



Neutral Citation: [2024] UKUT 00278 (TCC)

Case Number: UT/2023/000069

**UPPER TRIBUNAL
(Tax and Chancery Chamber)**

By remote video hearing

PERSONAL LIABILITY NOTICE – whether FTT’s decision contains error of law on Edwards v Bairstow grounds – no- appeal dismissed

Heard on: 28 May 2024

Judgment date: 11 September 2024

Before

**JUDGE ANDREW SCOTT
JUDGE JULIAN GHOSH KC**

Between

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Appellants

and

MOHAMMED ZAMAN
Respondent

Representation:

For the Appellants: Roddy McLeod, Counsel, instructed by the Office of the Advocate General on behalf of His Majesty’s Revenue and Customs

For the Respondent: Mohammed Zaman appeared in person

DECISION

INTRODUCTION

1. This is an appeal by HM Revenue and Customs (“HMRC”) against a decision of the First-tier Tribunal (Tax Chamber) (“the FTT”) released on 28 April 2023 ([2023] UKFTT 00404 (TC)). We refer to this as “the FTT 2023 decision”. The respondent is Mr Mohammed Zaman, who is the sole director and shareholder of Zamco Ltd.

2. The FTT first decided the relevant issue in this matter in a decision released on 24 June 2021 ([2021] UKFTT 0228 (TC) (“the FTT 2021 decision”). The FTT 2021 decision determined the issue before us in favour of Mr Zaman.

3. HMRC appealed the FTT 2021 decision to the UT (“the UT”), which allowed HMRC’s appeal on the basis that the FTT had made an error of law regarding the burden of proof (which we discuss below) ([2022] UKUT 00252 (TCC) (“the UT 2022 decision”), released on 20 September 2022). The UT remitted the case to the FTT.

4. The FTT, on the remitter in the FTT 2023 decision, determined the relevant issue (again) in favour of Mr Zaman.

5. HMRC now appeals against the FTT 2023 decision to the UT. The basis of HMRC’s appeal was that the FTT, in the FTT 2023 decision, had made a decision that was ‘perverse’ (in the sense that no tribunal could, applying the relevant legal principles and in the light of its findings of primary fact, have reached the decision that it did) and should be set aside on *Edwards v Bairstow* [1956] AC 14 grounds. The Scots approach is identical: see *Advocate General for Scotland v Murray Group Holdings Ltd* 2016 S.C. 201, which refers expressly to *Edwards v Bairstow*. Mr Zaman is domiciled in Scotland and Scots Law is the governing law.

THE ISSUES BEFORE THE FTT IN THE FTT 2021 DECISION

6. It is convenient to frame this decision against the background of the issues before the FTT in the FTT 2021 decision.

7. Put short, if goods are removed by, or under the direction of, a trader from a location outside the United Kingdom to the United Kingdom, a charge to Value Added Tax (“VAT”) arises under the Value Added Tax Act 1994 (“VATA 1994”), section 7(2), (4)(a). The time of supply rules are relevantly found in VATA 1994, section 6(2).

8. It is common ground that Zamco Ltd has a business of acquiring goods (alcohol) from suppliers, which it on-sells to customers.

9. The question dealt with by the FTT in the FTT 2021 decision was whether Zamco Ltd had acquired alcohol at a location outside the United Kingdom and brought this alcohol to the UK in the course of its business. If the answer to that question is “yes”, a charge to VAT arises for Zamco Ltd. If the answer is “no”, no VAT charge arises.

10. HMRC assessed Zamco Ltd to VAT on 30 May 2018 for the periods 02/16 to 08/17 (“the relevant period”): [2] FTT 2021 decision. Zamco Ltd has not appealed against the assessments, nor has it paid the VAT which HMRC say is due. On 23 October 2018, HMRC also fixed penalties on Zamco Ltd under Finance Act 2007 (“FA 2007”), Schedule 24, paragraph 1: [3]. Zamco Ltd has not appealed against or paid the penalties. Finally, on 26 October 2018, HMRC

issued Mr Zaman with a Personal Liability Notice (“PLN”), on the basis that there were “deliberate” inaccuracies in the VAT returns for the relevant period, which were “attributable” to Mr Zaman, under FA 2007, Schedule 24, paragraph 19(1): [4]. Mr Zaman appealed against the PLN. It was common ground that, if a trader appeals a PLN, that appeal may encompass an appeal against the underlying assessment and penalty, whether or not appealed by the trader: see, *Bell v HMRC* [2018] UKFTT 225 (TC) and most recently, *Jarvis v HMRC* [2020] UKFTT 54 (TC) (see [24] and [21] of the UT 2022 decision).

11. Mr Zaman has maintained that Zamco Ltd did not remove, or direct that the alcoholic goods be removed, to the United Kingdom, which means that both the VAT assessments and the PLN are wrong in law and should be quashed. This is what the FTT, in the FTT 2021 decision (at [10(1)]), called the “‘inaccuracy’ issue”, in that Mr Zaman’s position was that there was no “inaccuracy” in Zamco Ltd’s VAT returns for the relevant period at all, so that not only were the VAT assessments for the relevant period wrong, but also no penalties are due and the PLN must, therefore, fall away.

12. The FTT, in the FTT 2021 decision, determined the “‘inaccuracy’ issue” in favour of Mr Zaman: ([80]-[96]). The FTT found that the relevant alcoholic goods had not been removed to the United Kingdom either at the time that they were required by Zamco Ltd or the time that these goods were on-sold to Zamco Ltd’s customers: [96].

HMRC’S FIRST APPEAL TO THE UT

13. The reason why Mr Zaman’s appeal succeeded in the FTT 2021 decision was because the FTT expressed its decision (at [96]) as one in which HMRC had not discharged their burden of proof. The UT, in the UT 2022 decision (at [35]), recognised that this was an error of law. While the burden of proof is on HMRC to establish the validity of a PLN, it is for (in this case) the trader to prove, by evidence, that an assessment to VAT issued by HMRC is incorrect. HMRC do not have that evidential burden: [34] of the UT 2022 decision.

14. The UT 2022 decision expressly observed (at [37]) that:

“The problem with the FTT’s conclusion [in the FTT 2021 decision] was not that its factual findings were wrong. Rather, it answered the question by reference to whether HMRC had discharged the burden of proof which, despite the FTT having expressed significant reservations about the reliability of Mr Zaman’s evidence, led it to find in his favour.”

15. Indeed, the UT 2022 decision (at [31]) described the FTT’s approach to the facts in the FTT 2021 decision as “a careful analysis” which had not been criticised by either party. Thus, the UT, in the UT 2022 decision, declined to remake the FTT 2021 decision and remitted the matter to the FTT, on the express basis that the remitter was not “an opportunity to ask the FTT to disturb...findings of primary fact or make new findings of primary fact.”: [39].

THE FTT 2023 DECISION

16. The FTT 2023 decision found in favour of Mr Zaman. The FTT made its decision on the basis that, in the light of certain undisturbed findings in the FTT 2021 decision and a re-assessment of certain factual evaluations (applying the correct principles of law, in particular as to the burden of proof), the relevant alcoholic goods had not been removed to the United Kingdom, either at the time of their acquisition by Zamco Ltd, or at the time that they were sold to Zamco Ltd’s customers.

17. Since the FTT, in the FTT 2023 decision, located its conclusions in the findings of fact made in the FTT 2021 decision, we must set out the undisturbed findings of fact in the FTT 2021 decision. These are as follows (all paragraph references are to the FTT 2021 decision):-

(1) Zamco Ltd had a business of buying and on-selling alcoholic goods [18]; while this is common ground, the FTT recorded that Mr Zaman’s evidence and the documentation were, together, the only source to identify Zamco Ltd’s business of buying and on-selling alcoholic goods in the first place: [87].

(2) Zamco Ltd’s margin on sales was approximately £300,000 (2-3%): [19(3)].

(3) Mr Zaman is the sole director and sole shareholder of Zamco Ltd: [13].

(4) Zamco Ltd had a part-time employee, Mr Shafik Ahmed (“Mr Ahmed”), who, Mr Zaman said, met Zamco Ltd’s customers and collected cash: [13], [48]; Mr Zaman’s evidence was that Mr Ahmed dealt with Zamco Ltd’s customers more regularly than Mr Zaman ([84(1)], which the FTT described as “odd”: [90(6)].

(5) Mr Zaman’s oral evidence was that the goods were in warehouses in France and Germany at the point of sale: [81](1). The FTT expressly said, however, that it was (at [83]):

“...wary of putting significant weight on Mr Zaman’s evidence...unless (i) corroborated by evidence which we consider credible or (ii) clearly in line with “common sense” and what we consider inherently likely.”

This was because the FTT did not find Mr Zaman’s oral evidence “wholly “open” and forthcoming”: [83]. The FTT also recorded that Mr Zaman had been inconsistent in giving evidence ([84]); and that it did not have confidence that Mr Zaman “was always telling the whole truth to the best of his recollection”: [85]. We record that, importantly, the FTT, in the FTT 2021 decision, did not discount Mr Zaman’s evidence entirely; nor did the FTT say that Mr Zaman simply could not be believed on any material issue. Rather, the FTT expressly recorded scepticism of Mr Zaman’s evidence, unless it was, in one way or another, supported by another credible source.

(6) The “documentation” (comprising purchase and sales invoices, warehouse documents, correspondence between Zamco Ltd and HMRC) [7]) showed that the acquisition by Zamco Ltd from suppliers and on-sale to customers of alcoholic goods were generally outside the United Kingdom: [81(2)]. In assessing the reliability of this documentation, the FTT observed – in favour of it being a credible source of evidence – that the documentation was extensive: [86]. The FTT expressly recorded, however, that the evidential value of the documentation was not “definitive” because it was, in certain respects, incomplete or inaccurate: [86(1)-(3)]:

(a) As to the incompleteness of the documentation, the FTT recorded (at [86(1)]) that the “initial” purchase invoices from suppliers and sales invoices to customers did not include excise duty or “incidentals” such as handling costs. Other invoices did include these items: [32].

(b) There were a number of inaccuracies: excise duty was included in the documentation for five transactions, even though the purchase of goods within an

excise warehouse (which the relevant warehouse was) should not have attracted excise duties: [32]; in a number of transactions the warehouse involved in the sale differed from the warehouse used in the purchase [33]; in a number of transactions the destination of the sale appear to be the customer's address (and so different from the warehouse used in the purchase) [34]; in a number of transactions the destination of the sale was an entity (and warehouse) other than the purchaser [35]; some of the documentation included an "ARC" number appropriate for warehouse to warehouse transactions, but in some transactions the alleged "ARC" number could not be matched to a corresponding administrative document: [36]; one of Zamco Ltd's customers, Harmsworth Distribution Ltd (an United Kingdom company), had records of 42 sales to Zamco Ltd for 08/16 but Mr Zaman's evidence was that these transactions did not take place: [30], [86(1)], [86(2)].

(c) Furthermore, the FTT observed that there was "cause for scepticism" about the bona fides of many of the legal entities in the supply chain, given that a large number were VAT deregistered and may have been involved in "illicit activities": [86(3)].

- (7) It was unclear what value Zamco Ltd added to the supply chain: [90(4)].
- (8) Zamco Ltd had not appealed the VAT assessments for the relevant period, which had been raised on the basis that the place of supply was the United Kingdom: [81(3)].
- (9) Customers paid Zamco Ltd entirely in cash ([20]), which the FTT described as "unusual and suspicious, given the large sums involved": [90(1)].
- (10) Cash sums were deposited into Zamco Ltd's bank account in sterling: [20]; [81(4)].
- (11) One of the warehouses and two of Zamco Ltd's counterparties had "United Kingdom connections": [81(5)].
- (12) A number of suppliers did indeed transact with Zamco Ltd [29]. While some of Zamco Ltd's suppliers had become deregistered for VAT, others had remained active by the time that HMRC enquired about their transactions with Zamco Ltd: [29(1)-(7)]. In relation to one Dutch supplier, Tinte Drankenhandel BV, Dutch authorities explained that it traded in sterling "more often": [29(6)].
- (13) All of Zamco Ltd's customers were de-registered for VAT at some time after their purchases from Zamco Ltd: [24]. HMRC enquiries made to overseas tax authorities revealed that at least some of these customers were considered to be "missing traders" and "clandestine": [25], [26]. Two customers had United Kingdom connections in that the individual entitled to sign on behalf of one of them had an United Kingdom address and the director of another was resident in the United Kingdom: [25(3)], [26(6)].
- (14) In relation to the warehouses in which the alcoholic goods were stored, while certain of these had become VAT de-registered by the time HMRC made inquiries ([27](1)), others were still operating ([27(2)] and provided documentation which did refer to Zamco Ltd: [27(2)(a)], [(b)]).
- (15) Zamco Ltd's due diligence of customers consist of checking the existence of the legal entity (and sometimes the VAT number) ([30]) a practice described by the FTT as "cursory": [90(7)].

(16) One customer, Licores (a Spanish customer, which was also a supplier), explained that it traded with Zamco Ltd in sterling because Licores bought the alcohol in sterling: [29(3)].

(17) Mr Ahmed had been stopped by the police in the West Midlands, with some £70,000 seized on grounds that the cash was obtained by or in return for money laundering; furthermore, certain text messages from Mr Ahmed's phone were alleged by HMRC to show his involvement in the illicit alcohol market: [40]-[42], [81(6)], [90(5)].

(18) The FTT found that it was "likely" that there was "illicit activity" in the supply chains which included Zamco Ltd but was unable to specify or make a finding what that "illicit activity" was, or where in the supply chain it took place. However, this finding was insufficient to make a finding that Zamco Ltd had a role of arranging or overseeing the smuggling of alcohol into the United Kingdom (rather, the FTT found that the purpose of Zamco Ltd's involvement was to cover-up or obscure "illicit activity" elsewhere in the supply chain: [91]).

18. Critically, in the FTT 2021 decision, the FTT found, on the balance of probabilities, that the alcoholic goods were located outside the United Kingdom at the time of acquisition by Zamco Ltd and at the time of their on-sale by Zamco Ltd: [92] – [95].

19. In finding that, on the balance of probabilities, that the alcoholic goods were located in overseas warehouses at the time that they were acquired by Zamco Ltd, the FTT recorded that it relied on the documentation and the fact that Zamco Ltd had no premises in the United Kingdom to store alcoholic goods (we do not find this finding of fact recorded anywhere else in the FTT 2021 decision but it is not disputed by the parties in this appeal). The FTT acknowledged, as recorded above, that the documentation could not be viewed as conclusive ("definitive evidence" ([90(2)]), and that some of the documentation and evidence did not indicate any involvement by Zamco Ltd in its purported dealings with suppliers and customers, but explained this as a function of Zamco Ltd's limited involvement in the transactions: [93].

20. The goods remained overseas at the time that these goods were on-sold to Zamco Ltd's customers. The FTT recorded that, having found, on the balance of probabilities, that the alcoholic goods were located outside the United Kingdom at the time of their acquisition by Zamco Ltd, any finding that these goods were located in the United Kingdom at the time of their sale by Zamco Ltd to its customers required evidence that they were removed to the United Kingdom at some point after their acquisition by Zamco Ltd: [94]. The FTT went on to record that the fact of cash deposits in the United Kingdom of sterling and the "United Kingdom connections" were insufficient and not specific enough to the location of the goods to show, on the balance of probabilities, that the alcoholic goods had moved from France/Germany to the United Kingdom at or before their on-sale by Zamco Ltd to its customers: [95]. Nor, as the FTT expressly recorded, was its inferential finding that there was "illicit activity" somewhere in the supply chain specific enough to persuade the FTT that these alcoholic goods had been smuggled into the United Kingdom at or before their sale to Zamco Ltd's customers (it being more likely that Zamco Ltd had covered up or obscured the relevant illicit activity rather than actively engage in smuggling): [95].

21. If the FTT, in the FTT 2021 decision, had stopped there, there would have been no error of law. The FTT had found that the documentation was reliable enough, particularly given at least some of the responses to HMRC's enquiries to overseas tax authorities, to provide a sufficiently credible line of evidence to reach a sustainable finding of fact (that the alcoholic

goods were not removed to the United Kingdom by, or under the direction of Zamco Ltd). The FTT had explanations as to why cash sums had been paid in sterling to Zamco Ltd by at least two customers. It was, of course, open for the FTT to have reached the opposite conclusion. This is not a case, however, like *Awards Drinks Ltd (In Liquidation) v The Commissioners v HM Revenue and Customs* [2020] UKUT 0201 (TCC) where there was simply no evidence to corroborate the relevant documentation (indeed, all of the evidence pointed the other way).

22. But the FTT clearly erred in law in observing, at [96], that HMRC had not discharged their burden of proof. While the FTT was correct, at [75] of the FTT 2021 decision, to observe that the burden of proof was on HMRC in establishing the validity of a PLN, the FTT was plainly incorrect to hold that the burden of proof in establishing whether the alcoholic goods were, or were not, removed to the United Kingdom was on HMRC (see [96] of the FTT 2021 decision). This observation suggests that the evidence did, indeed, point to alcoholic goods being removed to the United Kingdom, but the weight of evidence was not sufficient to allow the FTT to make this finding. This is the wrong approach. As we have observed, the burden of proving that the alcoholic goods were not removed to the United Kingdom remains with the trader.

23. In the FTT 2023 decision, all of the FTT’s findings of fact in the FTT 2021 decision were left undisturbed (see [12] – [16] of the FTT 2023 decision), except the critical findings of fact as to the location of the alcoholic goods at the time of acquisition by Zamco Ltd from suppliers and their on-sale by Zamco Ltd to customers at [92] and [95] of the FTT 2021 decision. The FTT, in the FTT 2023 decision, described its “essential task” as to decide whether, on all the evidence before the FTT, applying the civil standard of proof (balance of probabilities) and drawing appropriate inferences, rationally and in accordance with its conscientious duty, it could make a finding on the essential issue of fact as regards the correctness of the assessment bracket, being whether the goods were removed to the United Kingdom by Zamco Ltd or under its directions): [21]. We observe – and this was not disputed by HMRC - that this was indeed a correct assessment of the FTT’s task in the FTT 2023 decision.

24. In relation to the location of the alcoholic goods at the time of acquisition by Zamco Ltd, the FTT, in the FTT 2023 decision, reaffirmed its conclusion in the FTT 2021 decision that the location at the time of acquisition by Zamco Ltd was outside the United Kingdom [38] – [39]. The FTT had so found, in the FTT 2021 decision, on the basis of not only the documentation but also the fact that Zamco Ltd had no premises in the United Kingdom to store alcoholic goods: [38] and [39(1)] of the FTT 2023 decision. The documentation in relation to warehouses expressly referred to Zamco Ltd and the very notion of smuggling presupposes an overseas location of the alcoholic goods at some point: [39](3) of the FTT 2023 decision. The FTT further found that the finding of an overseas location meant that, on the balance of probabilities, the goods were not removed to the United Kingdom prior to or as part of Zamco Ltd’s sales: [41] of the FTT 2023 decision.

25. In relation to the location of the alcoholic goods at the time of sales by Zamco Ltd, the FTT re-expressed [95] of the FTT 2021 decision as a weighing up of the evidence which led to a conclusion that the relevant locations were outside the United Kingdom: [42] – [43] of the FTT 2023 decision. The FTT found that while the payment of sterling to the United Kingdom and a few counterparties had United Kingdom connections were suggestive of, but not direct evidence of, the goods being removed the United Kingdom, the documentation indicated that the goods were in French or German warehouses. The FTT had taken into account the “illicit activity” in the supply chains, which the FTT had found, on the balance of probabilities, to constitute “covering up’ but not smuggling; the FTT said this conclusion was, as a “matter of

commercial common sense”, consistent with the margin of 2-3%, which the FTT considered too small for the risks involved in smuggling: [43(1)-(4)].

HMRC’S APPEAL AGAINST THE FTT 2023 DECISION

26. HMRC submitted that the FTT had made two separate errors of law in making the FTT 2023 decision.

27. The first alleged error of law was that the FTT had erred in its approach to the analysis of the evidence. The FTT ought, in HMRC’s view, to have placed weight on its finding in the FTT 2021 decision that there was illicit activity in the supply chain (see [91]) and considered all of the other evidence in the light of that critical finding. And, by placing any weight on the documentation, the FTT had further erred. That was because:

(1) Zamco Ltd’s involvement in covering up illicit activities tainted the veracity of the documentation;

(2) the FTT was wrong to accept the provenance of documentation in respect of Zamco Ltd’s relationship with third party entities; and

(3) “having found that Mr Zaman was not truthful” (in the words of HMRC’s skeleton argument), the FTT failed to appreciate that there was no other reliable or credible evidence which either corroborated Mr Zaman’s evidence or which was able to support what the FTT ultimately thought to be more likely than not.

28. This led to what HMRC say was the second error of law. If the FTT had correctly analysed the documentation in the light of the fact that it was part of illicit activities, then, the FTT ought to have: (1) placed no weight on the documentation; and (2) concluded that Mr Zaman had not discharged the burden of proof.

DISCUSSION

29. In the absence of any misdirection in law (and there was no dispute that the FTT had not applied the correct test), to reach a conclusion that a fact-finding tribunal has made a decision which no reasonable tribunal could have reached requires surmounting a very high hurdle indeed. In particular, it is well established that assessment of the weight to be given to factual findings is a matter for the fact-finding tribunal. In our view, HMRC have not surmounted that very high hurdle in this case.

30. HMRC’s case was, as we explain above, an *Edwards v Bairstow* ‘perversity’ challenge, which, in substance, amounted to a complaint that the FTT wrongly gave weight to the documentation and gave insufficient weight to the finding of illicit activity. Although HMRC set out two separate errors of law, we do not consider that the second alleged error of law advances matters if, as we consider to be the case, there was no error of law in relation to the weight (or absence of weight) given to the documentation or finding of illicit activity.

31. Turning first to the issue of the documentation, we note that HMRC’s case did not make any pleadings as to sham. This does not, of course, mean that the documentation upon which the FTT relied, both in the FTT 2021 decision and the FTT 2023 decision, must be accepted as proving any facts according to its terms. An absence of an intention to mislead does not mean that the facts necessarily occurred according to the terms of the documents. For example, the party to a transaction may, to a greater or lesser extent, not implement one or more steps in a

transaction strictly in accordance with the documentation, for commercial convenience (or in being simply careless).

32. It appears, though, that, despite not pleading that the documents were shams, HMRC's case is that the documentation should, in effect, have been entirely disregarded by the FTT: no other conclusion in relation to the documentation could, in HMRC's submission, have been rationally supported. In our view, the key reason relied upon by HMRC in that respect is that, as per their skeleton argument before us, the FTT had found that Mr Zaman was not truthful. But, as we note above, that is not what the FTT had found. It is plain that the FTT had not discounted Mr Zaman's evidence entirely. It is true that the FTT was sceptical about Mr Zaman's evidence but that falls well short of a decision by the tribunal that it considered that no reliance whatever should be placed on his evidence.

33. The FTT very carefully considered in the 2021 FTT decision a range of matters in relation to the documentation to assess its reliability. Clearly, HMRC would have preferred the FTT to have placed no weight on either Mr Zaman's evidence or on the documentation but the question before us is whether the totality of the evidence before the FTT led to one conclusion, and one conclusion only, namely, that the documentation was, in effect, fabricated. While we would accept that this was a conclusion open to the FTT, that is nothing to the point for the purposes of this appeal. The issue is whether it was also open to the FTT to find as it did. And, alive as we are to the multiple warnings over many years at the very highest level about the dangers of appellate courts 'second-guessing' the fact-finding of first-instance tribunals in the absence of compelling reasons to do so, we do not consider that there is any proper basis for us as an appellate tribunal to say that the FTT could not approach the weight to be given to the documentation in the way that it did.

34. So far as the finding of illicit activity is concerned, we are also unable to see the basis on which an appellate tribunal can interfere with the way in which the FTT approached its decision-making in the light of its finding at [91] in the 2021 FTT decision of illicit activity. It is worth setting out what the FTT actually said at that paragraph:

“91. Based on the above, as well as the text messages found on Mr Ahmed's phone in May 2016, we find it likely that there was illicit activity in the supply chains with which Zamco was involved. On the evidence before us, however, we are unable to say with specificity what (apart from money laundering) the illicit activity was, or exactly where in the supply chain it took place.”

35. In other words, the FTT expressly found two things: (1) that there was illicit activity; and (2) that they were unable to say “with specificity” where that activity took place. What the FTT said at [91] of its decision has then to be read in the light of the other findings it subsequently goes on to make.

36. In relation to the FTT's findings in the FTT 2021 decision at [92], dealing with the location of the goods at the time of acquisition, we have already noted that the FTT observed (at [37] of the FTT 2023 decision) that the documentation was generally credible, Zamco Ltd had no premises in the United Kingdom to store alcoholic goods, and the notion of a relocation of goods to the United Kingdom (“smuggling”) presupposes that the goods were located outside the United Kingdom at some point. The first two points seem to us to be plainly relevant to the decision and open to the FTT to have regard to. The last observation about smuggling is a little more puzzling but if what the FTT meant (and we consider that it did) was that it was common ground that the alcoholic goods in this case must have started life outside the United Kingdom and so the evidence must identify a point at which they entered the United Kingdom,

as to which there was an absence of evidence, that was also, in our view, an approach open to the FTT.

37. As to the location of the alcoholic goods at the time of their on-sale to Zamco Ltd's customers, the FTT, in the FTT 2023 decision, re-affirmed the FTT's conclusions at [95] of the FTT 2021 decision, on the balance of probabilities. We make the same observation in relation to this finding as we do in relation to the FTT's conclusions on [92] of the FTT 2021 decision. While the FTT could have reached the opposite conclusion (with which we could not have interfered), we do not see that the FTT made any error of law in reaching the conclusion that it did.

DISPOSAL

38. We dismiss the appeal.

**JUDGE ANDREW SCOTT
JUDGE JULIAN GHOSH KC**

Release date: 12 September 2024