Appeal number
UT/2016/0239

Excise duty – jurisdiction of First-tier Tribunal – paragraph 5 of Schedule 3 to the Customs and Excise Management Act 1979 – effect on person who was not owner of goods seized

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

CARL HODSON **Appellant**

- and –

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

Tribunal: The Hon Mr Justice Arnold and Judge Ashley Greenbank

Sitting in public in the Rolls Building, Fetter Lane, London EC4A 1NL on 2 November 2017

John Shelley CTA for the Appellant

Simon Pritchard, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

© CROWN COPYRIGHT 2017

DECISION

Introduction

1. This is an appeal from a decision of the First-tier Tribunal (Tax Chamber) (Judge Rachel Mainwaring-Taylor) dated 26 April 2016 [2016] UKFTT 288 (TC) to strike out part of the Appellant's appeal against a demand by HMRC for excise duty on the ground that the FTT had no jurisdiction in respect of that part of the appeal. The part struck out concerned the Appellant's case that the goods in issue were not duty payable because they were lawfully in transit under duty suspension arrangements. The FTT held that it had no jurisdiction to entertain that case by virtue of paragraph 5 of Schedule 3 to the Customs and Excise Management Act 1979 ("CEMA"). The Appellant appeals on the ground that his case is not precluded by paragraph 5 because he was not the owner of the goods and no notice of seizure was served upon him, and thus the FTT does have jurisdiction to determine that case.

2. By the same decision, the FTT gave the Appellant permission to amend his grounds of appeal to advance the contention that the Appellant was not "holding" the goods at the relevant time within the meaning of regulation 13 of the Excise Goods (Holding, Movement and Duty Point) Regulations 2010. It was agreed between the parties that the determination of that issue should be stayed pending the resolution of another case then pending before this Tribunal which raised a similar issue. The issue remains to be determined in this case.

The facts

3. The FTT set out the facts of the case very succinctly in its decision as follows:

> "4. On 17th May 20012 the Appellant was intercepted at Dover eastern Docks whilst driving vehicle registration number YN55 HOH attached to a trailer containing 15,750 litres of mixed wine. The documents showed the consignor of the goods to be Eurostop SARL with intended delivery to Plutus UK Limited. The goods were accompanied by ARC (Administrative Reference Code) number 12FRG007400003319045.
>
> 5. Border Force established that on 15th May 2012 the Appellant had driven the same vehicle with a load of alcoholic beverages using the same ARC number. Border Force seized the goods and issued the Appellant with an information sheet recording the details of the seizure.
>
> 6. The seizure was not challenged by the Appellant or anyone else.

7. The goods were deemed to have been duly seized and condemned under paragraph 5 of Schedule 3 to the Customs and Excise Management Act 1979 ('CEMA').

8. On 13th May 2013, the Appellant received a demand to pay excise duty of £39,908 and on 6th May 2014 he received a demand for a penalty in the sum of £7,981, which was later increased to £13,967, in relation to the unpaid excise duty.

9. The Appellant lodged an appeal on 7th June 2013 against the assessment to excise duty and a further appeal against the penalties on 26th August 2014."

4. It appears from reading the FTT's decision as whole that the FTT also accepted as established two facts which it recorded at [28] and [30] as having been alleged by the Appellant and which do not appear to have been disputed by HMRC: first, that the Appellant was not the owner of the goods; and secondly, that HMRC had served a notice of seizure dated 17 May 2012 on the owner of the goods, Empire Suppliers Ltd ("Empire"). Nor did either party dispute these facts before us.

5. Both parties sought to elaborate upon the facts found by the FTT on the present appeal, and the Appellant's representative was critical of the FTT's failure either to record in its decision the evidence before it or to make more extensive findings of fact. Moreover, at times, the Appellant's representative appeared to be challenging some of the findings the FTT did make. An appeal only lies to this Tribunal on a point of law, however, and neither party has obtained permission to challenge the FTT's findings of fact either on the ground that they were not open to the FTT on the evidence before it or on the ground that the FTT failed to find relevant facts which were established by the evidence. Accordingly, we are obliged to proceed on the basis of the facts as found by the FTT. In our view, that does not give rise to any difficulty, because the facts found by the FTT are sufficient for the purposes of this appeal.

6. We should add, for the avoidance of doubt, that we are not suggesting that it would not be open to this Tribunal to take into account facts additional to those found by the FTT if they were both undisputed and material. For example, in the present case it is common ground that notices of seizure were also served on Eurostop SARL and Plutus UK Ltd; but neither party contends that that fact makes any difference to the legal analysis.

The legislative framework

7. Schedule 3 of CEMA provided, as it stood at the relevant time and so far as relevant to the appeal, as follows:

"1.(1) The Commissioners shall, except as provided in sub-paragraph (2) below, give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to

their knowledge was at the time of the seizure the owner or one of the owners thereof.

(2) Notice need not be given under this paragraph if the seizure was made in the presence of—

…

(b) the owner or any of the owners of the thing seized or any servant or agent of his; or

…

2. Notice under paragraph 1 above shall be given in writing and shall be deemed to have been duly served on the person concerned—

(a) if delivered to him personally; or

(b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business …

3. Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners at any office of customs and excise.

4.(1) Any notice under paragraph 3 above shall specify the name and address of the claimant and, in the case of a claimant who is outside the United Kingdom and the Isle of Man, shall specify the name and address of a solicitor in the United Kingdom who is authorised to accept service of process and to act on behalf of the claimant.

…

5. If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

6. Where notice of claim in respect of any thing is duty given in accordance with paragraphs 3 and 4 above, the Commissioners shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture the court shall condemn it as forfeited.

8. Proceedings for condemnation shall be civil proceedings and may be instituted—

(a) in England or Wales either in the High Court or in a magistrates' court;

…

10.(1) In any proceedings for condemnation instituted in England, Wales or Northern Ireland, the claimant or his solicitor shall make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

…

(3) If any requirement of this paragraph is not complied with, the court shall give judgment for the Commissioners."

The authorities on paragraph 5 of Schedule 3 to CEMA

8. The leading case as to the effect of paragraph 5 of Schedule 3 to CEMA upon the jurisdiction of the FTT is the decision of the Court of Appeal in *Revenue and Customs Commissioners v Jones* [2011] EWCA Civ 824, [2012] Ch 414. In that case HMRC had seized substantial quantities of tobacco, wine and beer together with the car used by the owners for importing the goods. The owners gave notice to HMRC challenging the legality of the seizure on the ground that the goods were for their personal use, but later withdrew that notice. The owners then requested HMRC to restore the goods and the vehicle, but HMRC refused to do so and maintained that refusal after a review. The owners appealed to the FTT against that refusal. HMRC contended that the FTT had no jurisdiction to entertain the appeal. This contention was upheld by the Court of Appeal.

9. Mummery LJ, with whom Moore-Bick and Jackson LJJ agreed, began by explaining that, when HMRC seize goods on the ground that they have been illegally imported, two procedures are available under CEMA for resolving legal disputes about whether the owner can get his goods back. First, original proceedings brought by HMRC, to whom notice of claim has been given by the owner of the goods. Those proceedings are brought in a magistrates' court or in the High Court for the condemnation and forfeiture of the goods. Secondly, appellate proceedings in the FTT brought by the owner of the imported goods. An appeal to the FTT lies against a review decision of HMRC refusing the owner's application for restoration of the seized goods.

10. Having set out the facts, the statutory framework, the authorities and HMRC's submissions, Mummery LJ summarised his conclusions at [71] as follows:

"(1) The owners' goods seized by the customs officers could only be condemned as forfeit pursuant to an order of a court. The FTT and the UT are statutory appellate bodies that have not been given any such original jurisdiction.

(2) The owners had the right to invoke the notice of claim procedure to oppose condemnation by the court on the ground that they were importing the goods for their personal use, not for commercial use.

(3) The owners in fact exercised that right by giving to HMRC a notice of claim to the goods, but, on legal advice, they later decided to withdraw the notice and not to contest

condemnation in the court proceedings that would otherwise have been brought by HMRC.

(4) The stipulated statutory effect of the owners' withdrawal of their notice of claim under paragraph 3 of Schedule 3 was that the goods were deemed by the express language of paragraph 5 to have been condemned *and* to have been 'duly' condemned as forfeited as illegally imported goods. The tribunal must give effect to the clear deeming provisions in the 1979 Act: it is impossible to read them in any other way than as requiring the goods to be taken as 'duly condemned' if the owner does not challenge the legality of the seizure in the allocated court by invoking and pursuing the appropriate procedure.

(5) The deeming process limited the scope of the issues that the owners were entitled to ventilate in the FTT on their restoration appeal. The FTT had to take it that the goods had been 'duly' condemned as illegal imports. It was not open to it to conclude that the goods were legal imports illegally seized by HMRC by finding as a fact that they were being imported for own use. The role of the tribunal, as defined in the 1979 Act, does not extend to deciding as a fact that the goods were, as the owners argued in the tribunal, being imported legally for personal use. That issue could only be decided by the court. The FTT's jurisdiction is limited to hearing an appeal against a discretionary decision by HMRC not to restore the seized goods to the owners. In brief, the deemed effect of the owners' failure to contest condemnation of the goods by the court was that the goods were being illegally imported by the owners for commercial use.

(6) The deeming provisions in paragraph 5 and the restoration procedure are compatible with article 1 of the First Protocol to [the European Convention on Human Rights] and with article 6, because the owners were entitled under the 1979 Act to challenge in court, in accordance with Convention-compliant legal procedures, the legality of the seizure of their goods. The notice of claim procedure was initiated but not pursued by the owners. That was the choice they had made. Their Convention rights were not infringed by the limited nature of the issues that they could raise on a subsequent appeal in the different jurisdiction of the tribunal against a refusal to restore the goods.

(7) I completely agree with the analysis of the domestic law jurisdiction position by Pill LJ in *Gora's* case [2004] QB 93 and as approved by the Court of Appeal in *Gascoyne's* case [2005] Ch 215. The key to the understanding of the scheme of deeming is that in the legal world created by legislation the deeming of a fact or of a state of affairs is not contrary to 'reality'; it is a commonly used and legitimate legislative device for spelling out a legal state of affairs consequent on the occurrence of a specified act or omission. Deeming something

to be the case carries with it any fact that forms part of the conclusion.

(8) The tentative obiter dicta of Buxton LJ in *Gascoyne's* case on the possible impact of the Convention on the interpretation and application of the 1979 Act procedures and the potential application of the abuse of process doctrine do not prevent this court from reaching the above conclusions. That case is not binding authority for the proposition that paragraph 5 of Schedule 3 is ineffective as infringing article 1 of the First Protocol or article 6 where it is not an abuse to reopen the condemnation issue; nor is it binding authority for the propositions that paragraph 5 should be construed other than according to its clear terms, or that it should be disapplied judicially, or that the owners are entitled to argue in the tribunal that the goods ought not to be condemned as forfeited.

(9) It is fortunate that Buxton LJ flagged up potential Convention concerns on article 1 of the First Protocol and article 6, which the court in *Gora's* case did not expressly address, and also considered the doctrine of abuse of process. The Convention concerns expressed in *Gascoyne's* case are allayed once it has been appreciated, with the benefit of the full argument on the 1979 Act, that there is no question of an owner of goods being deprived of them without having the legal right to have the lawfulness of seizure judicially determined one way or other by an impartial and independent court or tribunal: either through the courts on the issue of the legality of the seizure and/or through the FTT on the application of the principles of judicial review, such as reasonableness and proportionality, to the review decision of HMRC not to restore the goods to the owner.

(10) As for the doctrine of abuse of process, it prevents the owner from litigating a particular issue about the goods otherwise than in the allocated court, but strictly speaking it is unnecessary to have recourse to that common law doctrine in this case, because, according to its own terms, the 1979 Act itself stipulates a deemed state of affairs which the FTT had no power to contradict and the owners were not entitled to contest. The deeming does not offend against the Convention, because it will only arise if the owner has not taken the available option of challenging the legality of the seizure in the allocated forum."

11. *Jones* has been followed and applied in a series of subsequent decisions: see in particular *Revenue and Customs Commissioners v Race* [2014] UKUT 331 (TCC), *European Brand Trading Ltd v Revenue and Customs Commissioners* [2016] EWCA Civ 90, *Duggan v Revenue and Customs Commissioners* [2015] UKFTT 125 (TC) and *Denley v Revenue and Customs Commissioners* [2017] UKUT 340 (TCC).

12. Lewison LJ, with whom Sir Terence Etherton C and Ryder LJ agreed, made two further points in *European Brand Trading* which are pertinent:

> "35. It is a necessary corollary of a condemnation (whether actual or deemed) that the excise duty has not been paid.
>
> …
>
> 38. There is one further point that needs to be addressed. What is the position if, as in our case, the application for restoration is made before the goods are condemned or deemed to be condemned but, before a decision on the application is made, they are condemned or deemed to be condemned? That question was considered by the Upper Tribunal (Warren J) in *Race v HMRC* [2014] UKUT 331 (TCC) and followed by the Upper Tribunal (Barling J) in *Shaw v HMRC* [2016] UKUT 4 (TCC). What Warren J said was this:
>
>> '33. … I do not consider it to be arguable that *Jones* does not demonstrate the limits of the jurisdiction. It is clearly not open to the tribunal to go behind the deeming effect of paragraph 5 Schedule 3 for the reasons explained in *Jones* and applied in *EBT*. The fact that the appeal is against an assessment to excise duty rather than an appeal against non-restoration makes no difference because the substantive issue raised by Mr Race is no different from that raised by Mr and Mrs Jones.
>>
>> 34. The Judge supported his contrary conclusion by referring to the period between the expiry of the one month time-limit for challenging seizure and the point at which the assessment to excise duty was issued. *The Judge commented that the owner of seized goods should not be forced to seek condemnation proceedings simply to guard against the possibility of a future tax or penalty assessment: see at [31] of the Decision. But that is precisely what he must do if he wishes to assert, if he were to be assessed, that the goods were not subject to forfeiture.* The effect of the deeming provisions is that the goods are legally forfeit. Notice 12A is clear that, unless the seizure is challenged, it is not possible subsequently to argue that the goods were not liable to forfeiture.' (Emphasis added)
>
> 39. I agree. The current form of Notice 12A reflects this. It says:
>
>> 'If you want goods returned because you believe they should not have been seized in the first place, perhaps because you claim excise goods are for your 'own use',

> the only avenue open to you is to challenge the legality of the seizure by sending a Notice of Claim (see section 3). You cannot use the restoration process for this.'"

The Appellant's submissions

13. The Appellant's representative's submissions may be summarised as follows. First, he submitted that in the present case there had been neither any seizure, nor any notice of seizure, which was capable of giving rise to the consequences specified in paragraph 5 of Schedule 3 with respect to the Appellant, because the goods had not been seized from the Appellant and no notice of seizure had been served upon him.

14. Secondly, he submitted that the words "any person" in paragraph 3 of Schedule 3 had to be read together with paragraph 10(1), which required the claimant (or his solicitor) to swear that, to the best of his knowledge and belief, the thing seized was "the property of the claimant", with the result that the person referred to in paragraph 3 could only be a person whose property the goods seized were. It followed, he argued, that paragraph 5 only applied where, and to the extent that, notice of his claim could have been given by such a person. In the present case, however, the Appellant could not have given notice of his claim because he was not the owner of the goods.

15. Thirdly, he submitted that the *Jones* line of authority was solely concerned with the position of owners of goods which had been seized by HMRC, and therefore did not apply where the FTT was dealing with a person who was not an owner.

16. Fourthly, he submitted that, since the Appellant did not own the goods in the present case, he could not make the sworn statement required by paragraph 10(1) of Schedule 3, and therefore any court proceedings could only result in judgment being given for HMRC by virtue of paragraph 10(3). It followed, he argued that, if the FTT did not have jurisdiction to entertain the Appellant's appeal, the Appellant would be deprived of access to a court contrary to Article 6 of the European Convention on Human Rights.

Analysis

17. We do not accept the Appellant's submissions for the following reasons.

18. So far as the first submission is concerned, the FTT found as a fact that the goods were seized at a time when they were in the Appellant's possession. To that extent, the goods were seized from him.

19. It is true that the FTT did not find that any notice of seizure was served on the Appellant, although the FTT did find that the Appellant was provided with information about the seizure. It is immaterial that no notice of seizure was served on the Appellant for the reasons explained below.

20. Counsel for HMRC pointed out that there was no requirement under paragraph 1 of Schedule 3 to serve a notice of seizure on the owner of the goods where the seizure was made in one of the circumstances listed in paragraph 1(2), and submitted that the Appellant had been the owner's servant or agent within paragraph 1(2)(b). As the Appellant's representative pointed out, however, the FTT made no finding that the Appellant was the owner's servant or agent. In any event, as noted above, it was the Appellant's own case that a notice of seizure had been served on the owner of the goods and the FTT appears to have accepted that.

21. Turning to the Appellant's second submission, even if paragraph 3 of Schedule 3 were to be interpreted as meaning that only someone who was (or at least claimed to be) the owner of the thing seized could serve a notice of claim, and even if paragraph 5 were to be interpreted as meaning that it only applied where someone who was (or at least claimed to be) the owner could have served a notice of claim, that would not assist the Appellant. As we have already noted, it was the Appellant's own case, and the FTT appears to have accepted, that notice of seizure had been served on the owner of the goods, Empire. It follows that Empire could have served a notice of claim. The FTT found as a fact, however, that no notice of claim had been served by anyone. No notice of claim having been served within the relevant period, paragraph 5 provided that the goods "shall be deemed to have been duly condemned as forfeited".

22. We should make it clear, however, that we do not accept that either paragraph 3 or paragraph 5 is to be construed in the manner contended for by the Appellant. So far as paragraph 3 is concerned, we consider that the words "any person claiming that any thing seized as liable to forfeiture is not so liable" in paragraph 3 mean exactly what they say. It is clear from the remainder of paragraph 3 that there is no requirement that the person in question should have been served with a notice of seizure, because the paragraph provides that, where no such notice has been served on the person, time runs from the date of the seizure. Nor is there any requirement in paragraph 3 that the person should be, or even claim to be, the owner of the thing which has been seized. We cannot see any justification for reading the requirement for the sworn statement imposed by paragraph 10(1) back into paragraph 3, because the words used in paragraph 10(1) are different and because paragraph 10(1) only imposes that requirement after proceedings for condemnation have been commenced by HMRC.

23. As for paragraph 5, the deeming provision applies where no notice of claim is given within the relevant period. There is no express requirement that notice of claim could have been given by a person with standing to give it, and we see no justification for implying such a requirement.

24. The Appellant's representative relied in support of his submission on the following passage in the judgment of Lightman J in *Fox v Customs and Excise Commissioners* [2002] EWHC 1244 (Admin), [2003] 1 WLR 1331:

"9. Goods are only liable to forfeiture if the conditions laid down in statutory provisions are established. Examples of such provisions are section 49 of the 1979 Act or article 5 of the Excise Goods (Personal Reliefs) Order 1992. In any case where the claim that they are liable to forfeiture is disputed in a manner provided by the 1979 Act, that issue of fact must be resolved in proceedings before the High Court or the magistrates' court. Where the claim is not so disputed, the 1979 Act provides that the seized goods are to be condemned and forfeited without any need to investigate whether the conditions laid down in, for example, section 49 are in fact satisfied.

10. Proceedings for condemnation are proceedings *in rem* against the goods liable to forfeiture: see *Customs and Excise Comrs v Air Canada* [1991] 2 QB 446. For this reason paragraph 1(1) of Schedule 3 requires notification of the seizure to the owner or owners if he or they may be unaware of it and only the owner or owners of the goods are interested in the outcome of the proceedings and have any standing in the proceedings.

11. A claimant, who must for the reasons I have given be the owner of the seized goods, is required by paragraph 3 of Schedule 3, if he disputes that the goods seized are liable to forfeiture, within one month to give notice of his claim to this effect to the commissioners and if he fails to do so under paragraph 5 the seized goods are deemed to have been duly condemned as forfeited. There is no need for any court proceedings: in default of protective action taken by the owner, the only person interested in the issue whether the seized goods are liable to forfeiture, by operation of the paragraph there is a valid and effective forfeiture.

12. Paragraph 6 however provides that, if a claimant within the one-month period gives the notice of his claim disputing the liability to forfeiture, the commissioners must issue proceedings for condemnation of the seized goods. Paragraph 10(1) provides that at those proceedings the claimant or his solicitor must state on oath that the goods seized were the property of the claimant at the time of the seizure, and if he or his solicitor does not do so, paragraph 10(3) provides that the court shall give judgment for the commissioners. This is because the claimant will not have established his ownership of the seized goods and accordingly the necessary legal standing to challenge the claim that the seized goods are liable to forfeiture. Such a judgment neither requires nor involves any finding that the seized goods are in fact liable to forfeiture: it involves merely a finding of default of any adverse claim by the owner with the statutory consequences of such default

> being that, whether or not in fact the goods are liable to forfeiture, the court is required to condemn them as forfeited."

25. In our judgment this passage does not support the Appellant's submission for the following reasons. First, the issue before Lightman J was concerned with the interpretation of section 141(1)(b) of CEMA in circumstances where some of the goods seized were owned by one person, who had challenged the seizure, and some by another person, who had not. Accordingly, to the extent that the passage set out above suggests that a notice of claim can only be served by the owner of the goods, it was obiter. Secondly, Lightman J did not consider the meaning of the words "any person" in paragraph 3, whether paragraph 5 only applied if notice of claim could be given by someone who claimed to the owner of the goods or what the position was if the owner could have given notice but did not. Thirdly, Lightman J was not concerned with the effect of paragraph 5 of Schedule 3 on the jurisdiction of the FTT. Fourthly, if and to the extent that *Fox* is inconsistent with *Jones*, it must be taken to have been overruled by *Jones*.

26. Moreover, we consider that parts of Lightman J's reasoning are adverse to the Appellant's submission. First, he stated that "[i]n any case" where the claim that goods are liable to forfeiture is disputed, "that issue of fact must be resolved in proceedings before the High Court or the magistrates' court" and that, "[w]here the claim is not disputed, the 1979 Act provides that the seized goods are to be condemned and forfeited". Secondly, he pointed out that proceedings for condemnation "are proceedings *in rem* against the goods liable to forfeiture". In other words, the process of condemnation and forfeiture results in title to the goods vesting in the Crown, and that title is good against any person. It is consistent with these points for paragraph 5 to affect any person with an interest in the legality of the seizure irrespective of whether that person was an owner of the goods, or was given notice of seizure, if no claim is made under paragraph 3.

27. As for the Appellant's third submission, it is factually incorrect that all the authorities in the *Jones* line are concerned with situations in which the person from whom the goods had been seized was the owner of the goods. On the contrary, as counsel for HMRC pointed out, *Duggan* was a case in which the appellant was the driver of the vehicle and not the owner of the goods. On the other hand, *Duggan* is not binding on this Tribunal.

28. More importantly, in our judgment, the reasoning in *Jones* and the subsequent authorities does not depend on the appellant to the FTT being the owner of the goods. Rather, it depends upon the absolute and unqualified terms of the deeming provision in paragraph 5 of Schedule 3, and upon the legal consequences of that deemed state of affairs. Just as proceedings for condemnation and forfeiture are proceedings *in rem* against the goods, the deeming provision in paragraph 5 has effect *in rem* with respect to the goods. Once the deeming provision applies, it is not open to the FTT to entertain any case by any party which is inconsistent with it, regardless of that party's standing or interest in the matter. Although the Appellant's representative appeared to suggest in his skeleton argument that paragraph 5 could only bind

persons other than the owner of the goods by virtue of the doctrines of *res judicata* or abuse of process and that the Appellant could not be bound on such a basis because he was not party to any relevant proceedings, in oral argument he recognised that HMRC do not rely upon those doctrines and that the reasoning in *Jones* was not based upon them, as Mummery LJ made clear at [71(10)].

29. Turning to the Appellant's fourth submission, we are sympathetic to the proposition that the Appellant ought to be able to challenge HMRC's demands for excise duties and penalties before an independent and impartial court or tribunal (subject to any question of timeliness). We also accept that, on its face, paragraph 10(1) appears to represent an obstacle to the Appellant's ability to challenge those demands by requiring HMRC to bring proceedings in court. We do not accept that this would involve a contravention of the Appellant's rights under Article 6 of the Convention, however, for three reasons.

30. First, "tax disputes fall outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produce for the taxpayer" and so Article 6 is not engaged: *Ferrazzini v Italy* [2001] STC 1314 at [30] (European Court of Human Rights, Grand Chamber) and *R (on the application of APVCO 19 Ltd) v Revenue and Customs Commissioners* [2015] EWCA Civ 648, [2015] STC 2272 at [68] (Vos LJ, with whom Floyd and Black LJJ agreed). The case which the Appellant wishes to advance that the goods were not duty payable is plainly a tax dispute.

31. Secondly, even if Article 6 is engaged, as counsel for HMRC pointed out, it is at least arguable that the Appellant would have a remedy available to him under section 3 of Human Rights Act 1998, which requires courts to construe legislation so far as possible in a way which it is compatible with Convention rights. As is well established, this is a strong duty of interpretation and may lead to interpretations being adopted which would not otherwise be adopted. In the present case, the Appellant could argue that paragraph 10(1) of Schedule 3 to CEMA should be interpreted as permitting the claimant to swear that the thing seized was his property in the sense that it was in his possession. We should make it clear that we are not ruling upon the correctness of such an argument, which would be a matter to be raised in condemnation proceedings in an appropriate court. The point is simply that it is not necessarily correct that a decision that the FTT has no jurisdiction in respect of the Appellant's case that no duty was payable would deprive the Appellant of access to a court in which to advance that case if Article 6 was engaged.

32. Thirdly, notwithstanding his reliance upon Article 6 of the Convention, the Appellant's representative did not argue that paragraph 5 of Schedule 3 to CEMA should be read down in some way by virtue of section 3 of the 1998 Act. In the absence of such an argument, we shall confine ourselves to saying that it is far from clear that it would be possible to interpret paragraph 5 in a manner which would assist the Appellant even if Article 6 was engaged.

33. Accordingly, in our judgment the FTT was correct to conclude that it had no jurisdiction to entertain the Appellant's case that no duty was payable in respect of the goods because they were in transit under duty suspension arrangements.

Conclusion

34. For the reasons given above, the appeal is dismissed.

MR JUSTICE ARNOLD **JUDGE GREENBANK**

Release date: 14 November 2017