Diversion of underbond cigarettes

In March 1998, Customs auditors noticed that a Melbourne duty free store had made eight unusually large purchases of underbond cigarettes over six weeks. The store had been periodically audited by Customs and was known as a small owner-operated business with a good record.

Following up, auditors visited the store about a week after the sixth purchase. The owner-manager said the purchases had been consolidated and airfreighted in two shipments to a New Zealand company. She said she had not dealt with the New Zealand buyer because a friend of hers, a retail tobacconist who owned a shop nearby, had handled all the negotiations and sales.

The store's records appeared to be in order but the auditors were uncomfortable about the transactions. It was unusual for a retail tobacconist to be acting as an agent to sell underbond goods and the profit margin for the duty free store was so small that the transactions weren't worthwhile. Deeper examination was called for.

The owner-manager claimed that, in early 1998, she had contemplated selling the store. When she had mentioned this to the tobacconist, he had arranged to have a 'prospective purchaser' manage the store for six weeks to assess the business. The owner took a holiday. It was during this period that the underbond cigarettes were bought and exported. The owner was unable to identify the prospective purchaser except by his first name.

With suspicions heightened, the auditors moved to a second tier of checks of the store's records. These revealed that the airway bills and export entries were false.

At this point, the case was referred to the Customs Investigations Branch, which obtained search warrants for several premises, including the tobacconist.

Evidence showed that the tobacconist had made an unsecured interest-free loan to the duty free store owner-manager. This effectively gave him control of the business. He exercised this control by putting one of his employees into the store under the guise of being a prospective purchaser.

Forensic evidence connected the tobacconist to documents relating to the payment and delivery of the underbond cigarettes. It also connected the duty free store owner-manager to the first of the eight transactions—she had signed a delivery docket to signify receipt of the goods when the manufacturer delivered the cigarettes to her store.

Investigations established that the cigarettes were not imported into New Zealand and the nominated purchaser knew nothing of the transactions.

Charges under the Excise Act were laid against three defendants—the commercial entity that owned the duty free store, the owner-manager and the tobacconist. Each faced eight charges for evading excise duty totalling $67,851.75 and eight for moving excisable goods without authorisation.

The case was heard in a magistrate's court where the maximum penalty available for such offences was $5000 each. All defendants pleaded not guilty to all counts. The commercial entity and the owner-manager were each found guilty of one count of evasion and one of moving goods without authorisation (the first delivery). They were fined $5000 on each count ($10,000 each) and ordered to pay reparations of $9,009.67 each.

The tobacconist was found guilty of all counts and fined $5000 on every charge ($80,000). He was also ordered to make reparations of $67,201.50 and to pay costs of almost $50,000.