



Neutral Citation: [2024] UKFTT 1018 (TC)

Case Number: TC09352

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Location: Alexandra House, Manchester

Appeal reference: TC/2023/08786

*CUSTOMS & EXCISE – Customs civil evasion penalty – excise civil evasion penalty – whether appellant's conduct dishonest - Section 8 Finance Act 1994 - Section 25 Finance Act 2003 - whether any evidence that Appellant acted dishonestly – no – appeal allowed*

**Heard on:** 23 September 2024

**Judgment date:** 7 November 2024

**Before**

**TRIBUNAL JUDGE GREG SINFIELD  
TRIBUNAL MEMBER SUSAN STOTT**

**Between**

**ANTHONY LEONARD SPEIGHT**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Mr Anthony Speight in person

For the Respondents: Ms Abbie Crompton, litigator of HM Revenue and Customs' Solicitor's Office

## DECISION

### INTRODUCTION

1. This decision concerns penalties under section 8(1) Finance Act 1994 ('FA1994') and section 25(1) Finance Act 2003 ('FA2003') amounting to of £1,113 in total which the Respondents ('HMRC') imposed on the Appellant, Anthony Speight. The penalties were imposed following the seizure of 12 kilograms of hand-rolling tobacco found by Border Force ('BF') Officers in Mr Speight's luggage when he arrived at Leeds Bradford Airport from Spain on 4 March 2022. HMRC subsequently formed the view that Mr Speight had been trying to smuggle the tobacco into the UK without paying excise duty, customs duty and import VAT.

2. Mr Speight appealed against the penalties to the First-tier Tribunal ('FTT'). His appeal was heard by in Manchester on 23 September 2024. At the end of the hearing, the FTT gave an extempore judgment allowing the appeal. On 26 September, the FTT issued a decision notice which included a summary of the FTT's findings of fact and the reasons why it allowed the appeal. The next day, as he was entitled to do under rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, Mr Speight asked for a decision containing full written findings of fact and reasons for the decision. This is that decision.

### LEGISLATIVE FRAMEWORK – CUSTOMS AND EXCISE CIVIL EVASION PENALTIES

3. Section 8(1) of FA1994 provides for a penalty for evasion of excise duty as follows:

“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. Section 25(1) of FA2003 provides, in identical terms, for a penalty for evasion of any relevant tax which includes VAT.

5. Section 16(6) of FA1994 relevantly provides that:

“(6) On an appeal under this section the burden of proof as to—

(a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,

...

shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.”

6. Section 33(7) of FA2003 provides:

“(7) On an appeal under this section—

(a) the burden of proof as to the matters mentioned in section 25(1) or 26(1) lies on HMRC; but

(b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.”

### ISSUE AND BURDEN OF PROOF

7. Before a person can be made liable for a penalty under section 8(1) of Finance Act 1994 and section 25(1) of Finance Act 2003, it must be proved that they engaged in conduct for the purpose of evading duty or tax and that the conduct involved dishonesty (in the sense explained

by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 at [62], [63] and [74]).

8. Accordingly, HMRC bore the burden of proving that, on 4 March 2022 at Leeds Bradford Airport, Mr Speight was engaged in conduct for the purpose of evading duty or tax and that his conduct involved dishonesty.

#### **FINDINGS OF FACT**

9. We find the facts in this case to be as follows.

10. On 4 March 2022, Mr Speight travelled from Malaga in Spain, where he had lived for several years, to Leeds Bradford Airport. Mr Speight had 12 kilograms of hand rolling tobacco in his luggage. Mr Speight was stopped by BF Officer Simon Holdsworth at the Passport Control Point ('PCP') for passport checks at Leeds Bradford Airport. Mr Speight was stopped because BF Officer Holdsworth recognised him from a previous customs examination on 3 January 2022 when tobacco had been seized. BF Officer Holdsworth recorded in his notebook that he asked Mr Speight whether he had ever been subject to Immigration or Customs stops at that airport and Mr Speight said 'No'. In his grounds of appeal (see [22] below), Mr Speight denied having said this and stated that it was "a complete lie by [BF Officer Holdsworth]". BF Officer Holdsworth directed Mr Speight to some seats in the Immigration Area and referred him to BF Officer James McWhinnie for further examination. BF Officer Holdsworth's notebook was not signed by Mr Speight. No HMRC officer was present when BF Officer Holdsworth stopped Mr Speight on 4 March.

11. As Mr Speight had been stopped by BF Officer Holdsworth at the PCP, Mr Speight had no chance to choose whether to enter the 'Red Channel' to indicate that he had goods to declare or the 'Green Channel' to indicate he did not have any goods to declare. In his grounds of appeal (see [22] below), Mr Speight stated that he had declared the goods at his first opportunity at Leeds Bradford Airport.

12. BF Officer McWhinnie asked Mr Speight some questions. Mr Speight's bags were searched and 12 kilograms of Hand Rolling Tobacco goods were found. Officer McWhinnie seized the tobacco as forfeit. No HMRC officer was present when Officer McWhinnie questioned Mr Speight and seized the tobacco on 4 March. BF Officer McWhinnie's notebook was not signed by Mr Speight.

13. On 6 February 2023, HMRC Officer Md Jihan Iftikhar of the HMRC Post Detection Audit team wrote to Mr Speight to advise him that HMRC were enquiring into his UK Customs Duty, Import VAT and Excise Duty affairs covering the period between 4 March 2021 and 6 February 2023. As Mr Speight did not respond, HMRC sent him a reminder letter on 22 February.

14. In a letter dated 4 March 2023, Mr Speight responded to HMRC's letters and provided information in relation to the seizure. In the letter, Mr Speight explained that he had purchased the tobacco in Spain and brought it to the UK as gifts for his extended family living in UK. He admitted that he had carried excess tobacco purchased in Spain through UK airport customs on three occasions but could not remember the dates.

15. On 15 March, HMRC Officer Iftikhar issued a Civil Evasion Penalty – Notice of Assessment ('the Penalty Assessment') to Mr Speight for £1,113. The Penalty Assessment was in the form of a letter and included the following:

"As you know, during our checks into your tax affairs we have found that you had not declared the right amount of duty. This was because on 04 March 2022 you entered the incorrect channel at Leeds Bradford Airport falsely

indicating you had nothing to declare when in fact, you were carrying excise goods in excess of your allowances.

We consider your actions were dishonest and, because of this, we are now going to charge you a civil evasion penalty. We are charging this penalty under Section 25(1) of Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty and/or Import VAT, and under Section 8(1) of Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty.”

16. Mr Speight contested this version of events in an email of 10 April to HMRC Officer Iftikhar. In his email, Mr Speight said:

“You state within the above fore mentioned correspondence that I have been issued with these penalties not because I was carrying excess duty free products but because “I have shown dishonesty in this case by not declaring that I was carrying excess duty free products and by entering the incorrect channel at LBA and falsely indicating I had nothing to declare”.

I require the evidence you hold which can prove your claim is accurate. The only contact I had at the airport was with your border force officers, therefore I must assume that their evidence has been used at this time, if this is the case then I wish to put you on notice that if and when requested all CCTV surveillance footage of my actions at LBA on the 04 March 2022 from the time I entered the queue at passport control on the upper level to the time I left the airport on the ground level plus the CCTV surveillance footage that clearly shows the entrance to the green nothing to declare channel on the ground floor for the same time period must be made available to me, the tribunal or if necessary civil court.

I need clarification how this claim can proceed if you are unable to back up your claim that clearly states I entered the incorrect channel and failed to declare my excess duty free products with plausible evidence. This in turn will in-fact show your border force officers to have been dishonest around events of this claim. I must at this time inform you that this brings into question the evidence and integrity of the 4 to 6 officers directly involved and also the evidence of every officer on duty that evening who may be required to give evidence under oath.”

17. Officer Iftikhar replied on 12 April and his email included the following:

“Regarding your statements re Border Force and their evidence/integrity. I can confirm that Border Force have shared information with HMRC regarding a seizure of goods that took place on 4 March 2022. I can also confirm that our penalty decision was made based on the information provided by both Border Force and your disclosure letter dated 4 March 2023. I can confirm that the Civil Evasion Penalty issued to you on 15 March 2023 is only in regards to your seizure on 4 March 2022.”

18. In his email of 21 April 2023 in response, Mr Speight said:

“The charges brought against me are false and at some stage the evidence from Leeds Bradford Airport and border force will be submitted which will show this wrongdoing.”

19. Further correspondence followed and, eventually, the decision to issue the Penalty Assessment was reviewed by HMRC Officer Hayley Baxter.

20. In a letter dated 5 June 2023, Officer Baxter confirmed the Penalty Assessment. The letter described what evidence she had seen and summarise the facts she relied on:

**“The evidence I have seen**

I have considered the information that has been supplied by BF, which includes a copy of the BF officers' notebook from the seizure on 4 March 2022. I have been provided with copies of the BF officer's notebooks for previous seizures of tobacco goods on 14 September 2020 and 3 January 2022 which took place at Leeds Bradford airport. I am also in receipt of signed copies of form BOR156 (seizure information notice) and BOR162 (warning letter about seized goods). I have also considered the correspondence exchanged between yourself and HMRC.

### **The facts**

On 4 March 2022 you arrived at Leeds Bradford airport on a flight from Malaga, Spain. You were stopped at the Passenger Control Point (PCP) for passport checks. BF Officer Simon Holdsworth's notebook records that he recognised you from a previous customs examination. He asked you if you had ever been subject to Immigration or Customs stops at Leeds Bradford airport; you replied, 'No'.

You were then referred to the Immigration area and the matter was referred to BF Officer J McWhinnie.

During questioning you confirmed:

- you had returned from Spain, where you were resident
- all bags belonged to you, and you packed them yourself
- you were fully aware of the contents.

The BF officer asked you if you were carrying anything for anyone else and you replied, 'Yes, some gifts'.

A search of your luggage found 12kgs of Amber Leaf HRT. You were told what the duty and tax on the HRT amounted to, however you declined to pay."

21. Ms Baxter's letter then went onto describe the seizure of the tobacco, the issue of the Penalty Assessment and the correspondence between HMRC and Mr Speight. Ms Baxter then explained why she considered that Mr Speight was liable to pay the penalty:

"At the PCP you were asked by BF if you had been stopped previously by either Immigration or Customs; you answered 'No'. You clearly did not give a truthful response.

You have also disclosed that your son and partner returned to the UK for schooling purposes in 2017, and you have travelled 'dozens and dozens' of times between Spain and the UK since then. You also advised that you visit your business partner who is in the UK after suffering from a heart attack in 2020; he is the administrator of the company, and you have to visit him on a regular basis. I am confident that as a frequent traveller, you will be aware of the customs allowances in place, and you will also be aware of the customs channels and what they represent.

The quantity of goods seized is significant, 48 times the permitted customs allowances. No reasonable person would consider it permissible to import 12kgs of HRT without payment of the relevant duties and tax. You had two previous occasions when you had tobacco goods seized for 13kgs of HRT and 2kgs of HRT; I am satisfied that you would have had your customs allowances explained to you at that time. On this occasion, you were aware that you were carrying excess tobacco goods, it is therefore reasonable to expect that you would have been eager to have declared this to the BF officer at the earliest opportunity.

Following a search of your baggage, the BF officer told you what the duties and tax due on the HRT was. It is recorded in the notebook that you declined to pay the amount due. Although you did not attempt to evade the relevant duties by entering the green 'nothing to declare' channel, you elected not to pay the duties due when offered by the BF officer. I can only conclude from this that you had no intention of entering the red channel and declaring the HRT.

At all ports of entry there is essential customer information at both the baggage reclaim and the customs declaration areas, advising the allowances for tobacco products when travelling to the UK. The purpose of this signage is to provide the personal allowance for which a declaration needs to be made.

Given that you have two previous seizures and yet you still chose to carry goods well in excess of the permitted amount demonstrates that you have no regard for the UK customs laws. I do not consider your behaviour to be that of a reasonable and honest person.

I am satisfied that you engaged in conduct for the purpose of evading any relevant tax or duty in accordance with section 8(1)(a) of the Finance Act 1994 and section 25(1)(a) of the Finance Act 2003.

I also agree with Officer Iftikhar that your conduct involved dishonesty, as required by section 25(1)(b) of the Finance Act 2003 and section 8(1)(b) of the Finance Act 1994.

By dishonestly attempting to import 12kgs of HRT on 4 March 2022, you are legally liable to a civil evasion penalty.

...

You appear to be concerned that the charges brought against you were for entering the incorrect channel. To clarify, you have been issued the penalties as it is considered that you attempted to evade the duties due on 12kgs of HRT by conduct involving dishonesty."

22. On 16 June 2023, Mr Speight submitted a Notice of Appeal to the FTT against the Penalty Assessment. In his Notice of Appeal, Mr Speight set out his grounds of appeal as follows:

"The charges brought by Mr Iftikhar from HMRC are false. Review Officer Hayley Baxter accepts in her review that the charges brought by HMRC are false, but agrees with Mr Iftikhar that I am dishonest and brings charges of her own, which I will also prove wrong when Border Force provide me with the evidence requested. This will then bring into question the honesty and integrity of the Border Force Officers involved.

The Review Officers legislation paragraph states my civil evasion penalty is for failing to declare the goods I was carrying but in her 7 page review she clearly states and I quote:

'Although you did not attempt to evade the relevant duties by entering the green nothing to declare channel.'

It is a fact accepted that I did declare the goods at my first opportunity at Leeds Bradford Airport.

Hayley Baxter's new accusations that I am dishonest because when asked by BFO Simon Holdsworth if I had ever been stopped before I answered 'No' is a complete lie by this BFO and again this will be proved beyond any doubt upon receiving the evidence requested from Border Force."

23. In the same Notice, Mr Speight said that the outcome that he sought was as follows:

“The charges brought by HMRC are false and are accepted as false by the Review Officer.

With the charges brought by HMRC accepted has (sic) false the charges should be dropped and the case dismissed.”

#### **EVIDENCE IN THE APPEAL**

24. We were provided with an electronic hearing bundle of 330 pages and a supplementary bundle of legislation and case law which contained 69 pages.

25. We only had one witness statement in this case which was made by HMRC Officer Iftikhar and dated 10 January 2024. There were no witness statements by the Border Force Officers who dealt with Mr Speight at Leeds Bradford airport on 4 March 2022. The officers’ notebooks were included in the hearing bundle but were not produced in any witness statement.

26. In his witness statement, HMRC Officer Iftikhar’s evidence in relation to Mr Speight’s conduct was as follows:

#### **“Introduction/Background**

4. On 4 March 2022, Border Force Officer Simon Holdsworth was on duty at Leeds Bradford Airport. The Appellant approached PCP where Officer Holdsworth recognised him from a previous seizure on 3 January 2022. Officer Holdsworth referred him to BF Officer James McWhinnie. BF Officer McWhinnie then asked the Appellant some questions. 12 kilograms of Hand Rolling Tobacco goods were found from the Appellant’s bags following the search conducted by BF Officer James McWhinnie.

#### **Other headings/substance**

5. The Hand Rolling tobacco found were seized by UKBF as the appellant had attempted to import excise goods amounting to 48 times the personal allowance when entering the UK. BOR156, BOR162, Notice 1 and 12A were issued to the Appellant by BF Officer McWhinnie.

...

Seizure of Hand Rolling Tobacco on 4 March 2022

a. At all ports of entry there is essential customer information detailing the allowances for tobacco products. Due to this I am satisfied the Appellant was aware of the customs allowances and made a dishonest attempt to bring in more than his allowances.

b. When asked by BF Officer Simon Holdsworth if he was subject to immigration or customs stops at the same Airport, the Appellant responded “No.” This was not true as he had previously been involved in a seizure at that airport.

c. The Appellant did not pay the duty when asked by BF Officer McWhinnie. Although he did not attempt to evade the duty by entering the Green Channel, the Appellant did not pay the duties when offered. This was considered dishonest as he was previously stopped and had tobacco goods seized. By refusing to pay the duty this shows he had no intention of paying the duty and he knew he could not import the goods without paying the duty as he had already had goods seized from him.

d. Appellant’s involvement in previous seizures dated 3/01/2022 and 14/09/2020.

e. I do not believe it is credible that the Appellant could have believed they were entitled to import this amount of tobacco goods without declaring them or paying the duty.

f. Based on the evidence available and on the balance of probabilities, I concluded a civil evasion penalty should be raised as there was sufficient evidence to demonstrate the Appellant intended to evade UK duty and taxes on the excise goods in his possession.”

27. At the hearing, HMRC Officer Iftikhar gave evidence on oath and was cross-examined by Mr Speight. Mr Speight asked HMRC Officer Iftikhar about the statement in his letter of 15 March 2023 that, on 4 March 2022, Mr Speight had entered the incorrect channel at Leeds Bradford Airport falsely indicating that he had nothing to declare. HMRC Officer Iftikhar said that it was a standard letter and he now accepted that Mr Speight had never entered the green channel. HMRC Officer Iftikhar explained that HMRC were not present at the time the BF Officer stopped Mr Speight. HMRC had received information from BF, including the officers’ notebooks. HMRC Officer Iftikhar explained that he had considered it and the information provided by Mr Speight. Mr Speight put it to HMRC Officer Iftikhar that the officers’ notebooks had not been written on the day that the events occurred. HMRC Officer Iftikhar said that this was a matter for the BF Officers.

#### **HMRC’S CASE**

28. HMRC’s case was that Mr Speight was engaged in conduct for the purpose of evading duty or tax and that conduct involved dishonesty. Ms Abbie Crompton, who appeared for HMRC, submitted that that, although he did not attempt to evade the relevant duties by entering the green ‘nothing to declare’ channel, Mr Speight’s conduct at and immediately after he was stopped at Leeds Bradford Airport showed that he had intended to evade duty and tax, and that his actions were dishonest. Ms Crompton relied on the following facts as showing that Mr Speight had dishonestly attempted to evade duty or tax:

- (1) when asked by BF Officer Holdsworth if he had been stopped at immigration or customs before Leeds Bradford Airport, Mr Speight said ‘No’ which was not true;
- (2) he was carrying an amount of tobacco well in excess of what was permitted, despite having had tobacco seized on two previous occasions; and
- (3) he declined to pay the duties due on the tobacco when offered the chance to do so by BF Officer McWhinnie.

29. Ms Crompton contended that the fact that Mr Speight declined to pay the duties due on the tobacco when offered the chance to do so by a BF officer showed that he had no intention of entering the red channel and declaring the tobacco. HMRC also contended that the fact that Mr Speight was carrying an amount of tobacco well in excess of what was permitted, despite having had tobacco seized on two previous occasions, showed that his behaviour was not that of a reasonable and honest person.

#### **DISCUSSION**

30. The issues in the appeal are whether, on 4 March 2022 at Leeds Bradford Airport, Mr Speight was engaged in conduct for the purpose of evading duty or tax and whether that conduct involved dishonesty, in the relevant sense which are matters of fact. Those facts were in issue and, as HMRC bore the burden of proof, they were required to prove them on the balance of probabilities. The three facts relied on by HMRC are set out in [28] above.

31. In relation to the second of the facts in [28], there was no dispute that, when he landed at Leeds Bradford Airport on 4 March 2022, Mr Speight was carrying 12 kilograms of hand rolling tobacco which was far in excess of his personal allowance. Mr Speight rightly did not



try to contend that he was unaware of the amount of tobacco he was permitted to import duty and tax free using his personal allowance. Any such submission would have been doomed to failure given his history of being found to have excess tobacco in his luggage and having it seized. While the fact that a person is carrying a large amount of tobacco in their personal baggage at the PCP can be evidence of conduct for the purpose of evading duty or tax, it is not enough to establish liability for a penalty without evidence that the conduct involved dishonesty.

32. HMRC's case was that dishonesty was shown by two aspects of Mr Speight's behaviour when stopped at the airport. The first was that Mr Speight made an untrue statement to BF Officer Holdsworth denying that he had ever been stopped before. The second was that Mr Speight declined to pay the duties on the tobacco when given the opportunity to do so by BF Officer McWhinnie.

33. The matters relied on by HMRC as evidence that Mr Speight was engaged in a dishonest attempt to evade duty or tax were matters that only the BF Officers concerned and Mr Speight could give evidence about. As stated above, there was no evidence from the BF Officers. We only had a witness statement from HMRC Officer Iftikhar. There was no witness statement from either of the BF Officers who dealt with Mr Speight at Leeds Bradford airport on 4 March 2022. The officers' notebooks were included in the hearing bundle but were not produced in any witness statement so were not evidence in the case. Even if HMRC Officer Iftikhar had produced them in his witness statement, he could not speak to the truth of the events described in them as he was not present on 04 March 2022.

34. Notebooks are not evidence of the facts described in them unless either the contents are agreed or the notebooks are produced by a witness who is able to speak to the truth of the facts described in them. This can be seen from the following cases. In *Hilden Park LLP v HMRC* [2017] UKFTT 217 (TC) at [41], the FTT said:

“Taking what the Upper Tribunal [in *Massey & Anor (t/a Hilden Park Partnership) v HMRC* [2015] UKUT 405 (TCC) at [62]) actually said in stages, they said, and were clearly right to say, that HMRC could, theoretically, in a case where they have the burden of proof, rely on the documents alone, without calling any witness evidence, to establish a prima facie case. I would perhaps add the caveat that HMRC could only do that to the extent that the authenticity of the documents was not in dispute: if authenticity was in dispute, HMRC would have to call a witness to give evidence of authenticity.”

35. In *Jacks v HMRC* [2017] UKFTT 613 (TC) at [7]:

“These Tribunal appeal proceedings are judicial proceedings. Facts, if not admitted, must be proved by evidence. Sometimes it is said that the Tribunal process and procedure is more informal than that adopted in Courts, but that is not to say that there is informality or laxness concerning the need for facts, if relevant, to be proved by proper evidence. By ‘proper evidence’ we mean reliable documents which are admitted or proved in evidence and/or reliable witness evidence. Business records, (which would include those maintained by the respondents) can be admitted as hearsay evidence of the facts stated therein, but the provenance of any such document must itself be proved, if not admitted.”

36. Mr Speight made no admission that he intended to evade duties and tax or was engaged in any conduct that involved dishonesty on 4 March 2022. He objected strongly to the allegation (subsequently abandoned) in HMRC Officer Iftikhar's letter of 15 March 2023 that he had “entered the incorrect channel at Leeds Bradford Airport falsely indicating [that he] had

nothing to declare”. In his grounds of appeal Mr Speight denied that he had made an untrue statement to BF Officer Holdsworth and said that he had declared the tobacco at the first opportunity.

37. In the absence of any evidence from the BF Officers concerned, we could not be satisfied on the balance of probabilities that the matters described in issues (1) and (3) in paragraph [28] above had occurred. Without those matters being proved, HMRC’s case amounted to no more than asserting that the fact that Mr Speight was stopped at the PCP with a substantial amount of tobacco showed that he had an intention dishonestly to evade duty or tax. We did not feel able to draw any inference that Mr Speight was engaged in conduct involving dishonesty with a view to evading duty or tax simply from the fact that he had a substantial quantity of tobacco in his luggage when stopped at the PCP. On the basis of the evidence provided, we concluded that HMRC had not established on the balance of probabilities that Mr Speight was engaged in conduct involving dishonesty at Leeds Bradford airport on 4 March 2022 that made him liable to a penalty under section 8(1) of Finance Act 1994 and section 25(1) of Finance Act 2003.

38. To be clear, the fact that a person was stopped before they had any opportunity to enter the red or green channel does not necessarily mean that it cannot be established, on the balance of probabilities, that they were engaged in conduct for the purpose of evading duty or tax and that the conduct involved dishonesty. Being engaged in conduct for the purpose of evading duty or tax dishonestly does not require the person to have actually failed to declare the items, eg by entering the red channel. However, in our view, there needs to be more evidence than was made available to us in this case. It might be that evidence from the BF Officers of what was said and done by Mr Speight could, if it had been accepted, have allowed us to reach the conclusion that it was more likely than not that Mr Speight was dishonestly trying to smuggle tobacco in this case but, in the absence of any witness statements from the BF Officers, that must remain mere speculation.

#### **DECISION**

39. For the reasons given above, this appeal is allowed.

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

40. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision in so far as it relates to the application for a closure notice 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.

**JUDGE GREG SINFIELD  
CHAMBER PRESIDENT**

**Release date: 07<sup>th</sup> November 2024**