



TC01444

Appeal number: TC/10/04305

Excise Duties – Tobacco – whether imported for commercial purpose – condemnation proceedings in Sheriff Court – jurisdiction of Tribunal – “strike-out” provisions in terms of Rule 8 of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009/273.

FIRST-TIER TRIBUNAL

TAX

JAMES WILLIAMSON AND BERNICE WILLIAMSON Appellants

- and -

UK BORDER AGENCY Respondents

TRIBUNAL JUDGE: Mr Kenneth Mure, QC

**Sitting in public at George House, 126 George Street, Edinburgh on Tuesday
13 September 2011**

No appearance for the Appellants

K Clancy, Solicitor, Shepherd & Wedderburn WS for the Respondents

DECISION

1. This is an application by the UK Border Agency to strike out the Appeal of Mr and Mrs Williamson against the refusal of the Agency to restore a quantity of
5 cigarettes and tobacco which were seized from them at Edinburgh Airport on 19 November 2009 on their return from Spain.

2. Mr Clancy appeared for the Agency. The taxpayers did not, however, attend although they were aware of the date and time of the hearing. Shortly after 10.30 am, and after the Tribunal Clerks had attempted to contact them unsuccessfully, the
10 Tribunal was persuaded that it was in the interests of justice to proceed to hear the Appeal in the Williamson's absence.

3. While persons entering the UK from another member state of the EU may import an unlimited quantity of cigarettes and tobacco, it must be for personal use. If it is imported for a commercial purpose, however, most obviously for resale, then it is
15 liable to be confiscated.

4. Mr and Mrs Williamson caused condemnation proceedings to be raised in Edinburgh Sheriff Court in relation to this matter. Accordingly the appeal to this Tribunal was continued until the outcome of these proceedings. The decision of the Sheriff was that decree of condemnation of all of the cigarettes and tobacco seized
20 should be pronounced and that on the basis that they had been imported by the Williamsons for commercial purposes. The Sheriff did not find the explanations of Mr and Mrs Williamson to be credible. The decision of the Sheriff is included as item 5 in the Bundle of Authorities.

5. Mr Clancy referred me to the decisions of the Court of Appeal in *Gascoyne v HMRC* [2005] Ch 215 and of the Edinburgh Tribunal in *Muirhead* (28 January 2011) in support of the proposition that once condemnation has been determined by the Magistrates Court (or Sheriff in Scotland) the matter is concluded. He submitted, accordingly, that this Tribunal could not reconsider issues, here essentially of parties' credibility which had been determined in the Sheriff Court.

6. Mr Clancy referred me to the terms of Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. This provides *inter alia* –

(2) the Tribunal must strike out the whole or a part of the proceedings if the Tribunal –

(a) does not have jurisdiction in relation to the proceedings or that part of them; and
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(b) does not exercise its power under Rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if –

(a) ...
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(b) ...

(c) The Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

5 7. I observe that in the Notice of Application it is only the second of these provisions which is referred to. I observe also that the wording of each of these provisions differs significantly. In the former the Tribunal must strike out, whereas in the latter it may. In any event Mr Clancy submitted that the Williamsons' appeal should be struck out on the basis that the issue of commercial or personal use had already been dealt with exhaustively by the Sheriff.

10 8. I consider Mr Clancy's argument well-founded. The only issue identified in the Appeal is whether the import was for commercial or personal purposes. That has been determined by the Sheriff and her decision on that aspect cannot be reviewed by this Tribunal. Accordingly this Appeal falls to be struck out in terms of Rule 8. Both sub-rules (2) and (3)(c) seem apt. In terms of the former I have no discretion.
15 However, in any event in terms of the latter provision it is in my view the reasonable and appropriate course.

9. 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
20 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.

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MR KENNETH MURE, QC
TRIBUNAL JUDGE

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RELEASE DATE: 14 SEPTEMBER 2011

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