



120TACD2022

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against the imposition by the Revenue Commissioners (“the Respondent”) of customs duty and Value Added Tax (“VAT”) in the amount of €4972.68 (customs duty of €1,408.69 and VAT of €3,563.99) on the importation of a motor vehicle Mitsubishi L200, ██████████ (“the vehicle”), from Northern Ireland in February 2021.
2. The charges were imposed by the Respondent on foot of changes introduced on 14 January 2021 by the United Kingdom government to the VAT margin scheme for used cars imported from Great Britain into Northern Ireland.
3. The appeal proceeded by way of a hearing on 27 June 2022.

Background

4. The Appellant purchased the vehicle, which was registered in Great Britain, from a car dealer in Northern Ireland. On 3 February 2021, the Appellant paid GB£14,700 for the vehicle, which was inclusive of 20% UK VAT.

5. On 17 February 2021, the Appellant's agent filed a Single Administrative Document ("SAD") on the Respondent's Automated Import System ("AIS") for the importation of the vehicle from Northern Ireland. However, this customs declaration was cancelled by the Appellant's agent on the same day.
6. On 5 March 2021, the Appellant's agent filed a further SAD on AIS for the importation of the vehicle. This generated a VAT liability of €3,563.99 and customs duty of €1,408.69, which the Appellant paid.
7. The Appellant appealed the VAT and customs duty paid by him to the Respondent. On 19 July 2021, the Respondent's designated appeals officer refused the appeal and upheld the VAT and customs duty charged.
8. On 28 March 2021, the Appellant appealed the imposition of VAT and customs duty to the Commission. Following receipt of confirmation that the first-stage appeal to the Respondent had been completed, the Appellant's appeal to the Commission proceeded.

Legislation and Guidelines

9. Article 77 of Regulation (EU) 952/2013 laying down the Union Customs Code ("the UCC Regulation") provides *inter alia* that:
 1. *A customs debt on import shall be incurred through the placing of non-Union goods liable to import duty under either of the following customs procedures:*
 - (a) *release for free circulation, including under the end-use provisions;*
 - (b) *temporary admission with partial relief from import duty.*
 2. *A customs debt shall be incurred at the time of acceptance of the customs declaration.*
 3. *The declarant shall be the debtor. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.*
10. Article 85 of the UCC Regulation provides *inter alia* that:
 1. *The amount of import or export duty shall be determined on the basis of those rules for calculation of duty which were applicable to the goods concerned at the time at which the customs debt in respect of them was incurred.*
 2. *Where it is not possible to determine precisely the time at which the customs debt is incurred, that time shall be deemed to be the time at which the customs*

authorities conclude that the goods are in a situation in which a customs debt has been incurred.

11. Under the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the Protocol on Ireland/Northern Ireland (“the Protocol”) at Article 8 in respect of VAT and excise provides that:

The provisions of Union law listed in Annex 3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland.

In respect of Northern Ireland, the authorities of the United Kingdom shall be responsible for the application and the implementation of the provisions listed in Annex 3 to this Protocol, including the collection of VAT and excise duties. Under the conditions set out in those provisions, revenues resulting from transactions taxable in Northern Ireland shall not be remitted to the Union.

By way of derogation from the first paragraph, the United Kingdom may apply to supplies of goods taxable in Northern Ireland VAT exemptions and reduced rates that are applicable in Ireland in accordance with provisions listed in Annex 3 to this Protocol.

The Joint Committee shall regularly discuss the implementation of this Article, including as concerns the reductions in exemptions provided for in the provisions referred to in the first paragraph, and shall, where appropriate, adopt measures for its proper application, as necessary.

The Joint Committee may review the application of this Article, taking into account Northern Ireland’s integral place in the United Kingdom’s internal market, and may adopt appropriate measures as necessary.

12. On 2 March 2021, the Respondent published eCustoms Helpdesk Notification 26/2021 regarding “Importing vehicles from Northern Ireland”. This notification stated *inter alia* that:

Under the Protocol on Ireland/Northern Ireland, Northern Ireland will continue to apply and adhere to EU rules in relation to trade in goods with the result that there are no customs formalities, including customs declarations or payments of tariffs, on trade between Ireland and Northern Ireland.

On 14 January, the UK introduced significant changes to the UK VAT margin scheme for used cars imported from Great Britain into Northern Ireland. These changes are not in compliance with provisions of EU law on VAT that apply in Northern Ireland as per

Article 8 of the Protocol. Accordingly, used cars that are imported into NI from GB after 31 December 2020, under the rules currently in force in the UK are not single market goods and cannot be brought into the State as if they were. Therefore, when they are brought into the State, they are liable for VAT and duty on the same basis as used cars brought into the State from Britain.

Submissions

Appellant

13. The Appellant submitted that he consulted a customs broker at the time of purchase of the vehicle and was advised based on information on the Respondent's website that no VAT or customs duty would have to be paid on importation. On 3 February 2021 the Appellant paid the purchase price for the vehicle to the car dealer in Northern Ireland, and it was delivered on 6 February 2021. On 8 February 2021, the Respondent published its first guidance on the imposition of customs duty and VAT on motor vehicles being imported from Northern Ireland.
14. On 17 February 2021, the Appellant presented the vehicle at a VRT centre. A SAD was requested, and the Appellant was informed that this was a new requirement. A SAD was filed on AIS which generated a VAT liability at 21% of €2,904.71. No customs duty was required. However, on the advice of the Appellant's agent, and following a call from the agent and the Respondent, whose representative could not explain why the VAT liability occurred, this SAD was cancelled.
15. After waiting for further advice from the Respondent for nearly two weeks, on 2 March 2021 the Respondent published eCustoms Helpdesk Notification 26/2021. The Appellant's agent filed a second SAD. In the time between the first and second SAD, the applicable VAT rate increased from 21% to 23%. The Appellant was also charged customs duty. The total liability was €4,972.68. The Appellant had no choice but to pay this liability immediately or face penalties for non-payment of vehicle registration tax.
16. The Appellant was aggrieved that the Respondent had imposed VAT and customs duty without notification or updating its guidelines as of the date of purchase of the vehicle, 3 February 2021. The Appellant stated that his agent was a customs broker and yet was also unaware of the changes to the legal situation.

Respondent

17. Counsel for the Respondent submitted that the Appellant had failed to provide proof that the vehicle had been registered in Northern Ireland and proof of cleared customs declaration in Northern Ireland. These were requirements even prior to the changes to the UK VAT margin scheme for used cars imported from Great Britain into Northern Ireland, and therefore, irrespective of the changes introduced by the UK government on 14 January 2021, the Appellant was liable to VAT and customs duty.

18. Following the finalisation of the Protocol, the Respondent provided the following information on its website in January 2021:

For vehicles first registered in Great Britain and subsequently registered after 1 January 2021 to a private individual or a business or sold by a motor dealer with an address in Northern Ireland, proof that the vehicle was properly imported into Northern Ireland will be required.

Proof will be in the form of:

- *A copy of the customs declaration showing the importation of the vehicle into Northern Ireland; or*
- *A T2L document issued by HMRC. The vehicle must be identifiable from the supporting documentation.*

19. The Respondent's website further stated that:

A person should not purchase a vehicle from Northern Ireland with either a GB registration or which had previously been registered in GB where this documentation is not available.

20. Further, the Respondent's website stated that where proof that a vehicle being imported into Northern Ireland could not be provided, a customs declaration must be made and customs duty and VAT based on the import value of the vehicle paid immediately prior to registration.

21. The vehicle was registered in Great Britain, and therefore the Appellant was required to provide proof of the proper importation of the vehicle into Northern Ireland. As no such proof was provided, the Appellant was liable for the VAT and customs duty paid in relation to the vehicle.

22. Counsel for the Respondent additionally submitted that on 14 January 2021, the UK introduced significant changes to the UK VAT margin scheme for used cars imported from

Great Britain into Northern Ireland, which breached Article 8 of the Protocol. On 8 February 2021, the Respondent published guidance on its website indicating that cars imported from Great Britain into Northern Ireland after 31 December 2020 could only be moved into the State and registered here after they were declared to customs, and customs duty, if applicable, and VAT at import were paid.

23. The Appellant's first SAD was accepted by AIS on 17 February 2021 but was cancelled by the declarant on the same date. On 1 March 2021, the VAT rate changed from 21% to 23%. The second SAD was accepted on 5 March 2021, at which time the VAT rate had increased and the sterling exchange rate had changed resulting in increases in both the value of the vehicle in Euro and the VAT due. This was the reason for the increased liability to customs duty on the second SAD compared to the first one. The customs debt is calculated under the rules applicable on which the customs declaration is accepted. In this instance, the customs debt for the vehicle was calculated under the rules applicable on 5 March 2021. While the Respondent had sympathy for the Appellant, its guidance documents simply reflected the legal position, which had changed as a result of the actions of the UK government.

Material Facts.

24. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

22.1.1 The Appellant purchased the vehicle from a car dealer in Northern Ireland, and on 3 February 2021, paid GB£14,700 (purchase price of £12,250 + UK VAT at 20%).

22.1.2 On 17 February 2021, the Appellant (via his agent) filed a SAD on AIS which he cancelled on the same date.

22.1.3 On 5 March 2021, the Appellant (via his agent) filed a SAD on AIS. The purchase price of the vehicle in euro currency was calculated as €14,086.94. Customs duty of 10% (€1408.69) was levied. Additionally, VAT at 23% (€3563.99) was imposed. The Appellant paid the total sum of €4972.68 in customs duty and VAT.

22.1.4 The vehicle was first registered in Great Britain. The Appellant did not provide the Respondent with proof that the vehicle had been properly imported into Northern Ireland.

Analysis

25. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."*
26. Under the Protocol, it was agreed between the UK and the EU that Northern Ireland would continue to apply and adhere to EU rules in relation to trade in goods, with the result that there would be no customs formalities, including payment of tariffs, on trade between Ireland and Northern Ireland.
27. In early 2021, the Appellant decided to purchase a motor vehicle from Northern Ireland and import it into the State, on the understanding that no customs duty or VAT would be levied on importation. However, the Respondent's evidence was that on 14 January 2021, the UK government unilaterally introduced significant changes to the UK VAT margin scheme for used cars imported from Great Britain into Northern Ireland, and in doing so breached Article 8 of the Protocol. As a result, used cars imported from Great Britain to Northern Ireland after 31 December 2020 are liable for duty and VAT when brought into the State, on the same basis as used cars brought into the State from Great Britain.
28. The Appellant did not dispute the legal position arising out of the amendments introduced by the UK government. However, he was aggrieved that the Respondent had not provided guidance on the changed regime until 8 February 2021, after he had purchased the vehicle. He was further aggrieved that the first SAD was cancelled by him on 17 February 2021, following, he stated, a call between his agent and a representative of the Respondent who could not explain why VAT had been added to the SAD. The second SAD was filed on 5 March 2021, by which time the applicable VAT rate had increased from 21% to 23%, and additionally customs duty at 10% was imposed. Consequently, the Appellant was obliged to pay a total of €4972.68, compared to a liability on foot of the first, cancelled SAD of €2904.71.
29. The Commissioner has considerable sympathy for the Appellant in this instance. He accepts that the Appellant imported the vehicle into the State in good faith and on the understanding that no VAT or duty would be payable. Additionally, there was a significant increase in the liability accruing under the second SAD compared to the first, which had been cancelled by the Appellant.

30. Nevertheless, the Commissioner's jurisdiction is limited to considering "the assessment and the charge", as stated by Murray J. at para. 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the liability imposed by the Respondent was correct in law, and has no equitable jurisdiction or broader power to consider circumstances not directly pertaining to the imposition of the charge, including the advice provided to the Appellant by his agent.
31. In the circumstance, the Commissioner is satisfied that the Appellant has not displaced the burden of proof upon him to show that the Respondent's imposition of VAT and customs duty was incorrect. The Commissioner has sympathy for the Appellant due to the substantial difference in liability between the first SAD and the second. The Commissioner agrees with the Appellant that it appears that customs duty was imposed on the second SAD but not on the first, and he does not consider that the Respondent has adequately explained how this arose. Nevertheless, the Commissioner notes that the first SAD was cancelled by the Appellant. While the Appellant contended that this was on foot of a discussion between his agent and a representative of the Respondent, there was no admissible evidence of the contents of that discussion put before the Commissioner at the hearing – the Appellant's account of what transpired was hearsay and therefore inadmissible.
32. In any event, the Commissioner considers that, whatever the contents of that discussion, it could not directly impinge on the determination of this appeal. This is because the question to be determined is whether the VAT and customs duty imposed on foot of the SAD of 5 March 2021 were correct in law. Having regard to the position as set out in the Respondent's eCustoms Helpdesk Notification 26/2021, together with Articles 77 and 85 of the UCC Regulation, the Commissioner is satisfied that the VAT and customs duty were correctly imposed by the Respondent on 5 March 2021.
33. Additionally, the Commissioner notes the Respondent's submission that, prior to the UK government's amendments to the relevant VAT regime on 14 January 2021, it was still a requirement to prove that a motor vehicle that originated from Great Britain was properly imported into Northern Ireland before being moved into the State in order to avoid the payment of VAT and duty. The Appellant accepted that he had not provided the necessary documentation to the Respondent. Therefore, even without the amendments to the relevant VAT regime introduced on 14 January 2021, the Commissioner is satisfied that the Appellant had not demonstrated compliance with the importation requirements, and therefore would have been liable to pay customs duty and VAT in any event.

Determination

34. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in imposing customs duty of €1408.69 and VAT of €3563.99 on the importation of motor vehicle [REDACTED].

35. The appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act 1997 as amended ("the TCA 1997"). This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone
Appeal Commissioner
12th July 2022