



TC02280

Appeal number: TC/2011/00603

PROCEDURE – appeal – application for stay of proceedings pending possible criminal proceedings – factors to be taken into account – held, on facts, hearing of appeal not prejudicial to such possible proceedings – in any event, not known whether director likely to be charged – delay between arrest and date of application – discretion under Tribunal Rule 5 – application of overriding objective under Rule 2 – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AABSOLUTE BOND LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOHN CLARK

Sitting in public at 45 Bedford Square London WC1B 3DN on 24 August 2012

Razwan Ashiq, instructed by Rainer Hughes, Solicitors, for the Appellant

Sarabjit Singh, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION ON APPLICATION FOR A STAY OF PROCEEDINGS

1. By a notice dated 14 August 2012, the Appellant (“ABL”) applied for a stay of six months in respect of the proceedings in respect of this appeal. This application was referred to Judge Berner, who considered the matter on the papers and directed that the application should be considered at an oral hearing. As the Judge who had been listed to hear the substantive appeal, I considered the application at the hearing on 24 August 2012 and refused the application. As requested at the hearing, I agreed to produce a decision setting out the reasons for refusal, and the principles which I took into account in arriving at my decision.

2. The hearing of the substantive appeal has since taken place, on the listed dates of 10 and 11 September 2012. As ABL instructed different Counsel to appeal on its behalf for the substantive hearing, and as the Tribunal for that hearing included a member, who was not present at the application hearing, I have prepared this decision separately from that relating to the substantive appeal.

Background

3. Although there was no formal evidence for the application hearing, it is necessary to give some information concerning the background circumstances. The substantive appeal concerns a VAT assessment in respect of goods allegedly delivered to ABL’s bonded warehouse between February 2008 and July 2008 but found not to be present when that warehouse closed in August 2009. Mohammed Hanif Rafiq was a director of ABL at the time of the alleged deliveries to the warehouse and at the time of its closure, but has since resigned as a director. I was informed at the hearing of ABL’s application that Mr Rafiq had at the material times been, and continued to be, the only shareholder in ABL. His co-director had remained as a director.

4. The assessments made by the Respondents (“HMRC”) had been, respectively, an assessment to Excise Duty and an assessment to VAT. Subsequently both the Excise Duty assessment and the VAT assessment had been withdrawn on review. The decision by HMRC’s Review Officer was expressed to be without prejudice to any further action that HMRC might consider.

5. Further assessments were then made by HMRC in November 2010, based on further evidence. In July 2011 the further Excise Duty assessment was withdrawn by HMRC as having been made out of time. The VAT assessment was not withdrawn, as HMRC considered it to be within time under the applicable VAT legislation. That assessment is the subject of the substantive appeal proceedings.

6. ABL’s Application Notice dated 14 August 2012, was as follows:

“Take notice that the Appellant’s [*sic*] applies for a stay on the appeal.

On the 14th September 2011 the Appellant was arrested for [*sic*] suspicion of tax evasion by HMRC Criminal Investigations. The Appellant was one of 16 individual who were arrested, and two of

whom were HMRC officers. The Appellant has been bailed to return on the 12th September 2012. Those instructed by the Appellant have not been informed by the HMRC Criminal Investigations whether Appellant will be charged on the 12th September 2012.

The Appellant respectfully submits that the Tribunal Proceedings would seriously prejudice the outcome of the pending criminal investigation and we do, resultantly, urge you to adjourn this matter pending the outcome of the HMRC investigations.

Those instructed by the Appellant in this matter have also been instructed by some of the other individuals who were arrested on the 14th September 2011. These individuals also have civil matters and tax appeals at this Tribunal and the Solicitors Office have consented for the matters to be stayed for six months pending the outcome of the criminal investigation.

The Appellant submits that the Respondent will not be prejudiced for a stay to be granted. The Appellant submits that the Respondent is already holding the VAT.

The Appellant seeks a stay for 6 months on the appeal.”

7. I was informed at the application hearing that Mr Rafiq had been required to make payment to HMRC pursuant to a guarantee.

Arguments for ABL

8. Mr Ashiq explained that Mr Rafiq, as a director of ABL, was due to appear at a police station on 12 September, the day after the Tribunal hearing was due to conclude. Two allegations were under review. The first was that there were two HMRC officers who had allegedly been supplying confidential information to people within the alcohol trade. The second was that Mr Rafiq had been involved in “diversion fraud”, and that ABL had been complicit in this. Mr Rafiq had been interviewed after arrest, but on legal advice had made no comment. The questions had related to the relationship to the HMRC office to the workings of ABL, and to the goods being missing. In the course of his bail application, which had been granted on various conditions including denial of access to his passport, it had been intimated that HMRC objected to bail, the issues being Mr Rafiq’s links, ABL’s operations, and the tax matter relating to missing goods.

9. Mr Ashiq accepted that ABL’s application should have been made earlier, but submitted that this did not detract from the force of its contentions.

10. ABL was the Appellant in the present proceedings. It was artificial to say that it existed in a vacuum. Mr Rafiq’s evidence was central to the appeal. ABL was complicit in the criminal allegations, as it was said to be the vehicle for fraud. Counsel for HMRC in the Magistrates Court had alluded to the missing goods. In the appeal before the Tribunal, the issue concerned accounting for the VAT.

11. Mr Ashiq referred to the question of prejudice. First, Mr Rafiq had an inalienable right to remain silent in any interview conducted by HMRC’s Criminal

Investigations office. Any evidence which he gave in the Tribunal appeal proceedings could, and no doubt would, be used by HMRC. In any subsequent trial, the judge had power to exclude evidence. Mr Ashiq argued that this was limited to cases where the evidence was unlawfully obtained or had no probative value; as a consequence, this effectively meant that Mr Rafiq's evidence could be used against him.

12. Secondly, Mr Rafiq had a right against self-incrimination. As far as any prejudice was concerned, HMRC already held the money representing the VAT treated as due from ABL. In these circumstances, any delay in the Tribunal appeal proceedings would prejudice Mr Rafiq. No prejudice at all would be suffered by HMRC.

13. It might be argued on HMRC's behalf that what Mr Rafiq faced did not amount to criminal proceedings. This would be artificial. There were two stages, ie the investigation and court proceedings. The HMRC argument lost its force when the bail conditions imposed on Mr Rafiq were examined. The result of the investigation could be that no further action was taken, or that Mr Rafiq might be charged.

14. The submissions for ABL were given added force by the fact that HMRC, as the Respondents before the Tribunal, were also the prosecuting authority in the criminal proceedings. It was therefore almost inevitable that any evidence given in the Tribunal appeal would be used by HMRC in that other capacity. Mr Ashiq submitted that if HMRC were to be asked as to their intended further actions in relation to the possible prosecution, they would decline on the grounds that this would prejudice their investigation; however, they would say that Mr Rafiq was not prejudicing his position.

15. This was the nub of the application; if Mr Rafiq was fortunate and the investigation was discontinued, any information gathered by the HMRC Criminal Investigation team might shed further light on this appeal. It was clearly important that the Tribunal had a witness who could give evidence unshackled, in the interests of justice both to ABL as Appellant and to HMRC as Respondents.

16. HMRC's notice of opposition to the application did not demonstrate any prejudice to HMRC. Mr Ashiq emphasised that ordinarily ABL would want matters to be resolved as soon as possible. HMRC had not yet made the decision whether Mr Rashiq would or would not be charged.

Arguments for HMRC

17. Mr Singh referred in detail to the judgment of the Court of Appeal in *Mote v Secretary of State for Work and Pensions* [2007] EWCA Civ 1234. It was clear from *Mote* and from the authorities cited by Richards LJ that the Tribunal had a real discretion whether or not to stay proceedings. (I consider as necessary below the various parts of that judgment to which Mr Singh drew my attention.)

18. It had been claimed on ABL's behalf that continuing with the appeal rather than waiting for the decision as to whether or not Mr Rafiq was to be prosecuted would

“seriously prejudice” his position. Mr Singh submitted that this claim was wholly unfounded. There were no criminal proceedings in the sense of a criminal charge against Mr Rafiq. Mr Rafiq had been arrested in 2011 on suspicion of a conspiracy to cheat the public revenue, but had not been charged with that or any other offence. He was not due to be interviewed again until 12 September, after the hearing listed for this appeal.

19. Thus the Tribunal did not know whether any criminal proceedings would be instituted. They might not be. This in itself was a powerful reason not to delay the Tribunal appeal proceedings.

20. If criminal proceedings were instituted, it would be necessary to consider the precise nature of any such proceedings and the precise issues raised by the present appeal. A related question was whether there would be any overlap between the two. The offence for which Mr Rafiq had been arrested was conspiracy to cheat; no allegation of any similar nature had been made against Mr Rafiq in this appeal. Mr Singh emphasised that Mr Rafiq was not the Appellant in these proceedings; he was a former director, and apparently a shareholder. There was no allegation of dishonesty in the present case either against ABL or against Mr Rafiq personally.

21. The present appeal concerned 13 consignments of spirits which HMRC contended had been delivered to ABL’s warehouse; HMRC’s case was that they were not there when the warehouse closed in 2009. In the absence of evidence that they had been released, or transferred to another warehouse, HMRC had concluded that they had been released without payment of duty and VAT. HMRC were not suggesting that duty and VAT were dishonestly evaded by ABL, Mr Rafiq, or anyone else; there was no intention on HMRC’s part to make any allegation of that kind. It followed that any evidence concerning fraud would be irrelevant to the Tribunal proceedings. In any event, the Tribunal could exclude such evidence on the basis that it would prejudice Mr Rafiq or ABL. Mr Singh emphasised that HMRC were making no allegations of fraud in the Tribunal proceedings. Their case was simply that ABL was unable to say that the duty and VAT had been paid. He acknowledged that the duty assessment had been out of time. Thus there was no overlap in issues between the Tribunal proceedings and any criminal proceedings.

22. Mr Ashiq had referred to the Tribunal proceedings being “part and parcel” of the criminal investigation. Mr Singh commented that he was HMRC’s Counsel in respect of ABL’s Tribunal appeal against the VAT assessment, and confirmed that the criminal investigation formed no part of this tax appeal. No questions of criminal culpability arose; the Tribunal would say that it was improper to do so as no allegation of fraud had been made in the course of the Tribunal proceedings against ABL or Mr Rafiq. There might be a bare factual similarity between matters in the Tribunal proceedings and any criminal proceedings, as ABL was the Appellant before the Tribunal and could possibly be referred to in the criminal proceedings. However, there was no allegation of fraud in the present appeal. It was very difficult to see how Mr Ashiq could say that it was inevitable that findings in an appeal where there were no criminal allegations could be used in criminal proceedings. This was nothing but speculation.

23. Mr Singh submitted that even if there were a potential overlap, anything decided by the Tribunal could be excluded by the trial judge; this was clear from *Mote*. This power was not limited, as Mr Ashiq had argued; the trial judge could exclude decisions of the Tribunal.

24. It followed that ABL had not shown that proceeding with the Tribunal appeal would result in any real danger of injustice in the context of criminal proceedings. A secondary issue was that of possible prejudice; ABL had not demonstrated that any prejudice would be suffered. It had not been shown that proceeding with the Tribunal appeal would create a real risk in relation to criminal proceedings.

25. Mr Singh referred to other reasons for proceeding in the normal way with the appeal hearing. A significant factor was that the application had been made in August 2012, but Mr Rafiq had been arrested in September 2011 and therefore ABL knew of the potential for criminal proceedings from that date onwards. There was no good explanation why it had taken ABL 11 months to make the application, which had been served only a few weeks before the date listed for the hearing of the appeal. If the application had been made earlier, the significant costs of preparation for the hearing could have been avoided. The application had been made “too late in the day”.

26. It was clear from *Mote* that there was a public interest in appeal proceedings being determined within a reasonable time. To order a stay now would cause a significant delay; this was not consistent with the “overriding objective” as set out in Rule 2 of the Tribunal Rules. A stay would cause prejudice to HMRC, who would like to have a decision within a reasonable time.

27. Mr Singh emphasised that even if it were to be shown that there was no prejudice to HMRC, the other factors which he had mentioned were more important in deciding whether or not the proceedings should be stayed.

28. In ABL’s Notice of Application, it had referred to consent being given by HMRC’s Solicitor’s Office to the stay of proceedings in other cases. The true position was that there had been only one such case, as mentioned in HMRC’s Notice of Objection. The circumstances of that other case included the significant factor that the appeal in question was at a very early stage, rather than the advanced stage which ABL’s appeal had reached by the time of its application. In any event, whether consent had been given in another case was beside the point; the question was whether ABL’s application was meritorious. HMRC’s submission was that it was not. Mr Singh submitted that for the reasons which he had given, the application should be refused.

29. In response to my question whether it was a significant part of HMRC’s case that ABL as Appellant and Mr Rafiq were separate legal entities, Mr Singh indicated that this was not a major part of his submission; there were no allegations of a criminal nature against ABL or Mr Rafiq in this appeal.

Mr Ashiq's reply

30. In relation to the “legal entities” point, HMRC were saying that they were making no allegations of dishonesty in the present proceedings. However, the same authority, ie legal entity, was making allegations of that nature in the context of the criminal investigation. At paragraph 25 of HMRC’s Statement of Case for the Tribunal appeal, HMRC referred to the only conclusion capable of being drawn, namely that after their receipt in ABL’s warehouse, the spirits had been removed without payment of duty and VAT. In the criminal investigation, the allegation concerned these and other goods, and was that there had been a conspiracy to cheat the revenue; this was, effectively, theft. Mr Singh’s submissions were merely that HMRC did not have to show dishonesty in relation to the matters raised by the Tribunal appeal.

31. In relation to the findings of the Tribunal, Mr Singh had misunderstood ABL’s application. The findings of the Tribunal were not admissible in the context of criminal proceedings, as they were findings. ABL’s application was based on the evidence of Mr Rafiq, which of course would be admissible. It was almost inevitable that a question would be put to him as to the whereabouts of the goods.

32. It was clear from *Mote* that the Tribunal Judge had a discretion. All cases were fact-sensitive. The distinction between *Mote* and the present case was that in *Mote* the application to stay the proceedings was made after Mr Mote had been charged; the investigation had been completed. Mr Mote was within the trial process, so that he could not be interviewed again. The authorities showed that it was forbidden under the Police and Criminal Evidence Act to interview again; it was unlawful.

33. In the present case, matters were at the investigation stage. No decision had been taken as to whether or not Mr Rafiq was to be charged. This gave HMRC the power to ask Mr Rafiq questions, under caution, concerning any answers given in the Tribunal proceedings. There was nothing stopping HMRC from using any voluntary disclosure in the case against him.

34. In criminal proceedings, the burden was on the prosecution. The accused had a right of silence. The system was for a “defence case statement” to be served. There was no such provision in the context of an investigation. This went to the heart of the issue of potential prejudice in relation to Mr Rafiq.

35. Mr Ashiq referred to *Mote* at [27], which considered forfeiture proceedings; these tended to be adjourned. The position described at [28] was similar to that in the present case. It tended to be the same authority which was both prosecutor and seeking forfeiture. Mr Singh’s submissions had force if the prosecuting authority was totally different from the authority involved in the other proceedings. The fundamental point was that referred to in *Mote* at [31] concerning a real risk of prejudice to the defendant in criminal proceedings. It was necessary for the court to decide whether there was real prejudice. Discretion was conferred on the Tribunal, as the issue was fact-sensitive.

36. Mr Ashiq accepted that the application should have been made earlier, but the lateness should not detract from its merits. The issue was related to forfeiture proceedings, where no prejudice was regarded as suffered. This was exactly the position here.

37. Mr Singh had referred to costs. Mr Ashiq submitted that these would have been incurred in any event. He accepted that there might have to be some delay in the matter coming back before the Tribunal. However, no extra cost would be incurred by reason of the adjournment.

38. Mr Ashiq did not seek to rely on the reference in the Notice of Application to the granting of stays in the context of other cases. He sought to amend the terms of the application; instead of referring to a specified period, he requested that there should be a stay of proceedings to a date after Mr Rafiq's return to the police station. Once this occurred, there was no further evidence and HMRC decided that there should be no further action, the appeal could take place. If instead Mr Rafiq was charged, the Tribunal would have a new consideration; there would have to be an application for the hearing of the appeal on a different date. The position would depend on the merits at the time. If Mr Rafiq were to be charged, the point concerning him being subject to further interview would of course fall away.

39. Mr Singh's view on Mr Ashiq's amended application was that it did not affect HMRC's submissions. If the hearing of the substantive appeal were to be postponed, the practicalities of listing meant that it could not be heard during the current year.

Discussion and conclusions

40. *Mote* concerned a decision by the Social Security Appeal Tribunal not to adjourn a hearing of Mr Mote's appeals in respect of housing benefit and income support by reason of criminal proceedings instituted against him after the bringing of his appeals but before the date listed for the hearing of those appeals. Richards LJ referred at [13]-[15] to the Tribunal Chairman's decision:

[13] . . . On the face of it, therefore, the chairman had a broad discretion whether or not to proceed with the hearing. He gave detailed reasons for his decision not to adjourn.

[14] He said first that there might well be cases in which it would be preferable for social security appeals to await the outcome of a related criminal prosecution, but whether or not that was so would depend on the circumstances of each case and in particular the precise nature of the criminal charges and the precise issues raised by the appeal.

[15] He then examined the extent of overlap between the issues in the criminal proceedings and in the tribunal proceedings. In summary, he said that the criminal court would be concerned with the question of dishonesty, which was wholly irrelevant to the tribunal proceedings; and that the tribunal was concerned with entitlement to benefit, whereas it would be no answer to the criminal charges for the appellant to say that he had not gained by any deception because he had not been

paid any benefit to which he was not entitled: the question of entitlement would at most be relevant to mitigation. So the issues were separate.”

41. After setting out further elements of the Tribunal Chairman’s conclusions, subsequently upheld by the Social Security Commissioner, Richards LJ reviewed the submissions of Mr Mote’s Counsel “in the light of a substantial line of authority concerning the relationship between concurrent civil and criminal proceedings”. The authorities concerned are considered in his judgment at [21]-[32]. The principles may be summarised as follows:

- (1) The exercise of the discretion to stay or adjourn the civil proceedings to await the outcome of a criminal prosecution should take into account whether there is a real danger of causing injustice in the criminal proceedings.
- (2) A relevant consideration in the exercise of the discretion is whether the continuation of the civil proceedings will give rise to a real risk of prejudice to the defendant in the criminal proceedings. If there is a risk of prejudice, it may be expected to weigh heavily in favour of a deferment of the civil proceedings pending the conclusion of the criminal proceedings.
- (3) The privilege against self-incrimination is a privilege against being compelled on pain of punishment to provide evidence or information, and the privilege does not give rise to a defence in civil proceedings or to a right not to plead a defence in civil proceedings.
- (4) There is no right to silence in the context of civil proceedings. The requirement to give details of a positive defence at an early stage in criminal proceedings means that disclosure of a defence in civil proceedings is unlikely to disadvantage a defendant in criminal proceedings.
- (5) Although the reasoned decision or judgment in civil proceedings would be available to the prosecuting authorities, no reliance can be placed on it in the criminal trial so as to prove the guilt of the defendant.
- (6) Where forfeiture proceedings and criminal proceedings are in progress at the same time, liaison between the authorities concerned is essential to ensure that the fair trial of a defendant is not prejudiced by anything arising in the civil proceedings, and steps should be taken accordingly.
- (7) No material change of approach in this area is required by reason of the coming into force of the Human Rights Act 1998.

42. This Tribunal’s powers in relation to a stay of proceedings are conferred by Rule 5 of the Tribunal Rules, and in particular Rule 5(3)(j). In the same way as under the then Regulations applicable in *Mote*, the terms of the discretion under Rule 5(3)(j) are broad; there is no specific guidance provided by the Tribunal Rules. As in the various cases referred to by Richards LJ in *Mote*, the exercise of the discretion has to be based on the facts and circumstances of the particular case.

43. The first practical issue in relation to the facts is that the appeal before this Tribunal is made by ABL rather than by Mr Rafiq. HMRC did not seek to rely on the distinction between the respective legal persons concerned in the respective

proceedings. There was no suggestion before me that there was any prospect of ABL being subjected to criminal proceedings. I have therefore considered the issue on the basis that it is Mr Rafiq, rather than ABL, who is the possible subject of criminal proceedings.

44. In the case of a “small company” wholly owned by one individual and run by that individual and one other director, I do not consider that the company and its director should be regarded for the purposes of this type of application as totally separate and distinct persons. In a colloquial sense, it could be said of Mr Rafiq that he and ABL are in effect, in the context of ABL’s activities, the same person. Whether this would be the same in other cases would depend on the precise facts and circumstances relating to the ownership and management of the company concerned. In relation to ABL, I accept Mr Ashiq’s submission that ABL does not exist in a vacuum, and that Mr Rafiq’s evidence is potentially significant in the context of ABL’s appeal to this Tribunal on the substantive issue of the VAT assessment.

45. I therefore approach the application on the basis that Mr Rafiq is concerned both with the civil proceedings before this Tribunal and possible criminal proceedings consequent on the investigations which have continued following his arrest on suspicion of conspiracy to cheat the public revenue.

46. Leaving aside for the present Mr Singh’s submission concerning the absence of any charge having been made against Mr Rafiq, the question is whether continuing with the substantive appeal before this Tribunal would give rise to a real risk of prejudice to Mr Rafiq as a defendant in criminal proceedings.

47. I accept Mr Singh’s submission that no allegation of dishonesty against Mr Rafiq or ABL is raised by the appeal to this Tribunal, and that the issues raised by the appeal are distinct from those involved in the suspected offence of conspiracy to cheat. No allegation of fraud has been made against either ABL or Mr Rafiq in the context of the VAT appeal. I therefore agree that it is most unlikely that any findings in relation to the VAT appeal could be used in relation to any criminal proceedings. In any event, there are safeguards. Any evidence which might suggest fraud or dishonesty could be excluded from the Tribunal’s consideration. Where fraud or dishonesty have not been pleaded, it would in any event be inappropriate to admit such evidence. Further, as mentioned by Richards LJ in *Mote* at [31], the judge in the criminal proceedings could limit the evidence admitted at the trial if this was necessary to prevent a breach of Convention rights or to ensure a fair trial.

48. As Mr Singh stated, no charges had been made against Mr Rafiq. This written decision is being prepared at a point after the hearing of the substantive appeal and after the date on which Mr Rafiq was due to attend the police station; no information has been provided to the Tribunal to indicate whether or not Mr Rafiq has been charged with any criminal offence. I therefore deal with this decision by reference to the same limited information as was available at the time of the application hearing.

49. Mr Ashiq accepted that the findings of the Tribunal would not be admissible in any criminal proceedings. However, he submitted that until any charges were made

against Mr Rafiq, the evidence which Mr Rafiq gave in the context of the Tribunal proceedings would be admissible in criminal proceedings, and that in particular Mr Rafiq would almost inevitably be questioned about the whereabouts of the goods. While matters remained at the investigation stage, HMRC could therefore ask Mr Rafiq questions about any answers given in relation to the Tribunal proceedings.

50. Mr Ashiq's submission was based on *Mote*, in which the application to adjourn the proceedings had been made after Mr Mote had been charged and the criminal investigations had been completed. Although this was the case in *Mote*, the position was different in one of the cases referred to by Richards LJ. In *V v C* [2001] EWCA Civ 1509 the defendant "also faced a criminal investigation and possible criminal proceedings in respect of the same matters" (*Mote* at [23]). It is clear from *V v C* at [4] that charges were not brought against Mr C until after the hearing by McCombe J of the appeal against the decision of Master Miller to dismiss the claimant's application for summary judgment against Mr C. On the basis of the views of the Court of Appeal in *V v C* and in *Mote*, I do not accept Mr Ashiq's distinction between the position after the relevant person has been charged and that before any charges have been brought.

51. My decision reached at the end of the application hearing was to refuse the application. I did not consider that the matters to be dealt with in the course of ABL's VAT appeal would be prejudicial to any criminal proceedings which might be brought against Mr Rafiq. In any event, it was not clear whether Mr Rafiq was likely to be charged.

52. In arriving at my decision, I was strongly influenced by the delay between notification of the criminal investigation and the date of the application, which (as Mr Singh submitted) was made very late in the day. In this respect, an application made at a much earlier stage might have been viewed as having a greater chance of being granted, but I must emphasise that any such application must still meet all the other tests considered in this decision, and unless it fulfils the necessary conditions having regard to the particular circumstances of the case in question, it will not be accepted as a basis for deferring the proceedings relating to that appeal.

53. My decision was also made in accordance with the overriding objective, as specified in Rule 2 of the Tribunal Rules; I did not consider it to be in the interests of justice for the appeal to be delayed.

54. In the course of preparing this decision I have reviewed the factors to be taken into account in exercising my discretion under Rule 5(3)(j), and I am satisfied that there are no reasons for departing from the terms of my decision as expressed to the parties at the conclusion of the hearing.

55. Mr Ashiq referred to the costs incurred by HMRC in preparing for the substantive hearing, and argued that these would have been incurred in any event, whether or not the application for a stay of proceedings was granted. I am not satisfied that this is the case. If a stay is granted and the appeal resumes after the relevant criminal proceedings have been concluded, the papers originally prepared will have to be revisited and reviewed, which in itself will involve the expenditure of time and money. Further, it may not be possible for the same Counsel to deal with the appeal, so that cost will be incurred in instructing someone else to prepare for the substantive hearing. The decision whether or not to pursue the appeal after the end of the criminal proceedings will be in the hands of the relevant appellant rather than HMRC. That appellant may not wish to continue with the appeal, and therefore HMRC cannot assume that their original expenditure will turn out to have been a contribution towards the costs of a future hearing.

56. For all the above reasons, I confirm my decision to refuse ABL's application for a stay of the proceedings in respect of its VAT appeal.

Right to apply for permission to appeal

57. 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.

**JOHN CLARK
TRIBUNAL JUDGE**

RELEASE DATE: 26 September 2012