[2017] UKFTT 618 (TC)

TC06054

Appeal number: TC/2016/01081

COSTS – appeal in standard category – whether HMRC acted unreasonably in defending or conducting the proceedings – Tribunal Rules Rule 10(1)(b) – application allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

ROKIT LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE THOMAS SCOTT

At both parties' request this application was decided on the papers on the basis of their written submissions

Charles Bradley of Counsel for the Appellant

Richard Evans of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. On 20 June 2017 the Tribunal upheld the appeal by Rokit Ltd ("Rokit") against a C18 post-clearance demand notice for £109,793 issued by HMRC in respect of customs duty on imports of second-hand clothing and the related penalty of £2,000.

2. Rokit now apply for their costs under Rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules"). The application is made on the basis that HMRC acted unreasonably in defending or conducting the proceedings.

The statutory provisions and relevant principles

3. Section 29 of the Tribunals, Courts and Enforcement Act 2007 (the "TCEA") provides that, subject to a Tribunal's rules, the "costs of and incidental to… proceedings in the First-tier Tribunal" shall be in the discretion of the Tribunal.

4. Rule 10 of the Tribunal Rules provides, so far as relevant:

> "(1) The Tribunal may only make an order in respect of costs…
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> (b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings."

5. Therefore, it is only if a party has acted unreasonably that a discretion to award costs in this Tribunal can arise.

6. The relevant principles are set out in the recent judgment of Judge Brannan in *British-American Tobacco (Holdings) Ltd v HMRC* [2017] UKFTT 099 (TC), at paragraphs [5] to [14]:

> "5. The principles to apply in deciding whether a party acted unreasonably were helpfully summarised by Judge Raghavan in *Market & Opinion Research International Ltd v Revenue & Customs* [2013] UKFTT 475(TC) at [8]:
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> " (1) It was to be noted that the test in the Tribunal Rules that a party or representative had "acted unreasonably" required a lower threshold than the costs awarding power of the former Special Commissioners in Regulation 21 of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 which was confined to cases where a party had acted "wholly unreasonably". This was discussed in *Bulkliner Intermodal Ltd v HMRC* [2010] UKFTT 395(TC) at [9].
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> (2) It was suggested that acting unreasonably could take the form of a single piece of conduct. I was referred to [9] to [11] of the decision in *Bulkliner* by way of support for this proposition. In particular at [10] the decision highlights the actions that the Tribunal can find to be unreasonable may be related to any part of the proceedings
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> "…whether they are part of any continuous or prolonged pattern or occur from time to time".
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> (3) The point is I think mentioned in the context of contrasting the Tribunal's rules in relation to acting unreasonably across the span of proceedings with the former Special Commissioners' costs power which was in relation to behaviour

which was "in connection with the hearing in question". Having said that there would not appear to be any reason why the proposition that a single piece of conduct could amount to acting unreasonably. It will of course rather depend on what the conduct is.

(4) Actions for the purpose of "acting unreasonably" also include omissions (*Thomas Holdings Limited v HMRC* [2011] UKFTT 656 (TC) at [39].)

(5) A failure to undertake a rigorous review of assessments at the time of making the appeal to the tribunal can amount to unreasonable conduct (*Carvill v Frost (Inspector of Taxes)* [2005] STC (SCD) 208 and *Southwest Communications Group Ltd v HMRC* [2012] UKFTT 701 (TC)) at [45]).

(6) The test of whether a party has acted unreasonably does not preclude the possibility of there being a range of reasonable ways of acting rather than only one way of acting. (*Southwest Communications Group Ltd* at [39]).

(7) The focus should be on the standard of handling of the case rather than the quality of the original decision (*Thomas Maryam v HMRC* [2012] UKFTT 215(TC)).

(8) The fact that a contention has failed before the Tribunal does not mean it was unreasonable to raise it. In *Leslie Wallis v HMRC* [2013] UKFTT 81(TC) Judge Hellier stated at [27]:

"It seems to us that it cannot be that any wrong assertion by a party to an appeal is automatically unreasonable…before making a wrong assertion constitutes unreasonable conduct in an appeal that party must generally persist in it in the face of an unbeatable argument that he is wrong…"

(9) As cautioned by Judge Brannan in *Eastenders Cash and Carry Plc v HMRC* [2012] UKFTT 219 (TC) at [91] Rule 10(1)(b) should not become a "backdoor" method of costs shifting."

6. This summary was approved by the Upper Tribunal in that case, [2015] UKUT 12 (TC) at [23]. The Upper Tribunal added:

"We would add only what this Tribunal (Judge Bishopp) said in *Catanã v Revenue and Customs Commissioners* [2012] STC 2138, at [14] concerning the phrase "bringing, defending or conducting the proceedings" in rule 10(1)(b):

'It is, quite plainly, an inclusive phrase designed to capture cases in which an appellant has unreasonably brought an appeal which he should know could not succeed, a respondent has unreasonably resisted an obviously meritorious appeal, or either party has acted unreasonably in the course of the proceedings, for example by persistently failing to comply with the rules or directions to the prejudice of the other side.'"

7. The Upper Tribunal went on to describe the test as follows at [49]:

"It would not, we think, be helpful for us to attempt to provide a compendious test of reasonableness for this purpose. The application of an objective test of that nature is familiar to tribunals, particularly in the Tax Chamber. It involves a value judgment which will depend upon the particular facts and circumstances of each case. It requires the tribunal to consider what a reasonable person in the position of the party concerned would reasonably have done, or not done. That is an imprecise standard, but it is the standard set by the statutory framework under which the tribunal operates. It would not be right for this Tribunal to seek to apply any more precise test or to attempt to provide a judicial gloss on the plain words of the FTT Rules."

8. The Upper Tribunal in Market& Opinion Research at [55] and [56] also made it clear that the attributes of the party concerned should be taken into account:

"There is one point we should make in this respect. In his skeleton argument, Mr Bremner submitted that if it were suggested that HMRC should be subjected to some higher standard than other litigants, then HMRC would submit that such a suggestion was wrong. There was, it was argued, no justification for subjecting different litigants to different standards.

To the extent this argument is concerned with the application of a test of reasonableness, and not some different or higher standard, we agree. However, the test of reasonableness must be applied to the particular circumstances of a case, which will include the abilities and experience of the party in question. The reasonableness or otherwise of a party's actions fall to be tested by reference to a reasonable person in the circumstances of the party in question. There is a single standard, but its application, and the result of applying the necessary value judgment, will depend on the circumstances."

9. I should note two important limitations on the Tribunal's powers under section 29 TCEA and rule 10(1)(b), although I consider that neither limitation is relevant in this case. The power to award costs is limited to costs "of and incidental" to the proceedings, rather than costs in respect of other matters, such as a prior investigation by HMRC: Catanã v HMRC [2012] STC 2138 at [7]. In this case this issue does not arise since it is clear that the costs claimed relate to the period after the notice of appeal was filed.

10. Secondly, the power to award costs under rule 10(1)(b) relates to unreasonable conduct in bringing, defending or conducting proceedings. As explained in Catanã at [8] and [9], whilst conduct or actions prior to commencement of an appeal might inform actions taken during the proceedings, unreasonable behaviour prior to commencement of proceedings cannot be relied upon to claim costs under rule 10(1)(b). In the present case the conduct of which BAT complains took place after proceedings had been commenced so this second limitation does not apply.

11. Finally, I should also refer to two additional decisions of this Tribunal. First, in Roden and Roden v HMRC [2013] UKFTT 523 (TC) Judge Mosedale, having observed that the Tribunal in Leslie Wallis was of the opinion that a party would not be acting unreasonably when pursuing a case without merit unless he ought to have known his case was without merit, stated at [15]:

"12... The Tribunal should not be too quick to characterise pursuing what is found to be an unsuccessful case is unreasonable behaviour: the Tribunal rules provide for a no-costs regime in virtually all tax cases (and the exception for complex cases does not apply in this case). So if in this case HMRC's view had no reasonable prospect of success, HMRC would have been acting unreasonably if they ought to have known this but not otherwise. In considering whether HMRC ought to have known whether the case had a reasonable prospects of success, I consider that I should consider HMRC as a whole and not just the individual officer presenting the case."

13. I respectfully agree with Judge Mosedale's comments.

14. Secondly, in John Scofield v Revenue & Customs [2012] UKFTT 673 (TC) I noted that:

"…Rule 10 (1)(b) must also be read in the light of the overriding objective (Rule 2 (1)) of the Rules which is "to enable the Tribunal to deal with cases fairly and justly." In particular, Rule 2 (4) provides that:

"Parties must

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally."

Background

7. There were three issues to be determined in the appeal. First, were the second-hand clothes imported by Rokit during the relevant period correctly classified by HMRC (the "Classification Issue")? Secondly, did Rokit have a defence of waiver under the Customs Code in respect of the duty assessed, and, as a preliminary issue, did the Tribunal have jurisdiction to consider that question (the "Waiver Issue")? The final issue was whether the related penalty should be upheld (the "Penalty Issue").

8. We found in favour of Rokit on the Classification Issue and the Penalty Issue, and in favour of HMRC on the Waiver Issue. As a result, the appeal against the duty and related penalty was allowed.

9. In brief, Rokit had applied a particular apportionment to its imports for customs purposes, treating 70% as "worn clothing" (dutiable at 5.3%), 13% as "new" clothing (dutiable at 12%) and 17% as "rags" (dutiable at 0%). Rokit asserted that this apportionment had been agreed with Customs & Excise some 15-20 years previously. HMRC did not accept that Rokit had proved the existence of such an agreement. HMRC also disagreed with the apportionment in any event, as a matter of fact and law. HMRC assessed 100% of the second-had clothing as "new" and dutiable at a rate of 12%.

10. The Tribunal's decision (*Rokit v HMRC* [2017] UKFTT 447(TC)) began its analysis of the Classification Issue (at [38]) as follows:

> "38. In our judgment, this must logically entail consideration of two questions, namely:
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> (a) what do the relevant definitions in headings 6309 and 6310 mean?, and
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> (b) having determined that, how should the correct application of these headings be determined in practice in respect of Rokit's imports?
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> 39. Rokit's submissions in relation to both of these questions were clear and remained consistent throughout the proceedings. However, HMRC's position on both questions was less than clear, and was not consistent. In particular, HMRC and Mr Bradley seemed unclear as to HMRC's position on question (b), and whether or not they needed to succeed on question (a) for the purposes of the appeal."

11. HMRC's position, asserted repeatedly in correspondence and in witness evidence, was that in order to be "worn" for duty purposes, the items must be "items that most people would throw out as not being worthy of being worn any more". HMRC also asserted that items could not be "worn" if they had been (or possibly if they were capable of being) cleared and/or repaired for resale.

12. An HMRC officer (Ms Pell) had visited Rokit's main premises for an audit inspection in 2015, and the relevant HMRC review letter referred to this visit as follows:

"During this visit she inspected some of the clothing on the premises; the items examined had been cleaned and hung up with the intent to sell. Some of the items were being altered with the intent to sell. Officer Pell noted a number of errors on the classification of the goods."

13. The Tribunal found in favour of Rokit on the meaning of "worn", concluding that in context it simply means showing signs of wear which are readily noticeable (see [64]). It concluded (at [62]) that HMRC's assertion that the heading could not apply to clothing which was capable of being repaired and resold was "entirely unwarranted."

14. In relation to the issue of how the appropriate test should be correctly applied in practice, the Tribunal found as follows (at [66]):

> "66. One might have expected that the answer to this question would be plain, namely that in order to determine the correct classification of the imports HMRC would inspect them, and where they were in bulk containers, would agree an apportionment based on sampling, to be corroborated and if necessary adjusted by further inspections.
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> 67. However, it is at this point that the central conundrum in this appeal arises. Rokit submits that such an apportionment was agreed with HMRC around 15 to 20 years ago, and applied since that date. It submits that Ms Pell had ample opportunity to inspect the goods to verify the apportionment in her audit visit in 2013. Finally, it submits that Ms Pell did not inspect the clothing at all during her 2015 visit, or make any request or attempt to do so.
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> 68. In relation to the alleged apportionment agreement, HMRC appeared not to deny that this existed, but rather to argue that they have no record of it, and Rokit has failed to provide adequate proof of it. We heard evidence from Mr Shackleton as to the terms of the agreement and its genesis. We found Mr Shackleton to be an entirely credible and reliable witness, and, in the absence of any contradictory evidence from HMRC, we find as a fact on the balance of probabilities that an agreement was reached with HMRC of the sort submitted by Mr Shackleton.
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> 69. In relation to the 2013 visit by Ms Pell to Rokit, HMRC devoted considerable resources, including an 18 page submission to the Tribunal, seeking to avoid disclosure of HMRC results of that visit and its audit report. In the event, they stated subsequently that the report had been lost, and that they would accept that Mr Shackleton's recollections of the events of the 2013 audit were correct. In particular, they accepted the following passages from Mr Shackleton's first witness statement:
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> "Officer Pell was given full access to the books and records that she requested. She was able to see the bales/bags of imported clothing but chose not to inspect them. She did not at the time nor subsequently question the agreed ratios. She did not suggest that the audit had been prompted by HMRC thinking that, for whatever reason, the agreed ratios were no longer appropriate or required reappraisal. We did not receive any correspondence from HMRC which challenged the agreed ratios.
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> As a result of the 2013 audit and the lack of any questioning of the ratios and the absence of any subsequent communications challenging the declared percentages in the relevant classifications or seeking information about the average compositions of the imported bundles, we understood that the long standing allocations continued to be agreed and accepted by HMRC."
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> 70. In relation to the 2015 visit by Ms Pell which precipitated the issue of the C18 Notice in this appeal, we received witness statements from Ms Pell stating that she had observed some of the clothing being cleaned and prepared for sale, and being hung on rails. We heard evidence from Ms Pell and had the

> opportunity to ask her questions. We did not find Ms Pell's recollections to be wholly reliable. For instance, having given evidence that she had observed two female employees hanging up the clothing, when shown a contemporaneous photograph of the two impressively large gentlemen who were performing this task, Ms Pell thought that she may have misremembered. She also claimed to have little or no recollection of her 2013 audit visit, which we find surprising.
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> 71. We find as a fact that neither during her 2013 audit visit nor during her 2015 visit did Ms Pell make any meaningful attempt to inspect any of the goods, with a view to determining their correct tariff classification or otherwise.
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> 72. The conundrum is that HMRC appeared during the proceedings to argue that this is irrelevant, and that inspection of the imports could never matter in determining their correct tariff classification.
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> 73. HMRC stated that this is because classification can never properly be determined by a formula or apportionment. It can only ever be based on written evidence of the classification of each item or items at the point of import.
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> 74. In examination, Ms Pell eventually stated that this was her understanding, as communicated to her by HMRC's Tariff Classification Team. She also accepted on questioning from us that a consequence of this was that it was wholly irrelevant whether she (or anyone from HMRC) had inspected any of Rokit's imports, in 2013, or in 2015, or indeed at any time.
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> 75. This approach is, of course, hugely convenient for HMRC. It means that any apportionment of the sort which Rokit say was agreed in the past would be unenforceable. There would be no need to keep it under review because it should never have been agreed in the first place. It also means that HMRC have no duty, either on an audit visit or otherwise, to inspect the imported goods."

15. As regards the Waiver Issue, this turned primarily on the agreement which Rokit submitted had been reached with HMRC some time previously to apportion the imported goods for duty purposes. Although we found as a fact on the balance of probabilities that an agreement of the sort submitted by Rokit was reached, the strict conditions attached to the defence waiver under the Customs Code led us to conclude, with some reluctance, that that defence was not established.

Rokit's arguments on Rule 10(1)(b)

16. Rokit argues that HMRC acted unreasonably both in defending the appeal at all and in its conduct of the appeal.

17. Rokit's first argument rests on the assertion that "at all points up to the hearing itself" HMRC's case was based solely on the propositions that (i) Ms Pell had viewed a sample of the imports on her 2015 visit to Rokit's warehouse, (ii) the garments looked like they had been cleaned or prepared for sale, and (iii) it followed that none of Rokit's imports could be classified as "worn" or "rags". The Tribunal found that in fact Ms Pell did not view the garments "in any meaningful sense". HMRC could readily have discovered this, and ought reasonably to have known that there was no reasonable prospect of establishing to the contrary.

18. Secondly, argues Rokit, the HMRC argument that the tariff classification of the garments should be materially affected by them having been

cleaned or prepared for sale after importation was "obviously bad in law". This is not, Rokit submits, an example of a party taking an arguable point on which it is ultimately unsuccessful, but an argument which had no realistic prospect of success.

19. Rokit's third submission is that at the hearing HMRC simply abandoned their previous arguments based on inspection of the garments and argued instead that this was irrelevant because tariff classification can never be determined by a formula or apportionment. Again, HMRC should reasonably have known that this alternative argument had no realistic prospect of success. Furthermore, this argument had not been raised before the hearing. As Rokit submitted in its skeleton argument:

> "This behaviour was plainly unreasonable in itself but, crucially, HMRC's late change in their case meant that the time and money Rokit spent on preparation for the appeal – which was understandably aimed at demonstrating (i) that its interpretation of the relevant headings of the CN [Combined Nomenclature] was correct in law and (ii) garments showing signs of appreciable wear and rags, and in the proportions declared – was in fact entirely wasted. Had Rokit known that HMRC did not in fact take issue on either of these points, but instead put their case on a completely different legal basis, it could and would have prepared for the hearing quite differently (e.g. not going to the expense of preparing witness statements or requiring a number of its employees to be absent from work in order to give evidence at the hearing)."

20. Rokit raised a number of subsidiary arguments that HMRC's conduct of the appeal had been persistently unreasonable throughout. These included:

    (a) HMRC's application to the Tribunal in April 2016 to strike out both the substantive appeal and the penalty appeal on the grounds that they were out of time was wholly misconceived and unreasonable.

    (b) The considerable time and resources devoted by HMRC to resisting the disclosure of the report of Ms Pell's 2013 visit.

    (c) The failure by HMRC to confirm that they would not take the jurisdictional point on the Waiver Issue until days before the hearing.

    (d) The failure by HMRC in their further skeleton argument on that jurisdictional issue to draw the Tribunal's attention to the (plainly relevant) decision in *Citipost*.

HMRC's arguments on Rule 10(1)(b)

21. HMRC deny that they acted unreasonably in defending or conducting the proceedings. They argue that although they were not successful in the appeal, the case law supports the proposition that this in itself does not amount to unreasonable behaviour, even if a "more cautious legal representative" would have acted differently.

22. In particular, say HMRC, their case was arguable. HMRC's case was always that the Appellant had inaccurately declared the imported goods for customs purposes, and in particular that the apportionment which Rokit said had been agreed with HMRC had not been proven to exist. As HMRC expressed it in their response to Rokit's cost application:

> "The Appellant relied on an agreement with the Respondents made between 15 and 20 years ago and could provide no written proof of the agreement. The Appellant took on significant risk in relying on an undocumented agreement and for adopting an unconventional approach to declaration based on apportionment. Had there been a contemporaneous record of the agreement, the Respondents' position would have significantly less force. However, considering that there was no written proof, it was not unreasonable for the Respondents to require that the agreement had been made and that the import declarations matched the apportionment…"

23. In order to establish the correct duty owed, argue HMRC, it was necessary for the Tribunal to make various findings of fact. Because the Tribunal had to make findings of fact, it could not be said that HMRC's conduct caused Rokit to incur costs.

24. The Tribunal's finding that Officer Pell did not inspect the goods in any meaningful sense did not, say HMRC, make HMRC's conduct unreasonable in arguing the point.

25. HMRC reject Rokit's suggestion that HMRC's technical arguments on the meaning of "worn clothing" had no real prospect of success. They say that "it is rare to say that any technical argument as to interpretation is unarguable as is apparent by the length of the reasoning of the tribunal".

26. HMRC argue that it was not unreasonable to take the position that determining classification by apportionment was impermissible. Nor were HMRC acting unreasonably in assessing all the imports as new clothing" in the absence of any formal breakdown of the clothing".

27. Fundamentally, HMRC argue that time and money was not wasted by Rokit in preparing their case, as they bore the burden of proof to establish that the goods corresponded to the apportioned percentages. The Tribunal upheld Rokit's apportionment on the basis of their witness evidence, so no costs were wasted.

28. As regards the subsidiary points raised by Rokit regarding HMRC's conduct in the course of the appeal HMRC point out that they withdrew their strike-out application on terms agreed with Rokit that there would be no related application for costs. The request for disclosure of Officer Pell's 2013 report was made very late in the proceedings, so initially resisting disclosure was not unreasonable. As regards jurisdiction for the Tribunal to consider the Waiver Issue, the point was arguable and the Appellants had notice of it.

29. Finally, HMRC point out that they were successful in relation to the Waiver Issue.

Discussion and decision

30. I have taken into account in reaching my decision all the principles set out earlier in this judgment. I need not repeat those here.

31. I do not consider that HMRC acted unreasonably in "defending… the proceedings". HMRC must ensure that the correct amount of duty is paid on Rokit's imports. In relying on an undocumented agreement with HMRC as to the correct duty, I agree with HMRC that Rokit thereby took the risk that their apportionment could be challenged. While the Tribunal was critical of HMRC's decision to levy duty on all the imports as "new clothing", in my judgment it was not unreasonable of HMRC to defend Rokit's appeal against the assessments. In effect, the proceedings were necessary in order to determine the correct duty on the imports as a matter of fact and law.

32. Nor was HMRC's interpretation of the legal position as regards tariff classification of the goods so misconceived that HMRC must or should have known that it had no reasonable prospect of success before the Tribunal. Again, the Tribunal was critical of HMRC's arguments regarding the meaning of "worn clothing", and the relevant criteria to be applied, and regarding the permissibility of agreeing a formula or apportionment for duty purposes. But although the Tribunal found those arguments to be wrong, they were not "unarguable". The authorities establish that the Tribunal should be very slow to extrapolate from that that HMRC must thereby have acted unreasonably in bringing or defending the proceedings, with cost-shifting as a consequence.

33. The more difficult question is whether HMRC acted unreasonably in "conducting… the proceedings". I have concluded that in certain respects they did.

34. I agree with Rokit that until the hearing HMRC's case was based almost entirely on their arguments regarding Officer Pell's supposed inspection of the imports and the failure of the inspected goods to meet HMRC's suggested criteria for reduced duty. The Tribunal found that this was "the only analysis of the legal basis for the decision" in the HMRC review letter (see [83]). It was also the only basis for HMRC's case put forward in HMRC's statement of case and skeleton argument.

35. That argument was effectively abandoned by HMRC at the hearing, and replaced by the argument that apportionment by a formula could never be permissible for duty purposes. It became apparent during the course of Officer Pell's evidence that, regardless of HMRC's case on the legal positions, their previous arguments would be unlikely to be established as a question of fact.

36. It was an inevitable consequence of this last-minute change by HMRC that much of the work and experience undertaken by Rokit was wasted. Much of the preparation undertaken by the Tribunal for the hearing was similarly wasted.

37. I should state that I am not persuaded by Rokit's subsidiary arguments regarding HMRC's conduct of the proceedings. While the examples given by Rokit and described above certainly do HMRC little credit, they are in my judgment instances of the cut and thrust of litigation tactics rather than unreasonable conduct.

38. In my judgment, it does not, however, follow that Rokit can recover all of its costs under Rule 10(1)(b) as a result of HMRC's unreasonable conduct of the proceedings. That is because the issue of the agreement which Rokit said they had made with HMRC – and which the Tribunal found had been made – would have fallen to be determined by the Tribunal regardless of HMRC's change of tack. That was so both as regards the Classification Issue and the Waiver Issue, on the latter of which the Tribunal found against Rokit.

39. The issue regarding the earlier HMRC agreement can in my opinion fairly be restricted to the evidence given by Mr Shackleton.

40. My decision is therefore that HMRC shall pay such of Rokit's costs under Rule 10(1)(b) as are *not* attributable to the evidence of Mr Shackleton, namely costs attributable to the preparation of his witness statement and his evidence in the proceedings.

41. Such costs shall be assessed on the standard basis in a sum to be agreed or, if the parties are unable to agree, to be determined by a Costs Judge.

Right to apply for permission to appeal

42. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

THOMAS SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 8 AUGUST 2017