering questions.

In most cases, therefore, the maximum reduction obtainable will be 80% of the tax on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a full and unprompted voluntary disclosure.

EVIDENCE AND FACTS

20. On 23 June 2022, the Appellant travelled from Nigeria to London City Airport. The Appellant was intercepted, and BF say he was stopped in the green channel (“the green channel evidence”), where travellers enter if they have nothing to declare on which to pay duty. The Appellant in his evidence at the tribunal hearing disputed that he had been stopped “in the green channel” and said that he had been stopped prior to entering it as Officer Head was walking in the area prior to the green channel, which also contained a telephone for those to declare duty and which represented the red channel, and approached him before he had reached the green channel (“the no channel evidence”).

21. The Appellant confirmed to Officer Head that: (1) he had been away for 6 days to visit family; (2) his luggage belonged to him; (3) he had packed his luggage; (4) he was fully aware of their contents; (5) no one had asked him to bring anything into the UK; and (6) he was aware of the restrictions in place regarding firearms, controlled drugs, etc..

22. Officer Head has been employed by HMRC/BF for 24 years and 12 years of those have been spent in airport duty roles in airports including London City Airport.

23. Officer Head said that the Appellant stated that he was not aware of the allowances for cigarettes and alcohol and when he asked the Appellant if he knew that he could only bring 200 cigarettes into the UK duty free, the Appellant replied, “No, is that all”.

24. The Appellant was then asked if he had cigarettes in his luggage, which he confirmed and when the Appellant was questioned as to how many, he stated, “I’m not sure”. This evidence was not disputed by the Appellant.

25. The Appellant was in possession of three large suitcases, a rucksack and a small ‘man bag’. The Appellant stated in evidence at the hearing that not only was he stopped before he had entered the green channel but that he also said straightaway he had cigarettes and was not given an opportunity to declare these before Officer Head searched them. It was estimated that the time between the Appellant replying, “I’m not sure” and the BF officer opening a large suitcase which was full of Esse Change Double KSF cigarettes was approximately 30 seconds. The other two suitcases contained cigarettes: in total there were 90,000 cigarettes.

26. When the Officer Head asked the Appellant why he had so many cigarettes, he replied, “For a wedding party” and in subsequent correspondence he then said they were for “gifts”. At the hearing he stated they were for “wedding gifts”.

27. Officer Head explained that London City Airport is a small airport and that the whole area between the green channel and the baggage collection facility is no more than 50 metres. It is only possible to exit the airport by going through the green channel.

28. This is because the red channel is simply a well signed telephone where passengers can arrange to declare goods and pay duty. They must use the red channel telephone to contact a BF Officer who comes to deal with the declaration. When any duty has been paid, passengers then exit the airport through the green channel as this is the only exit from the baggage area to the airport concourse.

29. The search of bags takes place in a room adjacent to the green channel.

30. The Appellant stated he was asked for his passport and details which he readily gave and when asked what was in his luggage stated and told the limit of cigarettes that could be brought into the UK without paying duty, he replied that he did not know of any limits.

31. The Appellant considered that he was honest in the answers he gave to questions when questions were directed to him. Accordingly, he considered he did not attempt to conceal anything. The Appellant stated, in relation to whether or not he was stopped in the green channel, that HMRC should get “the video camera evidence which will show this”.

32. The Appellant, at the hearing, stated that he had not been in the green channel when he was stopped by Officer Head and denied that he was not going to declare anything unless asked by a BF Officer. He stated that he had been stopped before he could declare anything.

33. The tribunal asked the Appellant why he would wish to ‘declare anything’ and what was he going to declare, when he claimed he was not aware of any duty that was payable on any of his goods.

34. It was put to the Appellant that it is not logical to declare goods if the owner believed that there was no duty payable on them. That is the purpose of using the green channel. The Appellant replied that he was “not sure”, and he only gave information when asked.

35. The Appellant stated that it had been a long trip and when he picked up his luggage, he did not know about the duty-free allowances and thought there was no need to ask someone. The Appellant did not believe this had anything to do with being honest or dishonest.

36. The goods were seized, and the Appellant was issued with a BOR156 form (a seizure information notice), and BOR162 form (a warning letter about seized goods) which he signed. The Appellant was also given a copy of Notice 1 and Notice 12A. No appeal was made against the seizure.

37. The Appellant took responsibility for all the goods by signing form BOR156.

38. The matter was then passed to HMRC and taken up by Officer Espie who had worked for HMRC for 33 years and whose evidence was credible. At the relevant time she was in the post detection border team and had received a copy of the contemporaneous notes from Officer Head.

39. On 30 March 2023, the Respondents issued an initial letter to the Appellant to inform him of HMRC’s enquiry into his Customs Duty, Import VAT, and Excise Duty affairs as they had reason to believe that the Appellant was engaged in conduct involving dishonesty. The letter asked the Appellant to confirm receipt of the letter and invited him to co-operate with the enquiry.

40. The Appellant was notified that co-operation could significantly reduce any penalties that may become due and requested that any representations be given within 30 days. PN300 (Customs civil investigation of suspected evasion), PN160 (Compliance checks into indirect tax matters) and CC/FS9 (The Human Rights Act and penalties) were also enclosed with the letter. The DSC1 (email disclaimer) was also attached for the Appellant's attention.

41. This letter asked a detailed number of questions including:

“confirmation of who was involved in the smuggling (attempt); a full explanation of how the smuggling (attempt) was carried out. Confirmation as to how many times and when (the date) alcohol and tobacco products were smuggled (or attempts made to smuggle) into the UK, for each occasion, please state the quantity of goods. Details of all international travel during 23 June 2021 to 30 March 2023 including the reasons for travel. Any documentation you think will support the information you are providing. Any other information or explanations you think may be of use to this check.”

42. On 18 April 2023, the Respondents issued a reminder letter to the Appellant, along with a copy of the initial letter sent to the Appellant dated 30 March 2023. The Appellant was requested to respond to the letter by 1 May 2023.

43. On 25th April 2023, the Appellant wrote to HMRC providing his name and date of birth and saying that he had:

“received a letter from HMRC about a matter I thought was done with. I was told at the airport that this was a warning. Please forgive my ignorance. I went to visit my mother in Nigeria and decided to bring some cigarettes back to the UK as gifts. I had no idea of the law I was breaking. I was complaint (sic) with the airport staff and answered everything they asked of me. I made a mistake which will not be made again and for that I am very sorry.”

44. On 26 April 2023, the Respondents sent an email to the Appellant acknowledging his agreement to correspond by email. Furthermore, in this email the Appellant was asked for details of international travel for the period 23/06/2021 to 30/03/2023.

45. A response was received that same day from the Appellant with details regarding his travels and the destinations he had travelled to, being Nigeria, Turkey, Amsterdam, Brazil and Gambia in the 21-month period.

46. On 25 May 2023, the Respondents issued a Notice of Assessment for a Civil Evasion Penalty in the sum £25,583. The Notice of Assessment explained how the penalty had been calculated and explained that the penalty had been reduced from £39,360 to £25,583, applying a reduction of 15% for disclosure and 20% for cooperation and advised that a reduction of 35% had been given.

47. The Appellant was advised that he had 30 days from the date of the letter to request a review or appeal the decision to a Tribunal if he did not agree with the decision. The letter enclosed a copy of the Duty schedule and form ESY1.

48. On 15 June 2023, the Appellant contacted HMRC and said:

“I do not really know where to start. June 23, 2023, I travel back from Nigeria with some cigarettes. I have never done anything like this before nor will I again. I truly was not trying to be dishonest with my actions. Once the gentleman asked me about my luggage. I told

him instantly what was in the bag. I gave them all the information he asked for. I was told this was a warning and now I have been given a fine of £25,583 which has given me anxiety daily as I contemplate how I can pay this. I am on £30,000 a year and also in a lot of credit card debt. I am just trying to catch up with all the debts and the cost of living. I take full responsibility for my mistakes and I am hoping you can please review this case again”.

49. On 7 July 2023, the Appellant was issued with a Review Conclusion Letter stating that the decision was upheld. The reviewer considered that the Appellant’s behaviour demonstrated that this was a preplanned attempt to import cigarettes in excess of the permitted allowance and that no reasonable honest person would seriously believe that it was in the law to import this number of cigarettes without making a declaration.

50. The reviewer considered that when the Appellant was told he could only bring 200 cigarettes into the UK and the Appellant replied “No, is that all”, this response indicated that although the Appellant may not have been aware of his exact allowance, he was aware that allowances existed. The reviewer also believed that an honest person intending to buy 90,000 cigarettes would have checked the permitted allowances from the Government website or appropriate official if they were in any doubt.

51. The reviewer considered that when asked how many cigarettes the Appellant was carrying and he replied “I’m not sure”, it was reasonable to suggest that the Appellant’s answer was evasive given that he had previously stated he was fully aware of the contents of his luggage and that he had packed it himself.

52. The reviewer then considered the Appellant’s disclosure of his travel several times in the period of the enquiry and concluded that, consequently, as a frequent traveller the Appellant would have had experience of customs channels and what they represent. The reviewer also stated that the Appellant would be aware of the essential customer information at both the baggage reclaim and customs declaration areas, detailing the allowances for tobacco products when travelling to the UK. The reviewer did not find it credible that the Appellant believed he was entitled to import 89,800 cigarettes without making a declaration.

53. The reviewer did not consider that the reason given for the cigarettes being purchased was for a wedding party was plausible though the intended use was not the issue. The reviewer concluded by saying that there were clear indications of dishonesty and conduct which was done only for the purposes of attempting to evade duty and tax.

54. The reviewer considered that an honest person in any doubt would take the necessary steps to ensure they did not exceed the permitted amount and that as a frequent traveller the Appellant would have been aware of customs channels and what they represented as well as the signage available throughout UK airport explaining the allowances for tobacco goods.

55. The reviewer stated that given that the Appellant was fully aware of the contents of his luggage, she questioned why he did not answer with the exact amount or at least an approximation when asked. She continued “it reasonable to suggest that this was because you were fully aware you were carrying cigarettes in excess of the permitted amount.”

56. The reviewer then upheld the amounts of the reductions of 15% for disclosure and 20% for cooperation and confirmed that the correct recommended retail price had been used, and the correct duty rate had also been applied.

57. On 29 September 2023, the Appellant lodged a late appeal to the First Tier Tribunal.

58. On 30 October 2023, the Respondents informed the Tribunal that they consented to the late appeal.

59. At the tribunal hearing, the Appellant disputed, as noted, that he had entered the green channel and had not been given the opportunity to declare the goods before being stopped. On being stopped he only answered the questions he was asked and did not provide any further information but was forthcoming and in doing so was honest.

60. Whilst acknowledging his responsibilities for not checking the limits, he said the reason for the lack of declaration was an oversight, not dishonesty. The Appellant stated that he did not engage in any behaviour he thought was dishonest and claimed that Officer Head who confiscated the cigarettes was aggressive and that he was under the impression that no further penalty would be imposed other than confiscation of the cigarettes.

61. The Appellant, when cross examined, denied that he was not going to declare anything unless asked but said he was stopped before he could. He was then asked if he was going to the red channel and declare the goods but replied that he “was not sure”. This was the first occasion when the Appellant had stated that he did have some goods to declare but had not have the opportunity to do so as this was not mentioned in any of his discussions and correspondence with HMRC prior to the hearing.

62. The Appellant was asked why, if he was now claiming he had not been in the green channel, he had accepted notification of this in all the corresponding with HMRC and had not challenged it. The Appellant said he did not believe he needed to. When asked why he was now saying that the cigarettes were for a gift rather than for a wedding as he said at the time of the seizure, he replied that the cigarettes were for gifts to the wedding guests who were likely to number 1,000.

63. Counsel for HMRC suggested that an honest person would ask first rather than only wait to be asked a question. The Appellant replied that it would be honest to wait until he was asked. The Appellant stated that he had been on a long trip and did not know he needed to ask someone. The airline had not told him about the limits on tobacco and that this was nothing to do with him being honest or dishonest.

64. The Appellant stated that despite all his travels, he was not fully aware what duty-free shops were for, but he confirmed that he had bought perfume in one of them but only because it was somewhere to shop. He said that when he goes to an airport he does not bother with duty-free shops but merely goes to the boarding gate to await his flights, disagreed that he must have been aware that there were limits and did not recognise that the shops exist primarily to allow travellers to take advantage of the duty free allowances.

65. He stated that on a previous journey he had declared foodstuffs, being mangoes, as he believed there was a restriction on their import into the UK. It was not the case that he did not declare anything unless he was stopped and disputed that if he had not been stopped at London City Airport, he would have walked out of the airport without paying duties.

66. He neither agreed nor disagreed with HMRC’s contention put to him that honest persons would have checked the allowances and if they were not sure they would have checked.

67. The Appellant disputed the value of the cigarettes used in calculating the penalty at £9.50 per 20 , which was the price used by HMRC being the cheapest cigarettes available in the UK inclusive of duty, as he stated that the cigarettes were of poor quality and not for sale in the UK.

68. He believed the price was £2 or less per packet of 20 but produced no other evidence to corroborate this. He confirmed that he had not preplanned the purchase of the cigarettes and had bought the suitcases in Nigeria to transport the cigarettes to the UK. The Appellant was asked why he thought the cigarettes are much cheaper in Nigeria than in the UK but did not consider that the imposition of duty in the UK was a factor.

69. HMRC disputed the Appellant's contention that he was intending to declare the cigarettes but was stopped before he had the chance to do so as if he did not know he should have asked and if he did know he should have said something before being asked. The Appellant disputed HMRC's contention that he knew there were restrictions and thought he might get away with it.

70. The medical report dated 17 December 2024 stated that the Appellant had been referred to counselling services at the beginning of 2024 and had completed 16 sessions. It stated that the Appellant presented with "symptoms of stress, anxiety and difficulty sleeping. The report continued "These symptoms may be linked to the severe pain he suffers from a dislocated wrist... The sessions continue to help this client to positively manage stress and anxiety, sleep concerns and cope with any further demands which present themselves."

APPELLANT'S SUBMISSIONS

71. The Appellant stated that he was honest and did not engage in any activities that he thought were dishonest.

72. Although there were restrictions on some goods that can be brought into the UK, such as foodstuffs and mangoes he had declared on a previous trip, he was not aware of the allowances for tobacco.

73. Furthermore, he was not given an opportunity to declare the duty on the cigarettes at the red channel before he was intercepted by Officer Head and questioned.

74. He says that he answered all questions promptly and made full disclosure. He told the truth because he answered the questions that he was asked and did not consider it dishonest to behave otherwise.

75. He says that it was an honest mistake and that although he takes his responsibilities seriously and is sorry, he does not think that the penalty should be levied.

76. The Appellant was led to believe that the confiscation and a warning was the end of the matter and is suffering from stress as a result of what he sees is his inability to pay the penalty.

77. The Appellant says he has cooperated fully with HMRC and made full disclosure. Accordingly, the level of deductions from the penalty are too low.

78. The confiscation is penalty enough and the tribunal should consider that as the penalty and cancel the civil evasion penalty.

79. The Appellants says he has insufficient funds to pay the penalty if it is levied.

80. The tribunal should take into account the impact this has had on his health as evidenced by the medical report.

HMRC'S SUBMISSIONS

Dishonesty

81. HMRC refer to section 8(1) parts (a) and (b) of the Finance Act 1994 (“part (a) and part (b”).

82. HMRC, relying on Officer’s Head’s and the Appellant’s verbal and written evidence prior to the hearing, say, there is no issue as to part (a), in that the Appellant entered the green channel with goods which ought to have been declared which is conduct for the purpose of evading duty.

83. HMRC dispute the Appellant’s no channel evidence which he has made for the first time at this hearing. He has ‘made this up’ and is being untruthful.

84. Part (b) is contested.

85. The Appellant states that he was unaware of allowances for cigarettes and, therefore, cannot have been dishonest because he did not know of a restriction, and he simply made a mistake. In evidence he says he was unsure, and he did not know what to do.

86. The Respondents submit that the Appellant was or must have been aware of restrictions of goods entering the UK, and, therefore, was dishonest when he entered the green channel instead of the red one with 90,000 cigarettes, He did not declare the cigarettes at the red channel or on first being stopped.

87. There are customs signs as you enter the green channel at all UK airports which display the relevant restrictions.

88. The Respondents submit that it is not plausible for a person to be aware of some restrictions on goods, as admitted to the UKBF officer when he was asked:

“Are you aware you can’t bring certain goods into the UK like firearms, controlled drugs, indecent and obscene material and weapons and explosives?”

to which the answer was:

“Yes,”

but then not to be aware there were, or even might be, restrictions for tobacco.

89. If the Appellant is found not to have been directly aware of the tobacco restrictions, it is submitted that he chose not to find out, and as such, has indirect knowledge that he was doing something he really ought to have checked, and it is the act of not checking which was dishonest.

90. Whilst it is accepted that one might not read the signs – they are so obvious that one knows the signs are there – it is submitted that when you bring goods back from other countries, and you are aware that some items cannot be brought back, you should check the signs to ensure that any goods that you carry back are in accordance with regulations.

91. That is what any normal, honest person would do.

92. The Appellant, even if his version of events is to be believed, in not actively checking prior to travel or reading readily available signs at the point where he decided to enter the green channel, or in any event when first questioned if he had been stopped ‘before he could declare the goods’, as he now contends, acted dishonestly.

93. This was not the first time the Appellant had travelled abroad. As confirmed to the Respondents’ officer by email on 26 April 2023, the Appellant travelled outside the UK in the two years prior to this journey to Nigeria, Turkey, Amsterdam, Brazil and Gambia.

94. He had to have ignored all customs signs on each and every occasion he travelled back to the UK in order to be ignorant of the possibility of there being cigarette limits.

95. The Respondents rely on the statement of Lord Scott in *Manifest Shipping* for a definition of 'blind-eye knowledge', that being a form of knowledge, at [112]:

“...“Blind-eye” knowledge approximates to knowledge. Nelson at the battle of Copenhagen made a deliberate decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. It is, I think, common ground - and if it is not, it should be - that an imputation of blind-eye knowledge requires an amalgam of suspicion that certain facts may exist and a decision to refrain from taking any step to confirm their existence. Lord Blackburn in *Jones v Gordon* (1877) 2 App Cas 616, 629 distinguished a person who was “honestly blundering and careless” from a person who,

“refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind – I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover”.

Lord Blackburn added “I think that is dishonesty”.”

96. The Respondents say that ‘Nelsonian blindness’ can show intentionality - see Judge Poon’s summary of Lord Reed’s observations in *Canada Square*, at [86] of *Hague*:

“In the recent decision of *Canada Square Operations Ltd v Potter* [2023] UKSC 41, Lord Reed observed that wilful or Nelsonian blindness corresponds to constructive knowledge and would provide the necessary intentionality for deliberate behaviour.”

97. Even if the Tribunal does not extend the concept of ‘Nelsonian blindness’ to equate to dishonesty in itself, the Respondents will say that it does equate to knowledge - in this instance of the existence of importation limits - and would cite the view of Lord Bridge in *Westminster CC v. Croyalgrange Ltd* [1986] 2 All ER 353 at [359]:

“...that it is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.”

98. Applying that situation to the present one, the Appellant:

1. knew that there were some restrictions on goods entering the UK,
2. conducted multiple trips outside the UK in the immediate two years prior to this journey,
3. chose not to find out whether those restrictions applied to his goods, (i.e. by not making prior investigations and wilfully ignoring the signs), and
4. declared he was compliant with all restrictions (by entering the green channel) or on his revised evidence, by failing to declare his cigarettes at the first opportunity when stopped if as he now claims he wished to declare them.

99. In these circumstances, the Respondents submit that if that declaration turned out to be wrong – which it was – the Appellant is deemed to have known it was wrong – even if he was not aware of the extent of that error.

100. The question is whether an honest person would have acted as the Appellant did, and the Respondents say no.

101. The test in *Ivey* for dishonest conduct is at [74] set out above.

102. The Tribunal must establish whether the Appellant genuinely believed there were categorically no restrictions on the importation of tobacco.

103. If the Appellant's statement that he was intending to declare the cigarettes but was stopped before he had the chance to do so and, therefore, did not have an opportunity to go into the green channel where BF say he was stopped is correct, he cannot then say he did not know whether or not duty was payable, as he was intending to declare the goods.

104. If on the other hand, he did know he should have said so immediately to Officer Head on being stopped. HMRC say that he knew there were restrictions and hoped that he might get away with it by proceeding through the green channel where he was in fact stopped and questioned.

105. There was plenty of time during his questioning for him to make the declaration about the cigarettes, but he did not do so even though one of the questions referred to the limit of 200 cigarettes which the Appellant said he did not know about and was surprised at how low it was. That was the opportunity for the Appellant to say he had 90,000 cigarettes but he kept quiet.

106. However, if the Appellant held a suspicion there might have been (and HMRC say that he must have had a suspicion because he was aware that some goods were restricted, and was a regular traveller), then the Nelsonian blindness/'blind eye' knowledge principle applies.

107. The Respondents submit that if the Appellant had any suspicion about goods restrictions, which they say he must have done as he did know about restrictions with regards to drugs, weapons etc., then his belief that there were no restrictions on tobacco or other excise goods, should be disregarded because he has wilfully chosen not to check.

108. If that has been established, and the Appellant either knew or is deemed to have known about restrictions on goods, the importation of 90,000 cigarettes with the knowledge that there is an allowance is clearly submitted to be dishonest on an objective basis.

Quantum and Reductions

109. Finance Act 1994 s.8(1), and Finance Act 2003 s.25(1) sets the penalty level at an equal amount to the duty, so the penalty level is £39,074.

110. The level can be reduced, although the reductions and how reductions can be awarded, are non-statutory, simply 'as they think proper' under s.29(1)(a) Finance Act 2003.

111. The Respondents reduced a penalty in accordance with two factors which can lead to a maximum reduction of 80%, as identified in Note 160 –

Up to 40% for an early and truthful explanation (co-operation)

Up to 40% for supplying information promptly and answering questions (disclosure)

112. The case officer has allowed 15% for co-operation and 20% for disclosure.

113. The reductions were set by Officer Espie because she concluded that the Appellant's explanations were different to those given to Officer Head and in his correspondence (wedding party v gifts) and as he did not answer all questions when initially asked but provided information over a number of emails and with prompts.

114. The Respondents do not agree that he told the truth when he said that he was not aware of any tobacco restrictions, which limits how much he can receive for disclosure.

115. The co-operation reduction reflects the delay in answering questions, although it is accepted the delay was rectified upon repeated asking, and the overall enquiry took two months before Officer Espie had sufficient information to issue the penalty.

116. The Tribunal has full appellate jurisdiction over the reductions, and can either confirm the reductions given, or substitute their own reductions as they see fit.

Conclusion

117. The Respondents submit that the Appellant acted dishonestly in that he either:

1. Directly knew of tobacco restrictions and went through the green channel anyway, which was dishonest, or failed to disclose them immediately upon being stopped and questioned by BF; or

2. He knew of restrictions on certain goods but chose not to check about tobacco despite bringing back nearly 90,000 cigarettes, and

either:

3. It was his decision not to check about tobacco which is the dishonest conduct as per Lord Blackburn in *Jones*,

or

4. The decision to not check is ‘Nelsonian blindness’, which infers knowledge of importation limits, and thus sufficient knowledge to render entering the green channel a deliberate act, and so objectively dishonest under the *Ivey* test.

118. The Respondents submit that their reductions were reasonable and should be confirmed.

119. The Respondents respectfully submit the appeal should be dismissed.

THE TRIBUNAL’S DECISION

120. The relevant legislation is set out in detail in this Decision and in essence relates to evading duties where conduct involves dishonesty. It expressly prohibits considering whether or not the Appellant has an insufficiency of funds.

121. The standard, which the tribunal accept is as applicable in civil as it is in criminal actions, by which the law determines whether there is dishonesty is objective, and the tribunal’s task is to ascertain the actual state of the Appellant’s knowledge or belief as to the facts. It is not a requirement that that belief must be reasonable; the question is whether it is genuinely held.

122. Having ascertained this, the test is whether the Appellant’s conduct was honest or dishonest determined by applying the objective standards of ordinary decent people. There is no requirement that the Appellant must appreciate that what he is doing is, by those standards, dishonest.

123. The penalty is the amount equal to the relevant tax or duty evaded or sought to be evaded but can be reduced in certain circumstances.

124. At the hearing there was a conflict between the green channel evidence and the no channel evidence. The tribunal considered that the green channel evidence was credible and that the no channel evidence was not for the following reasons:

Until the date of the hearing, the evidence was undisputed that the Appellant had been stopped in the green channel. This was confirmed by the written evidence of the Appellant when communicating with HMRC.

There was no dispute as to the evidence noted by Officer Head in respect of the questions he asked, and the responses given by the Appellant.

There was no objection or appeal against confiscation which would be likely if the stated intention was to declare goods and pay duty.

It was not credible for the Appellant to say he was going to declare goods and pay duty, if only he had been given an opportunity to do so, and at the same time state that he did not believe he had any goods on which duty was payable. The appellant's contention in this respect is illogical.

If the Appellant was intent on declaring the goods and paying duty he could and should have said so on immediately being stopped by Officer Head, but he did not.

125. When questioned by Officer Head he did not answer with the exact amount or at least an approximation of the exact number of cigarettes he was carrying, and the tribunal consider that it was because the Appellant was aware he was carrying cigarettes in excess of the permitted amount.

126. The tribunal consider that the Appellant was fully aware of the existence of tobacco restrictions because of the terms of his response when asked if he knew about these and that the limit was 200 cigarettes, said "No, is that all".

127. In the circumstances and on these facts the Appellant was dishonest

128. The Appellant chose not to find out what the restrictions might be and to that extent "deliberately shut his eyes to the obvious". At best, the tribunal believed he suspected that there were limits but did not want his suspicions confirmed.

129. The Tribunal find, in these circumstances and in view of these facts, that the Appellant had an indirect knowledge of something he ought to have checked and that his act of not checking was dishonest.

130. The Appellant was aware of restrictions in relation to bringing goods into the UK as evidenced by his declaring mangoes on a previous occasion. He had had experience of interacting with BF on entering the UK.

131. The tribunal did not consider it credible that he had travelled so extensively over a 21-month period and was not aware of the rationale for duty-free shops and the very clear signs throughout UK airports concerning what goods and the amounts which are duty-free and those that need to be declared.

132. It was not credible that he believed he was entitled to import 89,800 cigarettes without making a declaration and the fact is that he did not do so when he could have done on being first stopped by Officer Head.

133. The tribunal concluded that an ordinary decent person being an honest person in any doubt would have taken the necessary steps to ensure that they did not exceed any permitted amounts, and the Appellant did not do so.

134. We did not believe he genuinely believed there were no restrictions on the importation of tobacco.

135. There was no contrary evidence to contradict the calculations made by HMRC in relation to the customs and excise duty penalties and the tribunal considered that the deductions given by HMRC were, in all the circumstances fair and reasonable and are confirmed.

136. To the extent that the tribunal could consider the medical report, as requested by the Appellant, and although the tribunal was sympathetic, it had to note that the symptoms may be linked to the severe pain the Appellant suffered from a dislocated wrist which is not relevant to the financial consequences of the imposition of an assessment by HMRC.

137. It is understood that the Appellant had been in contact with HMRC about any available procedures for the of phased payment for any amounts due to them but in any event, the law does not allow the tribunal to take into account the insufficiency of funds for paying any duty or penalty.

138. We preferred the submissions made by HMRC to those made by the Appellant in relation to dishonesty and agreed with the conclusions set out by the review officer in the Review Conclusion Letter of 7 July 2023.

139. For the reasons stated, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

140. 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.

**WILLIAM RUTHVEN GEMMELL
TRIBUNAL JUDGE**

Release date: 20th February 2025