UPPER TRIBUNAL

TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00012 (TCC)

Applicant: Zobortrans EU s.r.o.	Tribunal Ref: **UT-2025-000013**
Respondent: The Director of Border Revenue (on behalf of Border Force)	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL FOLLOWING ORAL HEARING

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant (also referred to as the Appellant), Zobortrans EU s.r.o., applies to the Upper Tribunal (Tax and Chancery) ("UT") for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) ("the FTT"), released on 4 July 2024 ("the Decision"). The Decision was made by the FTT following a hearing conducted on 19 and 20 June 2024.

2. The FTT dismissed the Applicant's appeal against the Respondent Border Force's decisions only to restore the Applicant's seized vehicles, which had been used to transport smuggled tobacco and cigarettes, on payment of fees. The FTT decided that the review decisions made by the Border Officers were not unreasonable when they decided that: a) the tractor and trailer units seized on 5 December 2018 ("the third seizure"), which were carrying 96 kilos of hand rolling tobacco, should be restored on payment of £22,464; and b) the Renault van seized on 8 April 2019 ("the fourth seizure"), which was carrying 140,000 cigarettes, should be restored on payment of £17,623.

3. References in square brackets [] are to paragraphs in the Decision.

4. By a decision dated 9 January 2025 ("the PTA Decision"), the FTT refused to set aside the Decision and refused the Applicant permission to appeal the FTT's Decision to the Upper Tribunal ('UT') on the grounds of appeal pursued. The Applicant renewed its application to the UT for permission to appeal in-time within a month thereafter on 8 February 2025.

5. On 10 June 2025 I refused permission to appeal to the UT on the papers in respect of all the grounds of appeal then pursued by the Applicant (who at that time was represented by the Slovakian lawyer Mr Janksy of Jansky and Partners).

6. The Applicant, through Mr Janksky, requested reconsideration of its application for permission at an oral hearing which took place before the UT by video on 6 January 2026. Mr Janksy relied on renewed grounds for reconsideration dated 23 June 2025.

7. On the day before the hearing, the director of Applicant, Mr Roman Seidl wrote to the UT requesting an adjournment of the hearing on the basis that Mr Jansky was unavailable to attend. His reason was that 'we have a bank holiday tomorrow in Slovakia and our lawyer Mr Jansky is not available because of some serious personal matters'. He subsequently stated that Mr Jansky was with family or on holiday or abroad.

8. I refused the application for the adjournment by email on the basis that the UT had written to Mr Jansky on several occasions asking for his dates to avoid in order to fix the hearing to which he did not reply. Mr Jansky was warned that if he did not reply to the UT's emails then the hearing would be fixed without reference to his availability. I was satisfied it was not just and fair to adjourn the hearing given that it was a last minute request, a reasonable opportunity had been given for Mr Jansky and Mr Seidl to attend the hearing and no independent evidence or detail had been given to justify the reasons for Mr Jansky's unavailability. I also took account of the long delay in fixing the hearing after the refusal of permission on the papers due to the non-compliance of Mr Jansky. I indicated by email that Mr Seidl could renew his application for an adjournment at the hearing if he wished but he must attend the hearing to do so and provide some evidence of Mr Janksy's unavailability.

9. Mr Seidl attended the hearing on 6 January 2026 before the UT in person by internet enabled video (CVP) from Slovakia but with Mr Vadislav Musin accompanying him and interpreting into English on his behalf, to which there was no objection. Mr Siedl did not renew his application for an adjournment or postponement of the hearing despite the absence of Mr Janksy. Mr Seidl relied on oral submissions, which I address below, and which primarily consisted of evidence of facts.

10. Mr Rupert Davies of counsel appeared for the Respondent at the hearing relying on oral submissions and a written skeleton argument dated 30 December 2025.

11. I am grateful to the parties and I have considered all their written and oral submissions.

UT's jurisdiction in relation to appeals from the FTT

12. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic (as opposed to fanciful) prospect of an appeal succeeding, or if there is, exceptionally, some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

13. It is therefore the practice of this Chamber of the Upper Tribunal to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision

which is material to the outcome of the case or if there is some other compelling reason to do so.

Relevant factual background

13. The Applicant is a Slovakian freight transport company whose vehicles were involved in four sequential seizures of smuggled hand rolling tobacco ("HRT") and cigarettes in 2018 – 2019. On each occasion the vehicle used to transport the goods was seized and the Border Force offered to restore the vehicle for a fee:

> 1) On 7 October 2018, 48 kilos of HRT was seized along with the vehicle. The vehicle was restored on payment of £10,616.64 ("the First Seizure").
> 2) On 28 November 2018, 24 kilos of HRT were seized along with the vehicle the vehicle was restored on payment of £5,631.60 ("the Second Seizure").
> 3) On 5 December 2018, 96 kilos of HRT were seized, along with a tractor unit and trailer. The Border Force offered to restore the tractor and trailer for £22,464 ("the Third Seizure").
> 4) On 8 April 2019, 140,000 cigarettes were seized along with a Renault van The Border Force offered to restore the van for £17,623 ("the Fourth Seizure").

14. The instant appeal(s) concern the Third and Fourth Seizures for which the Applicant challenged the Border Force's decisions upon review to restore the vehicles for a fee, on the basis that those decisions were unreasonable.

15. In respect of the Third Seizure, the Border Force concluded the driver of the vehicle was responsible for the smuggling attempt, but that the Applicant had not taken basic reasonable steps to avoid it. Given the two previous seizures, Border Force policy dictates that the normal position would be to refuse to restore the vehicle, but on this occasion the lesser sanction of restoration for a fee was offered.

16. In respect of the Fourth Seizure the Border Force decided that the Appellant was responsible for the smuggling attempt, noting, inter alia, deficiencies with the CMR, an incorrect delivery address and the other seizures in which the Appellant had also been involved. Again, restoration for a fee was offered notwithstanding that the usual position under its policy would to have been to refuse restoration.

17. At the hearing of the Appellant's appeals before the FTT, it was conceded on behalf of the Respondent that the decision in respect of the Fourth Seizure was flawed in that it took account of some irrelevant factors in its conclusion of complicity. Nevertheless, it was submitted by the REspondent that were the decision to be retaken, the outcome would inevitably be the same (or harsher) given that the Appellant had still failed to take basic reasonable steps to avoid the smuggling attempt and that the sanction imposed was not as harsh as that proscribed under a strict application of the Border Force's restoration policy.

The FTT's Decision

18. Mr Seidl, the owner and director of the Appellant company and its only witness of fact, did not attend the hearing before the FTT. The FTT was informed of his non-attendance at 13:15 on the day before the hearing, after it had previously been decided that he would attend alone,

and that his representative, Mr Jánský, would attend remotely from Slovakia (the FTT having previously concluded that Mr Seidl was precluded from giving remote evidence from Slovakia following *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 286 (IAC)).

19. At the hearing, and after Mr Jánský had been informed of his inability to give evidence on Mr Seidl's behalf, an application was made to adjourn on the basis that Mr Seidl could not attend the following day due to childcare issues. The FTT found as a fact that this was not true, and that Mr Seidl had never intended to attend the hearing. The FTT declined to adjourn [FTT/3-15] but had given Mr Seidl the opportunity to attend the second day of the hearing.

20. The FTT noted that its jurisdiction was limited to determining whether the decisions were reasonable, taking into account the judicial review criteria set out in *C&E Commrs v Corbitt* [1980] 2 WLR 753 [FTT/16-17]. It further noted that, following *John Dee v C&E Commrs* [1995] STC 941, that where a decision was flawed, but if it had not been the decision would have inevitably been the same, the tribunal can dismiss an appeal [FTT/18].

21. The FTT followed the decision in *Szymanski v DBR* [2019] UKUT 0343 (TCC) ("Szymanski") in which the UT found that the Border Force restoration policy was reasonable [FTT/67]. In any event the reasonableness of the policy was not subject to challenge.

22. The FTT went on to make the following findings:

In respect of the Third Seizure:

> a. The Appellant failed to take reasonable steps to prevent smuggling [FTT/86]. This conclusion was founded upon the following findings of fact:
> i. The drivers responsible for the smuggling attempts in the Third and Fourth Seizures were not dismissed following those seizures. [FTT/47 & 58].
> ii. The trailer in the Third Seizure had not been sealed [FTT/72].
> iii. There was no specific provision within the driver's employment contract stating that drivers found to be involved in smuggling would be summarily dismissed [FTT/59-60].

In respect of the Fourth Seizure:

> b. The Appellant failed to take reasonable steps to prevent smuggling [FTT/101]. This conclusion was founded upon the following findings of fact:
> i. The drivers were not dismissed following the seizures (as above).
> ii. There was no specific provision within the driver's employment contract stating that drivers found to be involved in smuggling would be summarily dismissed (as above).
> c. These failings were sufficient on their own to confirm the decision [FTT/101].
> d. However, that conclusion was further supported by the fact that the Appellant failed to check the CMR (it was illegible), whether the goods matched the CMR, and, the bona fides of the consignor or consignee (the consignor being a business related to computer games, incorporated 4 months previously, that was unlikely to be shipping cocoa pieces to the UK) [FTT/102].

e. It was not necessary to consider whether the steps taken were reasonable with reference to the standards of other countries [FTT/100].
f. These expected basic reasonable steps went beyond the requirements placed on carriers by the CMR, but that was not unreasonable (following Szymanski [54]) [FTT/100].
g. It was reasonable to take into account the First and Second Seizures [FTT/78].
h. There was no evidence to support the claim that payment of the fee would cause existential problems for the Appellant [FTT/48].
i. Whether the Border Force as a body could have done more to locate and intercept the smugglers was not a relevant consideration [FTT/99].

The Applicant's written grounds of appeal

23. The Applicant, through Mr Jansky, originally requested permission to appeal from the FTT on the following grounds of appeal (as paraphrased):

a. It was unjust to hold the hearing in Mr Seidl's absence, as this limited the evidence which could be given.
b. The Tribunal did not apply correctly the provisions of CMR convention in regard to the obligations of the carrier.
c. The Tribunal overlooked the misconduct and misleading behaviour of the Border Force officers in that their reasoning and conclusions were one-sided and arbitrary.

24. The Applicant, through Mr Jansky, renewed its grounds in an email to the UT dated 23 June 2025 as follows (paraphrased):

a. The reasoning in respect of the application of article 8 of the CMR was unsatisfactory ("Ground One").
b. The decision failed properly to take into account the measures to prevent smuggling that the Appellant actually undertook, to give sufficient reasons as to why they those measures were considered to be insufficient, and to explain what measures would have been sufficient ("Ground Two").
c. The FTT was wrong to conclude that Mr Seidl had never intended to attend the hearing ("Ground Three").

The law and the CMR

25. Article 8 of the CMR states:

"1. On taking over the goods, the carrier shall check:
(a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and
(b) The apparent condition of the goods and their packaging.
2. Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they

are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note.
3. The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note.

26. Sections 14 to 16 of the Finance Act 1994 provide:

Section 14 (2):
"(2) Any person who is—
(a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,
(b) a person in relation to whom, or on whose application, such a decision has been made, or
(c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,
may by notice in writing to the Commissioners require them to review that decision."

Section 15(1):
"Where the Commissioners are required in accordance with this Chapter to review any decision, it shall be their duty to do so and they may, on that review, either-
(a) confirm the decision; or
(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate."

Section 15(2):
"Where—
(a) it is the duty of the Commissioners in pursuance of a requirement by any person under section 14 [or 14A] above to review any decision; and
(b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to that person of their determination on the review,
they shall be assumed for the purposes of [section 14 or 14A] to have confirmed the decision."

Sections 16 (4) to (6):
"(4) In relation to any decision as to an ancillary matter, or any decision on the

review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—
(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.
(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.
(6) On an appeal under this section the burden of proof as to—
(a) the matters mentioned in subsection (1)(a) and (b) of section 8 above, shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established."

27. The appropriate test to be applied when determining the reasonableness of the decision is whether the Review Officer acted in a way in which no reasonable Review Officer could have acted; if he had taken account an irrelevant matter or if he disregarded something to which he should have given weight (as per Lord Lane in *Customs and Excise v JH Corbitt (Numismatists) Ltd* [1980]STC 231).

28. Where a flawed decision took into account an irrelevant matter or disregarded something to which weight ought to have been given, but the tribunal determines that a properly considered decision would inevitably (rather than "most likely") reached the same conclusion, an appeal can nevertheless be dismissed (*John Dee v C&E Commrs* [1995] STC 941 at [953])

29. The Tribunal may consider evidence that was not before the decision maker and may reach factual conclusions based on that evidence such that the decision under appeal may found by the Tribunal to be reasonable or unreasonable, as the case may be, as a result - *Gora v Customs and Excise Commissioners* [2003] EWCA Civ 525.

Discussion, Analysis and Decision

30. I refuse permission to appeal in respect of each of the Applicant's grounds of appeal as they hold no realistic prospects of success and do not raise any arguably material errors of law in the FTT's Decision.

31. I have addressed the original grounds of appeal to the UT in my decision refusing permission to appeal on the papers.

32. I begin by considering the renewed grounds drafted by Mr Jansky contained in the application for reconsideration of permission to appeal dated 23 June 2025. I am satisfied that the FTT applied the correct law, correctly interpreted the law, had sufficient evidence to support its decision and gave adequate reasons.

The written grounds of appeal

Ground One

33. Ground One challenges the FTT's analysis of the application of the CMR.

34. The Appellant has not challenged the reasonableness of the Border Force restoration policy, the application of which required the decision maker to consider whether the Appellant had undertaken basic reasonable checks to avoid smuggling, and the FTT to consider whether the decision maker had undertaken that exercise reasonably. It is against that background that the FTT considered the application of the CMR.

35. Firstly, the FTT concluded that there were adequate grounds to find that basic reasonable checks had not been undertaken before it went on to consider the effect of any lack of compliance the CMR on its decision. These failings were sufficient on their own to confirm the Border Force's decision and to dismiss the appeal [FTT/101]:

> "We have already found in relation to the Third Seizure that installing GPS was a reasonable step, but that this was insufficient on its own to meet the requirements of the Policy, given the absence of any specific provision in the employment contract and the Appellant's practice of continuing to employ drivers who had been caught smuggling. The Appellant has failed to show that the conclusion should be any different in relation to the Fourth Seizure. We would thus have confirmed Officer Summer's decision on those grounds alone."

36. The FTT's consideration of the effect of compliance with the CMR was therefore immaterial to its conclusions.

37. In so far as the Appellant may be asserting that compliance with the CMR is the only basis on which the FTT ought to have considered whether basic reasonable checks had been carried out, there is no legal basis for such an assertion and the same is unarguable. The unchallenged policy does not limit "basic reasonable checks" to those stipulated by the CMR. The FTT also followed, and was bound to follow the UT's view in *Szymanski* [54] [FTT/100]:

> "It is readily apparent that, in the different policy context of seeking to prevent smuggling, Border Force would not be unreasonable if they expected checks to be made beyond those set out in a Convention whose purpose was wholly different (the international standardisation of contractual conditions)."

37. Where the FTT moved on to consider the effect of compliance with the CMR at [FTT/102], it noted that the CMR document was illegible, that a cursory glance would have raised concerns, and that the Appellant had failed to perform simple checks of the bona fides of the

consignor or consignee. These are basic checks that do not require any interpretation of the CMR.

38. Where the FTT concluded at [FTT/102] that the goods did not match the CMR, it did so against the background of an uncontested finding of fact at [FTT/50] that the driver (contrary to the requirements of article 8(2) of the CMR) had not recorded any statement on the CMR that he had been unable to check the load. The Appellants assertion that it was not possible to check the load is therefore irrelevant.

39. It is not arguable that the FTT made any error of law in respect of Ground One.

Ground Two

40. Ground Two appears to challenge the adequacy of the FTT's reasons arounds its findings that basic reasonable steps to avoid smuggling were not taken. Criticism is made of a failure to explain what steps would have been sufficient and a failure properly to explain why the steps taken by the Appellant to avoid smuggling were insufficient.

41. In *Medpro Healthcare Ltd & Another v HMRC* [2025] UKUT 255 (TCC) at [29-39] the UT undertook a review of the requirements to give adequate reasons, quoting from *Flannery v Halifax Estate Agencies Ltd*, [2000] 1 WLR 377:

> "[26] …the appellate court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to determine whether, when all of these are considered, it is apparent why the judge reached the decision that he did. If satisfied that the reason is apparent and that it is a valid basis for the judgment, the appeal will be dismissed…If despite this exercise the reason for the decision is not apparent, then the appeal court will have to decide whether itself to proceed to a rehearing or to direct a new trial".

42. The FTT detailed the measures that it found were not taken, but ought to have been, including: dismissing drivers guilty of smuggling attempts, explicitly providing for that dismissal in their employment contracts, checking the bona fides of the consignors and consignees, checking the CMR was legible, applying seals to the trailers, and checking the load (including noting any reservations on the CMR). It was reasonable for the FTT to find that these are all basic steps to prevent smuggling that could easily and inexpensively have been performed. There is no requirement for the FTT to produce guidance in the form of an exhaustive list of basic reasonable steps.

43.The FTT took into account the measure taken to prevent smuggling that had actually been undertaken by the Appellant (the installation of GPS), it simply considered it to be insufficient [FTT/87 & 101]. In the context of the exercise that the FTT was undertaking (assessing whether basic reasonable steps to avoid smuggling had been taken), the failings to take such steps that the FTT found, and the number of seizures in which the Appellant had been involved, the word "insufficient" needs no further explanation.

44. In respect of the seals, the FTT found as a fact that the seal had not been applied to the trailer in the Third Seizure and found that this was a basic reasonable step to prevent smuggling [FTT/72].

45. The FTT's reasoning is rational and sufficient and is without arguable error of law. Ground Two is dismissed.

Ground Three

46. Ground Three appears to be a challenge to the FTT's finding of fact that Mr Seidl had never intended to attend the hearing, presumably on the of basis *Edwards v Bairstow* ([1956] AC 14) that the FTT made a finding in a way that no reasonable tribunal ought to have done, by virtue of erroneously taking account of an irrelevant fact or not considering a relevant fact.

47. The FTT made this finding after refusing to adjourn the hearing but offering for him to attend on the second day but being informed that Mr Seidl could not attend the hearing due to his wife working a pre-arranged shift with Mr Seidl being required for childcare. The Appellant does not appear to challenge the following facts that were recorded in the FTT's decision:

a. That the hearing was listed for two days, a fact that had been communicated to the parties.
b. That the day before the listed hearing, at 10:05, Mr Jánský had informed the FTT that Mr Seidl would attend the hearing in person, alone.
c. That at 13:15 on the day before the listed hearing, Mr Jánský informed the FTT that Mr Seidl would no longer attend, stating that, "He said he will not come alone" (with no mention of childcare issues).
d. That the FTT permitted the hearing timetable to be rescheduled so that Mr Seidl could attend on the second day of the hearing instead.
e. That it was after being informed that Mr Seidl could attend the following day that Mr Jánský first informed the FTT that he could not do so due to childcare issues.

48. The FTT found that, "we did not find it credible that Mr Seidl had ever intended to come to the hearing. Had that been the position, he would not be prevented from attending on the second day because of his wife's prearranged shift pattern and his consequential childcare responsibilities." [FTT/14].

49. Given that, up until the afternoon of the previous day, Mr Seidl had intended to attend the two-day hearing, it was reasonable for the FTT to conclude that it did not find the pre-arranged childcare excuse to be credible. No relevant facts were ignored, and no irrelevant facts were taken into account.

50. Ground Three is unarguable.

<u>The oral grounds of appeal pursued by Mr Seidl at the hearing</u>

51. Mr Seidl, through Mr Musin's translation, made extensive oral representations at the hearing on 6 January 2026. In effect, the representations constitued evidence of fact. I will not attempt to record all that evidence herein but include a summary.

52. Mr Seidl wanted to explain about his absence from the FTT hearing and stated that at the time of the FTT hearing he had a young child ill in hospital and his wife/ the mother was working and it was a bad time. He had no English language ability and no experience of court or procedures in Slovakia or England. He accepted that the problem was caused by instructing a Slovakian lawyer rather than an English lawyer with experience of the relevant law and procedure. He did not want to attend the hearing in England alone without a lawyer.

53. He also stated that there was a problem finding out about the seizure and sale of the vehicles as Border Force sent emails to the wrong email address which he did not receive.

53. He accepted that there was a gang of smugglers operating and it was difficult for him find reliable drivers for his company. He had no suspicion at the time of the consignments as three seizures took place within a short time (within two months) and he had no knowledge of smuggling. He stated he took reasonable measures to prevent smuggling such as placing GPS in the vehicles to find out if drivers were not in the locations they were supposed to be. He stated that in all three cases the smuggling must have occurred when goods were loaded in the vehicles during planned stoppages on the route so he could not have found about this. After the seizures he got in touch with the drivers and Border Force. He explained that the vehicles were sealed but these were manipulated by the drivers who knew how to use the locks and seals and unseal goods and put in fresh packages. He accepts that since Brexit all trucks going into the UK are now sealed but this was not happening at the Customs in Slovakia and vehicles were then unsealed by the Border force in the UK. He sated that pre-Brexit the customs officers in Slovakia did not want to seal or unseal goods or vehicles as it was not their duty. There were no contractual terms for the company's employee drivers being prohibited from smuggling because the law of Slovakia would allow him to dismiss drivers for serious breaches of contract so there was no need for additional contractual terms.

54. Mr Seidl stated that he dismissed the driver immediately in respect of the first seizure. In the second seizure the driver agreed to pay the restoration fee from his own money so was not dismissed. In the third seizure the diver was dismissed from employment – although the vehicle was sold by Border Force without the Applicant being notified and Mr Seidl had no knowledge this occurred. In the fourth seizure the goods were loaded by the logistics company who was liable and not the driver but the driver no longer works for the Appellant. He referred to a fifth seizure where the driver was dismissed immediately. He stated he had taken his concerns about the smuggling to the Slovakian law enforcement authorities and discussed the bringing of criminal cases. He tried his best to find out what was going on and prevent it from happening. However, in vehicle trailers there would often be mixed loads from 5-10 companies who could be involved in any one consignment. The law did not allow the haulage companies to open an check all these packages. To do so would give rise to existential problems.

55. Mr Seidl did not think that the total number of seizures from the company compared to the very many shipments carried out by the Applicant was significant. There was a very highly volume of transportation carried out by the company. Border Force could not be aware of the mortgages or loans that the Applicant had taken out on each vehicle and the financial constraints of the company in operating or the consequences of the seizures. Often transport jobs were taken on by the company to break even or even lose money as only some loads would give rise to a profit but he needed to keep the vehicles moving and give work for the drivers.. After the action of the Respondent, the company had received a bad name as involved in smuggling in the UK but he did everything he could to prevent it. The company had no other history of illegal action or its vehicles being use to smuggle goods. He had no ability to enforce the responsibility of the drivers for their actions – and they were able to laugh and continue unlawful activities without taking responsibility. Despite all this, the Applicant remained in the top 5 export haulage companies bringing goods to and from Slovakia to the UK. The tractor and trailer units were sold and the loss or fees were 70,000 and 30,000 euros each.

56. Mr Seidl was grateful to have the opportunity to explain all this to the UT at the hearing. He was sorry that the employee drivers almost destroyed his company, the Applicant, which has a long and good history as a family business. The Applicant has never intentionally been involved in any wrongdoing such as smuggling. He apologised for the mistakes that he made since the beginning of the cases arising since 2019.

Admissibility of Mr Seidl's evidence

57. I express my sympathy to Mr Seidl for the predicament in which he has found himself and am grateful for his active participation in the hearing.

58. Nonetheless, I am satisfied that it is not just and fair to admit his representations as fresh evidence on appeal to the UT (see Rules 2 and 15 of the UT Rules and *Ladd v Marshall, Ketley v HMRC* etc). This was evidence that was not put before the FTT, and could and should reasonably have been given to the FTT orally and in writing for it to consider and make findings about. I cannot make any assessment of the reliability of the evidence in the absence of cross examination but it is likely to be in dispute, at least in part, so while it may be reliable, this cannot be taken for granted. I am also satisfied that it is unlikely that any of this evidence, even admitted, would be likely to give rise to a realistic prospect of finding any error of law in the FTT's Decision. It is not arguable that the FTT failed to take account of this evidence when it was not available to it and when there is no arguable error of law in the FTT proceeding with its hearing having given Mr Seidl a reasonable opportunity to attend.

Conclusion on grounds

59. I refuse permission on all grounds of appeal because they do not raise arguably material errors of law in the FTT's Decision. I am not satisfied that any of these grounds hold realistic prospects of success and there is no other compelling reason to grant permission to appeal.

Conclusion

60.Permission to appeal to the Upper Tribunal is **refused on all grounds.**

61. I know this decision will come as a disappointment to the Applicant and Mr Seidl but I repeat my thanks to him and Mr Musin for their participation at the hearing.

Signed:	**Date: 7 January 2026**
JUDGE RUPERT JONES	
JUDGE OF THE UPPER TRIBUNAL	