

# **JTI POLSKA Sp. Z o.o. and others (Respondents) v Jakubowski and others (Appellants)**

**Case ID: 2021/0144**

## **Case summary**

### **Issue**

Whether the Supreme Court should depart from the judgment of the House of Lords in *James Buchanan & Co. Ltd v Babco Forwarding & Shipping (UK) Ltd*. [1978] AC 141 ("Buchanan") and hold that excise duty payable in respect of goods which are stolen in the course of international carriage by road cannot be claimed under article 23.44 of the Convention on the Contract for the International Carriage of Goods by Road 1956 (the "CMR").

### **Facts**

The respondents contracted with the appellant hauliers to transport a consignment of cigarettes from Poland to England. The road carriage was undertaken subject to the CMR. During transit, whilst the driver's vehicle was parked in a motorway service station in England, thieves stole a number of cases of cigarettes. As a result, the respondents incurred excise duty pursuant to a European excise duty suspension arrangement, under which the cigarettes were deemed to have been released for commercial consumption in the UK following the theft.

The respondents claimed compensation from the appellants under the CMR. The parties settled the claim save as to the excise duty, which the respondents claimed under article 23.4 of the CMR. Article 23.4 provides that, in the case of the loss of goods, a cargo claimant may claim "carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods", in addition to the value of the goods. The House of Lords previously held in *Buchanan* that the words "other charges incurred in respect of the carriage of the goods" encompasses charges incurred because of the way that the goods were carried and lost, so that a cargo claimant can recover excise duty levied on goods stolen in transit. The appellants contend that the decision in *Buchanan* was wrong and should be departed from.

### **Judgment appealed**

[\[2021\] EWHC 1465](#)

### **Parties**

#### **Appellant(s)**

Marek Jakubowski and others

#### **Respondent(s)**

JTI Polska Sp. Z o.o and others

### **Appeal**

#### **Justices**

Lord Reed, Lord Hodge, Lord Briggs, Lord Sales, Lord Hamblen, Lady Rose, Lord Richards

**Hearing start date**

28 February 2023

**Hearing finish date**

28 February 2023

**Watch hearing**

28 February 2023 [Morning session](#) [Afternoon session](#)