



123TACD2023

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 €1,352.62 (customs duty of €704.16 and VAT of €648.46) on the importation of a classic ██████████ truck (“the truck”) from ██████████ to Ireland. The customs duty and VAT was imposed on the basis that the Respondent did not accept that the truck was a “Collector’s Item” as defined in EU law.
2. The appeal proceeded by way of a hearing on 7 July 2023.

Background

3. The truck was imported from ██████████, and presented to the Respondent for examination on 3 December 2021. The Respondent concluded that the truck was not preserved and maintained in its historically correct condition as a result of modifications that were significant enough to exclude it from qualifying as a Collector’s Item under Chapter 97 of the EU Combined Nomenclature. Consequently, the truck was liable to

10% import customs duty and 23% VAT, as opposed to 0% customs duty and 13.5% for Collector's Items.

4. The Appellant sought a first stage appeal of the Respondent's decision. On 12 April 2022, the Respondent's designated appeals officer refused the appeal.
5. On 16 May 2022, the Appellant appealed the Respondent's decision and subsequent refusal of his first stage appeal to the Commission. On his Notice of Appeal, the Appellant stated that the amount under appeal was €2,485.68. However, in its Outline of Arguments, and at the hearing of the appeal, the Respondent confirmed that the correct amount was €1,352.62, and the Appellant confirmed that he had not paid any amount to date. The Commissioner is satisfied that the quantum of the appeal is the amount stated by the Respondent.
6. The appeal proceeded by way of an oral hearing on 7 July 2023. The Appellant represented himself and was assisted by his wife. The Respondent was represented by counsel.

Legislation and Case Law

7. Chapter 97 of Annex I to Council Regulation (EEC) 2658/87 concerns "Works of art, collectors' pieces and antiques", and Heading 9705 thereof concerns "Collections and collectors' pieces of archaeological, ethnographic, historical, zoological, botanical, mineralogical, anatomical, paleontological or numismatic interest".
8. The Explanatory Notes to Chapter 97 provide, *inter alia*, as follows:

"Additional note

1. Heading 9705 includes collectors' motor vehicles and aircraft of historical or ethnographic interest which are:

(a) in their original state, without substantial changes to the chassis, body, steering, braking, transmission or suspension system, engine, wings etc. Repairing and restoring is allowed, and broken or worn-out parts, accessories and units can have been replaced, provided that the vehicle is preserved and maintained in the historically correct condition. Modernised or modified motor vehicles and aircraft are excluded;

(b) in case of motor vehicles at least thirty years old, in case of aircraft at least fifty years old;

(c) of a model or type which is no longer in production.

The requisite characteristics for inclusion in a collection — being relatively rare, not being normally used for its original purpose, being the subject of special transactions outside of the normal trade in similar utility articles, and being of greater value — are presumed to be fulfilled for motor vehicles and aircraft which comply with the above three criteria.

[...]

Parts and accessories for motor vehicles and aircraft are classified in this heading, provided that they are original parts or accessories, that they are at least thirty years old (for motor vehicles) or at least fifty years old (for aircraft), and that they are no longer in production.

Replicas and reproductions are excluded, unless they fulfil the above three criteria.”

9. In *Erika Daiber v Hauptzollamt Reutlingen* Case 200/84 [1985] ECR 3363 (“*Daiber*”), which concerned the interpretation of the predecessor to Chapter 97 (Chapter 99), the Court of Justice of the European Union (“CJEU”) stated that:

“13. As the Court has repeatedly held, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters.

14. Moreover, for the purpose of interpreting the Common Customs Tariff the Court has consistently held that both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation. For the purpose of interpreting the abovementioned tariff headings it is therefore necessary to take account not only of the wording and system of the Common Customs Tariff but also of the Explanatory Notes.

15. In addition, since it is a question of interpreting a heading allowing duty-free importation, it is necessary to take account of the purpose of the exemption. The exemptions in Chapter 99 of the Common Customs Tariff are intended to facilitate international trade in objects of cultural and educational value and that aim is decisive for the interpretation of the heading in question.

[...]

18. It follows that in order to be suitable for inclusion in a collection within the meaning of Heading No 99.05 an article must be relatively rare. Consequently, articles which have previously been mass-produced but which currently exist only in a limited number, so that they cannot be easily obtained, satisfy that requirement.

[...]

20. It follows that a further characteristic of the articles in question, linked to the previous one, is that they are not traded on the ordinary market and may fetch a high price.

21. Finally, it must be observed that collectors' pieces are not normally used for their original purpose, although it cannot be ruled out that their functional capacity may remain intact.

22. However, for classification under Heading No 99.05 it is not sufficient that an article should satisfy only the criteria for collectors' pieces set out above. It must also be of 'historical interest'. Articles which possess such interest, according to the Customs Cooperation Council's Explanatory Notes to Heading No 99.05, include 'articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary or earlier peoples. This category includes: mummies, sarcophagi; weapons; objects of worship; articles of apparel; articles used by primitive races; articles which have belonged to celebrities.'

23. Without its being necessary to distinguish between the terms 'historical' and 'ethnographic' it must be observed that neither the wording of Heading No 99.05 nor the Explanatory Notes confine themselves to the general history of nations. The term 'history' covers human development and achievement in all fields.

24. It follows that an article connected with human achievements, including those in the field of technology, may, because it marks a significant step in the evolution of human achievements or illustrates a period of that evolution, be of historical or ethnographic interest within the meaning of Heading No 99.05 of the Common Customs Tariff.

25. Accordingly, the preliminary questions must be answered as follows:

Collectors' pieces within the meaning of Heading No 99.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for

their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.

Collectors' pieces which evidence a significant step in the evolution of human achievements or illustrate a period of that evolution are to be regarded as being of historical or ethnographic interest for the purposes of Heading No 99.05 of the Common Customs Tariff."

10. In *Uwe Clees v Hauptzollamt Wuppertal* Case C-259/97 ("Clees"), the CJEU stated that

"13. Next, the Court has held that, in order for an article to be classified under the tariff heading at issue, it is not sufficient that it satisfies only the criteria for 'collectors' pieces', that is to say that it merely possesses the requisite characteristics for inclusion in a collection. It must also be of 'historical or ethnographic interest'. The Court has thus held that those two conditions are cumulative (see Daiber, paragraph 22).

14. With regard to the first condition, articles which meet the four criteria listed in the first point of the operative part of the judgment in Daiber possess the requisite characteristics for inclusion in a collection. The criteria set out in the first four indents of the first subparagraph of paragraph 1 of the Commission's explanatory notes, relating to that first condition, correspond to those laid down by the Court in Daiber.

15. As for the second condition, namely that the article in question must also be of historical or ethnographic interest, the Court observed in Daiber that the term 'history' covered human development and achievement in all fields (paragraph 23), including equally that of car design. Thus, motor vehicles, which relate to human achievements in that field of technology, may be of historical or ethnographic interest when they evidence a significant step in the evolution of human achievements or illustrate a period of that evolution (Daiber, second point of the operative part).

[...]

19. On the basis of that premiss, the Commission laid down as a first criterion that the vehicle in question must be in its original state, without substantial changes to its most important components. That criterion is justified. A vehicle which is not in its original state is not liable to attest to the evolution of the technology of its age.

[...]

22. In conclusion, therefore, the three criteria at issue, as constituents of the presumption established by the Commission, do not depart from the guidance provided by the Court in Daiber. Vehicles which meet those criteria are, as a rule, such as to

attest to the distinctive technical and aesthetic features of the age in which they were manufactured and thus such as to illustrate, in particular, a period of the evolution of human achievements in the field of car design.

*24. However, the fact that a vehicle meets the three criteria set out by the Commission is not sufficient for it to be classified under heading 9705 of the CN. First, compliance with those three criteria merely establishes a presumption of historical or ethnographic interest, which is rebutted where the competent authority establishes that the vehicle's specific character is not in any way linked to a period in the past in the sense that the vehicle is not liable to evidence a significant step in the evolution of human achievements or illustrate a period of that evolution. Secondly, it is also necessary to meet the four criteria, referred to in the first point of the operative part of the judgment in *Daiber*, concerning the characteristics which a vehicle must possess in order to be included in a collection.*

25. Accordingly, the reply to be given to the national court is that heading 9705 of the CN must be interpreted as meaning that motor vehicles which are:

- in their original state, without substantial changes to the chassis, steering or braking system, engine, etc.;*
- at least 30 years old; and*
- of a model or type which is no longer in production*

are presumed to be of historical or ethnographic interest.

However, motor vehicles which satisfy those conditions are not of historical or ethnographic interest where the competent authority establishes that they are not liable to evidence a significant step in the evolution of human achievements or illustrate a period of that evolution.

In addition, the criteria laid down by the case-law of the Court concerning the characteristics required in order for a vehicle to be included in a collection must be met.”

11. In *Amoena Ltd v Commissioners for Her Majesty's Revenue and Customs* Case C-677/18 (“*Amoena*”), the CJEU stated that

“40. According to the Court’s settled case-law, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as

defined in the wording of the relevant heading of the CN and of the notes relating to the sections or chapters...

41. Those objective characteristics and properties of products must be capable of being assessed at the time of customs clearance..."

Evidence

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12. The Appellant gave oral evidence at the hearing. He stated that he imported the truck from ██████████ and that this was a hobby for him and his wife. The truck was imported by another individual on his behalf. He stated that he believed there were two factual errors in the decision of the Respondent's designated appeals officer, and that was why he had appealed to the Commission.
13. He stated that the wheels fitted to the truck were original. The Respondent had contended that the original wheels had five nuts as opposed to eight, but this was incorrect; the ██████████ had five nuts but the ██████████ had eight. He accepted that, at the point of entry, the back wheels of the truck had been changed to a narrower set to facilitate fitting the truck into the container. He stated that the original wheels were in the back of the truck, and that when he took possession of the truck all the original wheels were on it.
14. He stated that there was a canopy attached to the back of the truck by cable ties. He agreed that this was not original but stated that it was added to facilitate transport of spare parts on the back of the truck and he removed the canopy when he took possession of the truck.
15. He stated that the truck was in its original condition, although accepted it was a "*little tired*". He stated that he considered it highly collectable, and that it took him five years to find it, and that it was the only right-hand drive ██████████ available in Europe. He accepted that he was not present when the truck was assessed by the Respondent at customs.
16. On cross-examination, he stated that he had since sold the truck to another purchaser for €5,750. He accepted that the truck was modified on import, and stated that there was no such thing as an original canopy as had been stated in the designated appeals officer's decision. He stated that the canopy was a cover and was no different to having a seat cover. Regarding the original wheels that were not on the truck at inspection, he stated that he believed they were underneath another set of wheels in a photograph of the back of the truck taken by the Respondent.

17. In response to the suggestion that the declared value of the truck (€8,383) indicated it was not a Collector's Item, the Appellant stated that to him it was collectable and very precious: "*one man's treasure is another man's trash and vice versa.*" He stated that the truck was an iconic vehicle.

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18. ██████████ stated that he was part of the Investigation, Prosecutions and Frontier Management Division of the Respondent, and dealt with commercial imports in Dublin Port. He physically examined the truck on importation, and deemed it not to be a Collector's Item.

19. He stated that the general state of the truck was quite poor. He stated that the wheels were not the same as shown in the catalogue for the ██████████, and referred to a copy of the catalogue. He stated that the eight-nut wheel was fixed to an ██████████, and that the image of the ██████████ was a different wheel. Regarding the canopy, he stated that he did not see any cable ties. He stated that the rear wheels were different to the front wheels, and that the original wheels were not in the truck. He stated that if they had been, he would have given the benefit to the Appellant.

20. He stated that he would expect a Collector's Item to be in "*mint condition*" but that the truck was in far from good condition. He accepted that it was a vintage vehicle and would be of interest to certain people but that did not make it a Collector's Item. He stated that he had to assess a vehicle at the point of import, and could not look into the future as to what might be done with a vehicle after it left the Respondent's supervision.

21. He stated that vehicles that are Collector's Items would generally be of higher value, but he accepted that this did not have to be the case. He understood that the vehicles imported with the truck had been purchased in ██████████ townships for cash, and therefore were relatively cheap.

22. On cross examination, it was put to the witness that the catalogue photograph that he stated showed the ██████████ with a five-nut wheel did not in fact show that. He stated that he could see it was a different wheel to the ██████████, but accepted that the number of nuts on the wheel was not clear. He stated that he found two wheels in the back of the truck, but they were not the original back wheels. Regarding the canopy, he stated that it was fixed solidly to the truck and he did not see cable ties. He did not know how it was fixed.

Submissions

Appellant

23. The Appellant stated that the reason for the appeal was the factual inaccuracies in the decision letter of the Respondent's designated appeals officer, and he had addressed those inaccuracies in the hearing. He stated that the original wheels were in the back of the truck. He accepted that the canopy was not original but stated that he removed it. He stated that it appeared there was no monetary value set by the Respondent to determine if a vehicle was or was not a Collector's Item.
24. He accepted that the truck was dirty and not in a pristine condition but stated that being "*pristine*" was not a requirement in the legislation. He stated that the truck still was an original vehicle and was rare. He believed it had cultural value. He also made reference to other vehicles in the same shipment that had been granted the status of Collector's Items, but the Commissioner pointed out that he could only consider the truck and the evidence relating to it in his Determination.

Respondent

25. In written submissions, the Respondent stated that, as a result of the modifications to the truck, it was placed within TARIC Code 8703 2390 00 of the EU Combined Nomenclature on the import declaration resulting in additional Duty and VAT. TARIC Code 8703 2390 00 applies to "*Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars*".
26. It was submitted that the core issue in the appeal was whether the truck should be classified under TARIC Code 9705 0000 of the EU Combined Nomenclature "Collector's Items" or TARIC Code 8703 2390 of the EU Combined Nomenclature.
27. The General Rules for Interpretation of the Combined Nomenclature ("CN") were extracted from the International Convention on the Harmonised Commodity Description and Coding System (also known as the "Harmonised System" or "HS"). The objective of the HS was to facilitate international trade by the establishment, *inter alia*, of tariff and statistical nomenclatures in conformity with an international harmonised system. As a Contracting Party to the HS Convention, Ireland and the EU were obliged, under Article 3, paragraph 1(a) (II) of the Convention: "*not to modify the scope of the Sections, chapters, headings or subheadings of the Harmonised System*". This meant that classification decisions could not be taken which involved the expansion of a heading or code beyond that provided.

28. The Explanatory Notes to Chapter 97 (as set out at paragraph 8 of this Determination) represented the findings of the decision of the CJEU in *Daiber*, so therefore must obviously be given considerable weight. In any event, the Commission was bound to follow the judgments in *Daiber* and *Clees*.
29. The Respondent submitted that the truck:
- was not a collector's item;
 - was not of historical interest;
 - was not an article having a bearing on the study of the activities, manners, customs and characteristics of contemporary or earlier peoples;
 - was not in its original state and without substantial changes;
 - was not in its historically correct condition;
 - had been modified and was excluded as a result;
 - was not "relatively rare" and "not being normally used for its original purpose"; was not the subject of "special transactions outside of the normal trade in similar utility articles, and being of greater value"; and/or was not "unique" or at least available in such small numbers that it might not be freely available for purchase;
 - was not of "great value, out of all proportion to the value of their constituent materials" or "handled by a specialised trade, and are often of great value, out of all proportion to the value of their constituent materials";
 - was not a motor vehicle, which related to human achievements in that field of technology evidencing a significant step in the evolution of human achievements or illustrating a period of that evolution.
30. In oral submissions, counsel stated that the onus of proof was on the Appellant, and that he had not provided photographic evidence that the original wheels were in the back of the truck at the point of import. The wheels at the front of the truck did not correspond with the correct wheels in the catalogue. Regarding the canopy, it was irrelevant whether it was fixed with cable ties or bolted to the truck; the point was it was appended to the truck at the point of entry, and it was not an original feature.
31. The Respondent was not, in this appeal, standing over the decision of the designated appeals officer, but was standing over the decision it made at the point of entry of the truck to decline to classify it as a Collector's Item.

32. In response to questions from the Commissioner, counsel accepted that a vehicle being “*pristine*” was not a legal test, but the implication was that a Collector’s Item would be looked after and maintained in its original condition. She did not agree that the *Daiber* judgment meant that, if an appellant satisfied the first three conditions, the burden shifted to the Respondent, as the burden of proof in tax appeals was always on an appellant.

Material Facts

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

- 33.1. The truck was imported from [REDACTED] to Ireland and presented for inspection by the Respondent on 3 December 2021. The declared value of the truck was €8,383.
- 33.2. The Respondent determined that the truck was not a ‘Collector’s Item’ under Chapter 97 of the EU Combined Nomenclature, and therefore was liable for customs duty of €704.16 and VAT of €648.46.
- 33.3. The truck was over 30 years old and of a model or type no longer in production.
- 33.4. At the time of inspection of the truck, the front wheels on the truck were the original wheels of a [REDACTED] truck.
- 33.5. At the time of inspection of the truck, the back wheels on the truck were not the original wheels, and the original back wheels were not contained within the truck.
- 33.6. At the time of inspection of the truck, there was a canopy fixed to the back of the truck that was not original. The canopy was a reasonably firm and durable structure and was not akin to a seat cover.
- 33.7. Consequently, at the time of inspection of the truck, the truck was not in its original state.
- 33.8. The truck was subsequently sold by the Appellant to a third party for €5,750.

Analysis

34. 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.”

35. Based on the Explanatory Notes to Chapter 97 of the EU Combined Nomenclature, as well as the CJEU's judgments in *Daiber* and *Clees*, the Commissioner's understanding is that it is necessary for an appellant, who is seeking to prove that he or she has imported a motor vehicle that should be classified as a Collector's Item, to demonstrate that the vehicle was (i) in its original state, without substantial changes to the chassis, body, steering, braking, transmission or suspension system etc. Repairing and restoring was allowed, and broken or worn-out parts, accessories and units could have been replaced, provided that the vehicle was preserved and maintained in the historically correct condition. Modernised or modified motor vehicles were excluded; (ii) at least 30 years old; and (iii) of a model or type which is no longer in production.
36. If those three conditions were met by the appellant, there was a presumption of historical or ethnographic interest, which was rebutted where the competent authority established that the vehicle was not liable to evidence a significant step in the evolution of human achievements or illustrate a period of that evolution. Furthermore, it was also necessary to meet the four criteria set out in *Daiber* concerning the characteristics which a vehicle must possess in order to be included in a collection, i.e. articles which were relatively rare, were not normally used for their original purpose, were the subject of special transactions outside the normal trade in similar utility articles were of high value.
37. Finally, based on the CJEU's judgment in *Amoena*, the test for determining whether or not a vehicle was a Collector's Item was an objective test, and the objective characteristics and properties of the vehicle must have been capable of being assessed at the time of customs clearance.
38. It is not in dispute that the truck at issue in this appeal is over 30 years old and of a model or type no longer in production. Therefore, the second and third criteria set out in paragraph 35 above are met. The primary question for determination is whether the truck was in its original state when presented for assessment by the Respondent at the point of importation.
39. There were three principle issues of fact addressed at the hearing: (1) whether the front wheels on the truck were original; (2) whether the original back wheels were transported in the back of the truck (it being accepted that they were not on the truck at the point of importation); and (3) whether the canopy attached to the back of the truck on importation was such as to render the truck not in its original state.

40. Regarding the first issue, the Appellant contended that the 8-nut wheels on the front of the truck were original, whereas the Respondent contended that the original [REDACTED] wheels had 5 nuts. The Commissioner has considered the difference in evidence between the Appellant and [REDACTED] at the hearing. He has also considered the copy of the [REDACTED] catalogue provided by the Respondent, and he does not agree with [REDACTED] that it is possible to determine that the photograph of the [REDACTED] truck (on page 41 of the hearing booklet) shows a five-nut wheel, as opposed to an eight-nut one. The Commissioner found the Appellant's evidence regarding the type of wheel typically affixed to [REDACTED] truck to be more convincing than that provided by the Respondent, and therefore he finds on the balance of probabilities that the two front wheels on the truck were original.
41. Regarding the second issue, it was not in dispute that the two back wheels at inspection were not original. The Appellant stated that they had been removed to fit in the transportation container, but contended they were in the back of the truck. This was disputed by [REDACTED]. The Commissioner has considered the evidence on this issue and concludes that the original back wheels were not in the truck at the time of inspection. In coming to this finding, he has had regard to the following: that [REDACTED] inspected the truck but the Appellant was not present at the inspection, and therefore only [REDACTED] had direct knowledge of the state and condition of the truck at the point of inspection; and that the Respondent provided a photograph of the back of the truck, which admittedly was unclear, but which did not show the original wheels, and that no contradictory photographic evidence was provided by the Appellant.
42. Regarding the third issue, it was not in dispute that there was a canopy attached to the truck at importation that was not original. The Commissioner has considered the photograph of the canopy provided by the Respondent, and it seems to him to have been a reasonably durable and firm structure. Consequently, he does not agree with the Appellant that it was akin to a seat cover, but rather considers it to have been a substantive modification of the truck. The Commissioner agrees with the Respondent that the manner of how the canopy was attached to the truck was ultimately irrelevant; what matters is that the truck was altered and therefore not in its original state. While the Commissioner accepts the evidence of the Appellant that he subsequently removed the canopy, he also considers this irrelevant to the question at issue, which is the state of the truck at the point of inspection.
43. Therefore, as he has found that the original back wheels were not on or in the truck, and the truck was modified by way of a canopy attached to its back, he concludes that the

truck was not in its original state at the point of importation and assessment by the Respondent, and thus the presumption of historical or ethnographic interest does not apply. Consequently, it follows that the Respondent was entitled to determine that the truck was not a Collector's Item within the meaning of Chapter 97 of the EU Combined Nomenclature.

44. Finally, while the Appellant stated during the hearing that he was primarily aggrieved at the decision of the Respondent's designated appeals officer, which he considered contained factual inaccuracies, the Commissioner agrees with the Respondent that this appeal is concerned with the Respondent's original decision that the truck was not a Collector's Item, and is not a review of the first-stage appeal. For the reasons set out herein, the Commissioner is satisfied that the Respondent's original decision was correct.

Determination

45. 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 its decision that the [REDACTED] truck imported by the Appellant from [REDACTED] was not a Collector's Item within the meaning of Chapter 97 of the EU Combined Nomenclature.
46. The appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act 1997, as amended ("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 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone
Appeal Commissioner
20th July 2023