



SEMAPHORE

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UK Supreme Court Rules on Excise Duty Payable on Stolen Cargo

A case involving an appeal by a road carrier against a decision holding the carrier liable for excise duty payable on 289 cases of cigarettes stolen during a CMR transit, was recently heard by the United Kingdom Supreme Court.

CMR stands for “Convention on the Contract for the International Carriage of Goods by Road” and is also known as a CMR consignment note. It is a document used for the regulation of road freight transport, and serves as an international agreement which has been adopted by most European states with the purpose of regulating legal issues concerning road freight transportation.

The Court has issued its judgment in the case of *JTI Polska Sp Z oo and Ors v Jakubowski & Ors* [2023] UKSC 19, affirming the House of Lords’ decision in *James Buchanan & Co Ltd v Babco Forwarding & Shipping (UK) Ltd* [1978] AC 141.

The appellant road carrier had pursued an appeal to the Supreme Court against the first instance decision holding the carrier liable under Art 23.4 of CMR for the excise duty payable on 289 cases of cigarettes stolen during the transit.

Article 23.4 of the CMR Convention provides: “In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damages shall be payable.”

In *Buchanan v Babco*, the House of Lords held that excise duty payable in respect of excisable goods lost or stolen during transit is recoverable in full from the carrier (in addition to the market value of the goods), as “other charges” under Article 23.4 of CMR.

In the *JTI Polska* appeal, whilst the carrier accepted that in light of *Buchanan* the first instance court was bound to hold the carrier liable for the excise duty, it submitted that the House of Lords’ decision was wrong and should be departed from, and applied for a certificate enabling a direct appeal to the Supreme Court.

The appeal was accepted on the basis of criticism of *Buchanan* by academics and the Court of Appeal in the case of *Sandeman Coprimar SA v Transitos y Transportes Integrales SL* [2003] EWCA Civ 113 [2003] QB 1270.

Courts in other jurisdictions have either adopted a “broad interpretation” of Article 23.4 (as per *Buchanan*) in which charges incurred due to a loss in transit are recoverable from the carrier, or a “narrow interpretation” in which recovery is limited to those charges which would have been incurred if the carriage had been performed without incident, thus excluding excise duty levied as a result of loss or theft.

The Supreme Court acknowledged that there were powerful arguments in favour of the narrow interpretation, in particular those based on the object and purpose of Chapter IV of CMR and the structure of the compensation scheme for the loss of goods.

However, the Court determined that the *travaux préparatoires*, which the appellant had sought to cite in support of the narrow interpretation, was unable to demonstrate a definitive legislative intent in relation to the wording of Article 23.4.

The Supreme Court considered that the broad interpretation was tenable on the basis of the arguments heard by the House of Lords in *Buchanan* and similar findings made by the higher courts in other CMR jurisdictions (including Denmark, Belgium and Lithuania).

As such, the Supreme Court found that the required threshold of the decision in *Buchanan* being shown to be untenable had not been met. As such, the Court ruled that *Buchanan* should be upheld and by doing so maintained the status quo.

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