

MOBILX FINALLY (FINALLY) LODGE APPLICATION WITH SUPREME COURT FOR PERMISSION TO APPEAL COURT OF APPEAL JUDGEMENT

VAT AND EXCISE SPECIALISTS



Liban Ahmed
Director

Ipswich Office
9 Lower Brook Street
Ipswich
IP4 1AG
Tel: 0844 826 7695

liban.ahmed
@ctmltd.com

Liban worked for HM Revenue & Customs for 20 years, predominately in MTIC investigations, before being recruited by **KPMG**. He formed CTM in 2005 and now manages all Tribunal and Upper Tribunal appeals.

Overleaf:

Tribunal decisions

Mobilx lodge appeal just before Christmas

We reported in our October edition that Mobilx had finally decided to make an Application to appeal the Court of Appeal Judgement. Well, it took a further 3 months for that Application to be drafted and submitted, but the Supreme Court has now confirmed to CTM that they have received it and it is awaiting directions. We understand that there are very good reasons for the late service and that there is optimism that, at least, the delay will not be an issue.

The Supreme Court's decision regarding the written Application could take 2-3 months to be released and, if it is unsuccessful, it could take several more months for the court to hear oral submissions. The ultimate goal is to get before the ECJ.

FCIB Evidence – Did HMRC obtain it lawfully?

Megantic Services has been in the High Court recently to challenge HMRC on whether they have legally obtained the FCIB material in civil cases.

It appears that there is a dispute that may lead the Court to find that the material can only be used in criminal cases. It is argued that HMRC requested and received a copy of the FCIB server for criminal cases, but did not receive the authority from the Dutch Authorities for it to be used in Tribunal appeals.

The case is in the balance and Judgement is due out imminently. If Megantic are successful, it would have a dramatic effect on any appeal where FCIB evidence has been served, particularly where a Tribunal has already reached a decision that was heavily influenced by it.

Fresh Tribunal Decisions

With CTM and many other firms awaiting decisions from the Tribunal for cases that finished over 6-12 months ago, it is clear that some Judges are struggling to meet deadlines set down by the Tribunal. The Tribunal have confirmed recently that there is nothing they can do to force Judges to deliver more timely decisions, which should ordinarily be released within 3 months.

There is little new that can be said about the latest batch of Tribunal decisions released in the last quarter of 2010, apart from HMRC are often taken at face value without any need to evidence their allegations. This is often as a result of

Next Edition:

Supreme Court
Decision in Mobilx

FCIB High Court
Judgement

not defending every single allegation. Traders should not decide what is important, or not, they should assume that the Tribunal will treat all allegations, or criticisms, with equal importance and that is exactly what is happening. Deal with everything and leave nothing to chance is our only advice. However, there has been some success and there will be more.

One thing we would say, though, is that traders should prepare their cases not just well, but cost effectively. It is very easy to run out of funds in the early stages and have nothing left at the end when you really need it. Many traders have come to us recently looking for investment, because fees simply got out of hand.

We have created a table, more out of interest to you than anything else, that details a sample of who has won, or lost, in some of the decisions released towards the end of last year. It also shows which counsel was used and the representatives/solicitors who prepared the appeals.

Trader	Result	Representative	Counsel	Judge
Xentric Limited	<u>Lost</u> - Actual Knowledge	Khan Partnership	Mohammed Kharmisa	Kelly (London)
G Comms Limited	Lost - Should have known	Lex Partners	Orlando Parnell	Hellier (London)
Procomm Consultancy	<u>Lost</u> - Actual Knowledge	Khan Partnership	Geoffrey Cox	Gort (London)
Gillex Limited	Lost - Actual Knowledge	Liquidator	No counsel	Clark (London)
Greener Solutions	<u>Won</u>	Aegis	Colin Wells	Avery-Jones (London)
Telement Ltd	Lost - Actual Knowledge	Not represented	Simon Livingston	Avery-Jones (London)
Masstech	<u>Won</u>	Chinnery & Co	Ian Bridge	Nolan (London)
Phonepoint	Lost - Actual Knowledge	McGrigors	Tim Brown	Barlow (Manchester)
A One Distribution	<u>Lost</u> - Actual Knowledge	BGT Tax	Simon Taylor	Nolan (London)
3 rd Generation	Lost - Actual Knowledge	Client failed to turn up	No Counsel	Brooks (London)
Mobile Export 365	<u>Lost</u> - Actual Knowledge	Khan Partnership	Patchett-Joyce	Dr Williams (London)

Should you require advice on the best way forward, without unnecessarily large fees, please call us at any time and, if needs be, we can arrange a conference with experienced counsel for those wishing early, impartial advice.