



**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/03800**

**BETWEEN**

**SALIM AHMED**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE PETER HINCHLIFFE  
DUNCAN MCBRIDE**

**Sitting in public at Taylor House, London EC1 on 12 March 2020**

### **DECISION**

1. The appeal was upheld in part.
2. The Tribunal does not have jurisdiction to determine the validity of the forfeiture of the 64,000 cigarettes that Mr Ahmed brought into the UK on 18 February 2018.
2. The penalty on Mr Ahmed for his failure to pay excise duty was reduced to reflect Mr Ahmed's co-operation with HMRC

### **Summary findings of fact and reasons for the Decision**

#### **The Appeal**

4. On 18 February 2018, Mr Ahmed was stopped in the Green 'nothing to declare' customs channel at Heathrow Airport Terminal 4 and found to have 64,000 cigarettes in his luggage. Mr Ahmed had travelled from Dhaka, Bangladesh via Kuwait.
5. The cigarettes were seized as liable to forfeiture under the Customs and Excise Management Act 1979 (the "Act"). Mr Ahmed was issued a Seizure Information Notice and a Border Force guide to what can be brought through Customs by the Border Force Officer who stopped him; Officer Maglione. Mr Ahmed was notified that his conduct was to be investigated

in order to assess if there had been dishonest conduct on his part when seeking to import the cigarettes. He was warned that, if his conduct was found to be dishonest, a Civil Evasion Penalty of up to 100% of the duty evaded could be imposed on him.

6. On 14 March 2019, HMRC issued a Civil Evasion Penalty – Notice of Assessment (the “Penalty Assessment”) to Mr Ahmed in the total amount of £14,846.

7. Mr Ahmed sought a review of the decision to issue the Penalty Assessment and impose the penalty. This was carried out by HMRC and their conclusion was issued on 30 April 2019. The review upheld the assessment and the penalty imposed on Mr Ahmed.

8. On 21 May 2019, Mr Ahmed appealed to the Tribunal against HMRC’s decision to issue the Penalty Assessment. Mr Ahmed stated he had no intention of bringing so many cigarettes into the UK. His uncle in Bangladesh had packed the boxes that he had brought with him in his luggage and he had not realised that the boxes were full of cigarettes. He had believed that they also contained clothes and toys. He said that he knew that it was his fault for not checking his luggage, but he had relied on his uncle. He sought a cancellation of the assessment to pay the penalty or, alternatively, a reduction in the penalty, as he was unable to pay this amount.

9. The onus of proof in the appeal is on Mr Ahmed.

### **Summary findings of fact and reasons for the Decision**

10. HMRC and Mr Ahmed agreed on the following facts and matters:

- Mr Ahmed had 64,000 cigarettes in his luggage when he went through the green ‘Nothing to Declare’ customs channel at Heathrow Terminal 4 on 18 February 2018 after arriving from Dhaka via Kuwait.
- Mr Ahmed was travelling with his wife and child and between them they had two suitcases and four boxes of luggage. Each of the boxes contained 16,000 ‘Derby’ cigarettes in 80 cartons wrapped in carbon paper.
- Mr Ahmed was questioned by Officer Maglione of the UK Border Force at that time. Mr Ahmed stated that the boxes had been packed by his uncle. When asked about their content he stated that “in the boxes are items for my disabled mother in law and our child”.
- Officer Maglione seized the cigarettes and issued a Warning Letter (Border Force Notice BOR162) and Seizure Information Notice (form BOR156) and other documents, which explained the position in relation to goods seized by HMRC.
- Mr Ahmed did not challenge the legality of the seizure within the permitted timescale.
- Mr Ahmed’s offered assistance when questioned about his luggage and its contents. He co-operated with HMRC and gave information promptly when it was requested.
- Mr Ahmed did not seek to challenge the seizure of the cigarettes in these proceedings

11. HMRC concluded that Mr Ahmed had been dishonest and therefore a civil evasion penalty was to be charged under s.25 (1) of the Finance Act 2003 and section 8(1) of the Finance Act 1994 for the attempted evasion of import VAT and excise duty. HMRC calculated that the total duty that Mr Ahmed attempted to evade was £22,857. This would be the amount of the civil evasion penalty, however HMRC reduced the amount by 35% to reflect Mr Ahmed’s disclosure and co-operation. HMRC gave a reduction of 15% for Mr Ahmed’s disclosure and 20% for his co-operation.

12. Mr Ahmed responded to HMRC's enquiry on 22 February 2019 and stated that he had asked by friends in the UK to bring some cigarettes back from Bangladesh. He stated that he had asked his uncle who lives in Bangladesh to put ten to twenty cartons of cigarettes into his luggage. He does not smoke and is not knowledgeable about cigarettes and the rules on importing them. He stated that he was shocked to discover at the airport how many cigarettes had been packed in his luggage and he apologised for his mistake.

### **Issues for the Tribunal to decide.**

13. In order to determine this appeal, the Tribunal needs to decide if Mr Ahmed's conduct was dishonest and, if it was, whether the amount of the penalty has been properly and fairly calculated.

14. At the hearing Mr Ahmed was helpful and frank. He was greatly concerned at the position that he had put himself into by his actions. He confirmed that the contents of his letter of 22 February 2019 were true. He disowned his subsequent letter to HMRC in which he had sought to argue that he had thought he had a quantity of cigarettes in his possession that was below the customs limit when he arrived at Heathrow. He accepted the evidence put forward by Officer Maglione. He explained that when he returned to Bangladesh to see his family, it was customary for his relatives to pack his and his wife's' luggage with items to take back to the UK. He had asked for 10-20 cartons of cigarettes to be packed so that he could sell them in the UK and recover some of the cost of his airfare. He was not aware of the limits on importing cigarettes into the UK and he had not given any thought as to why there was a difference in price between Pakistan and the UK and the fact that tax and duty may be the cause. However, he admitted that he knew that he was not telling the truth when he said that the boxes in his luggage contained items for his mother-in-law and toys for his child. He knew that there were some cigarettes in the boxes and did not mention these. He knew that carbon paper was used to conceal the contents of the boxes. He said that he regarded this as a sensible precaution in Bangladesh, where he had a long journey to get to the airport and on to the plane to the UK, and where officials and others may create difficulties if they knew he had valuable items. Mr Ahmed stated that he had not paid for the cigarettes. His uncle had done so. It was only when he arrived in the UK that his uncle had explained that he intended to ask Mr Ahmed to contact a relative, who would buy the cigarettes from him.

### **Conclusions**

15. The Tribunal accepted much of Mr Ahmed's evidence and concluded that he had not deliberately set out to smuggle 64000 cigarettes into the UK in a calculated manner and that he was in part naïve and reckless in his conduct. Nevertheless, the Tribunal found that Mr Ahmed had known that he had too many cigarettes in his luggage and that he had felt the need to conceal the existence of the cigarettes when first questioned by Officer Maglione. His conduct at this time was that of someone who was aware that he had something to hide. The Tribunal concludes that Mr Ahmed's actions in seeking to conceal the presence of some cigarettes in his luggage was evidence of dishonest behaviour. Mr Ahmed had lived in the UK for nearly ten years at this point. He had returned to Bangladesh for eight or nine trips. It was unlikely that he had failed to gain any understanding, or any awareness, of import duties or tax on items such as cigarettes in all of this time. It was not necessary for the Tribunal to conclude that Mr Ahmed intended to evade duties and tax and knew that he was doing so. It was sufficient that Mr Ahmed had a sense that he would benefit from concealing the true contents of his luggage and chose to do so when he was stopped and questioned. The Tribunal concludes that Mr

Ahmed acted dishonestly when seeking to import the cigarettes into the UK and that a civil evasion penalty is appropriate.

16. The Tribunal considered the submissions in respect of the appeal against the penalty. The Tribunal wished to understand if the penalty had been properly calculated by HMRC and if any of the arguments put forward by Mr Ahmed would amount to special circumstance or to a reasonable excuse that would affect the penalty that was proposed by HMRC. The Tribunal also considered if the reductions in respect of disclosure and co-operation were appropriate and sufficient.

17. The Tribunal found that there was no basis for concluding that special circumstances or a reasonable excuse existed that would affect the penalty that was proposed by HMRC. Mr Ahmed's conduct was a straightforward attempt to import cigarettes without paying duty. At best, it may be that he was reckless as to the extraordinary quantity he was carrying through the 'green' channel at the airport, however, there are no special circumstances or a reasonable excuse in this case.

18. In calculating the penalty, HMRC gave a reduction of 15% for Mr Ahmed's disclosure and 20% for his co-operation. The Tribunal considered Mr Ahmed's disclosure and found that his letter of 22 February 2019 was an early and helpful admission of culpability. In it he set out the position that he maintained at the hearing. Whilst claiming that his failure to declare the cigarettes was not deliberate, he nevertheless admitted that he knew he was carrying a quantity of cigarettes and that he sought to conceal this from the Border Force Officer who stopped and questioned him.

19. The Tribunal find that a 20% reduction for disclosure would be more appropriate in the circumstances of this case, rather than the 15% reduction applied by HMRC.

19. The Tribunal regards the 20% reduction for cooperation as being reasonable in this case. Mr Ahmed decision to change his position after 22 February 2019 was short lived, but it was unfortunate and precludes any further reduction.

20. In all of the circumstances of this case, the Tribunal finds that the penalty should be reduced by 40%, rather than 35%, of the excise duty and VAT that was payable on the cigarettes being imported. The effect of this additional reduction is that the total penalty due from Mr Ahmed is 60% of £22,857, which amounts to £13,714.

21. The Tribunal concludes from all of the circumstances of this case that there were no special circumstances or a reasonable excuse that justified any further reduction in, or cancellation of, the penalty and that the discounted penalty was not disproportionate or unreasonable.

## **Decision**

22. The Tribunal finds that the appeal against the penalty succeeds in part and the penalty should be reduced to £13,714.

23. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been

prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

**PETER HINCHLIFFE**

**TRIBUNAL JUDGE**

**RELEASE DATE: 9 APRIL 2020**