



**TC02664**

**Appeal number: TC/2012/03992**

*Strike-out application – prospects for success and jurisdiction – Rule 8(2) and (3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – Application allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ALLAN SLATER**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE KENNETH MURE, QC  
IAN G SHEARER**

**Sitting in public at George House, 126 George Street, Edinburgh on Wednesday  
20 March 2013**

**Brian McLean, for the Appellant**

**Iain Artis, Advocate, with Ian Mowat, Office of the Advocate General for  
Scotland, for the Respondents**

## DECISION

1. This is an application at the instance of HMRC, the Respondents, to strike-out  
5 Mr Slater's appeal under reference to Rule 8(2) and (3)(c) of this Tribunal's procedural rules.

2. A preliminary consideration arose in relation to the scope of the Appellant's arguments which fell to be considered. In his Grounds of Appeal (box 7) it is stated –  
“Client paid EU duty and does not feel there is a double taxation liability. No  
10 evidence has been provided by HMRC to support their claim.” However, in two subsequent documents described as the “Appellant's Statement of Case” and another containing “Additional Points” ten further aspects are raised by the Appellant relating essentially to the fairness of procedures followed by the Respondents' officials and those of the UK Border Agency in relation to their treatment of Mr Slater and the  
15 possible violation of his Human Rights.

3. Mr Artis' stance was in the first instance that the Tribunal should not permit the appeal to stray beyond the Grounds set out in box 7, but if these two further documents bearing to be the “Appellant's Statement of Case” were to be considered, then he should be allowed to address the Tribunal not simply on Paragraph (3)(c) of  
20 Rule 8, viz that there was no reasonable prospect of the appeal succeeding, but also on Paragraph (2) viz that additionally the Tribunal had no jurisdiction to hear the matters raised.

4. We considered it appropriate that the hearing should be extended to include matters raised in the two additional documents containing the ten points and described  
25 as the “Appellant's Statement of Case” in addition to the original Grounds of Appeal. Mr McLean explained to us that he had encountered delay and difficulty in obtaining all the information required to finalise his stance on behalf of the Appellant. So far as the Respondents' interests were concerned, we considered that these were sufficiently protected in that Mr Artis would have the opportunity of addressing us on both  
30 paragraphs of Rule 8.

5. The circumstances giving rise to the dispute may be summarised briefly. On 15 December 2010 a refrigerated vehicle driven by the Appellant was about to board a “shuttle” train bound for the UK at the French freight terminal control zone at Coquelles. The vehicle was intercepted, and after a search 135 kg of tobacco, not  
35 recorded on the cargo manifest, was found concealed. The tobacco was seized as liable for forfeiture. This procedure was not challenged by the Appellant, and the tobacco was condemned statutorily as forfeited. The Appellant did not seek restoration of the tobacco. An assessment to excise duty on the tobacco of £16,954 was made subsequently, which is the subject of this appeal. The assessment was  
40 made on the basis that the tobacco was being imported into the UK for a commercial purpose. Reference is made to Reg. 13 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010. Following an internal review HMRC maintained their decision to make the assessment.

6. The original Grounds of Appeal state simply that EU duty was paid and that there should not be a further, double taxation liability. There is no indication of where duty or tax was paid or how much. However, irrespective of that, a liability to duty arose on import of the tobacco into the UK. We agree with Mr Artis that *esto* 5 duty or tax were paid in France or elsewhere in the EU, then a claim for repayment would be open to the Appellant on his importing the tobacco into the UK and paying duty there. It follows, and we agree with Mr Artis, that the Appellant's complaint of his suffering double-taxation is accordingly misconceived. We conclude, therefore, that for purposes of Regulation 8(3)(c) there is not a reasonable prospect of the 10 argument as set out originally succeeding.

7. We now have to consider the Human Rights issues noted in the other appeal documents lodged on behalf of Mr Slater. Mr McLean elaborated his arguments as to the infringement of Mr Slater's Human Rights in a brief oral submission. He founded 15 substantially on the recent decision of the Supreme Court in *Cadder v HMA* [2010] UK SC 43. He referred us to the terms of paras 53, 31 and 33 especially of the decision of Lord Hope. These passages, Mr McLean argued, supported his argument that evidence taken in breach of Mr Slater's Human Rights should be ignored, with the resultant effect that paragraphs 2, 3 and 4 of the Respondents' Statement of Case should be ignored by the Tribunal. That meant that there was nothing of substance 20 left. Mr McLean submitted that the evidence as to commerciality came from information taken in breach of principles of Human Rights, and therefore could not be the basis of a proper assessment to excise duties.

8. Mr Artis' response was to the effect that the role of the Tribunal is circumscribed. While this Tribunal's jurisdiction extends to the decision to make the 25 assessment, and its being upheld on review, it does not include the propriety of the Respondents' officers' decision to stop and search the vehicle in question, and the questioning and investigation thereafter. These might be apt for Judicial Review, but as was acknowledged recently in the decision in *Hok Ltd* [2012] UK UT 363 (TCC), this Tribunal does not have a general equitable jurisdiction.

9. Reference may also be made to the concluding terms of the opinion of Mummery LJ in *HMRC v Lawrence & Jones* [2011] EWCA Civ 824. He considered 30 "... that the First Tier Tribunal had no power to re-open and re-determine the question whether or not the seized goods had been legally imported for the [taxpayers'] personal use; that question was already the subject of a valid and binding deemed determination under the 1979 Act; the deeming was the consequence of the 35 [taxpayers'] own decision to withdraw their notice of claim contesting the condemnation and forfeiture of the goods and the car in the courts; the First Tier Tribunal only had jurisdiction to hear an appeal against a review decision made by HMRC on the deemed basis of the unchallenged process of forfeiture and condemnation; and the appellate jurisdiction of the First Tier Tribunal was confined 40 to the correctness or otherwise of the discretionary review decision not to restore the seized goods and car".

10. We agree with Mr Artis' submission that, irrespective of the merits of any argument as to Human Rights or other equitable remedies, this Tribunal's jurisdiction precludes us from considering them.

5 11. For all of these reasons we consider that this Application to strike-out the appeal falls to be granted both in terms of paragraph (3)(c) and also paragraph (2) of Rule 8.

12. Finally, we would express our gratitude to both Mr McLean and Mr Artis for their helpful arguments in support of their respective stances.

10 13. 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.

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20 **KENNETH MURE, QC**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 18 April 2013**