AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

97TACD2025

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of [redacted] ("the Appellant") against a decision of the Revenue Commissioners ("the Respondent") dated 11 December 2023, in relation to a Notification of Customs Debt, in the sum of €1,235,279, with interest in the amount of €62,600.89, arising from the Respondent opening a Post Clearance Intervention ("PCI"), in relation to the importation of second-hand motor vehicles ("the vehicles") by the Appellant which were the subject of a claim under Great Britain ("GB") Preferential Origin ("PO") ("GBPO") and Returned Goods Relief ("RGR"). The customs duties related to the importation of motor vehicles in the year 2021 ("the relevant period").

2. Motor vehicles being imported from GB that qualify for PO attract a 0% rate of customs duty. Motor vehicles that are not entitled to GBPO attract various rates of duty, the most common being 10%. The Appellant contended that despite any entitlement to claim a benefit on the basis of GBPO and/or RGR, the Appellant was a customs representative only, not the importer and thus, had no liability for the said customs debt.

3. On 15 December 2023, the Appellant made a first stage appeal to the Designated Authorised Officer ("DAO") of the Respondent and on 15 February 2024, the DAO issued a decision to the Appellant refusing the first stage appeal.

4. The Appellant's representative submitted that the Appellant does not dispute the amount of the debt.[1] Rather, the Appellant appeals the Respondent's refusal to amend the declarations the Appellant made on the Respondent's Automated Import System ("AIS") to reflect that it acted as "a direct representative" of the motor dealers ("the garages") for whom it transported the vehicles, and that the Respondent should then proceed to pursue the garages for the customs debt, on whose behalf the Appellant acted.

5. On 12 March 2024, the Appellant duly appealed the decision of the Respondent to the Commission by submitting a Notice of Appeal. On 22 May 2024, in accordance with section 949Q TCA 1997, the Appellant and the Respondent submitted a Statement of Case. Furthermore, on 25 July 2024, in accordance with section 949S TCA 1997, the Appellant submitted an Outline of Arguments and on 16 August 2024, the Respondent submitted it Outline of Arguments.

[1] Transcript Day 1 page 10

6. The appeal proceeded by way of a hearing that took place on 21 January 2025. The Appellant was represented by [redacted], the Managing Director of the Appellant, ("the Appellant's representative") and the Respondent was represented by junior counsel.

Background

7. The Appellant is a [redacted] company and a company that was engaged in the import of second-hand vehicles from GB to Ireland. The Appellant's representative is the Managing Director of the Appellant and during the relevant period, the Appellant had [redacted].

8. In relation to the vehicles, the Appellant completed customs formalities and declarations via the "AIS". The AIS is the Respondent's national electronic import system. The AIS handles the validation, processing, duty accounting and clearance of customs declarations. When submitting a customs declaration into the AIS, certain mandatory information must be completed in order for the goods to receive an import routing, to correctly calculate and account for any duty at import and for the goods to be cleared for import into the State.

9. In 2021, the Appellant lodged customs declarations to the AIS in respect of imported vehicles, for which the Appellant claimed GBPO on 452 declarations and RGR on 235 declarations. By claiming GBPO, the customs duty rate on the importation of the vehicles was reduced from 10% to 0%. The Appellant subsequently applied for RGR relief on all 687 declarations after the claim for GBPO relief was refused. The Commissioner has had the benefit of a list of the vehicle imports, which was helpfully provided in the bundles of documentation submitted by the parties to this appeal.

10. The Respondent submitted that to aid efficient processing and to ensure that commercial trade is not unduly delayed, the Respondent does not always request supporting documents at the point of entry, but within three years of importation the Respondent is entitled to subject any import to an audit or documentary check. The classification of an import as "orange", "red" or "green" at the point and time of entry does not affect the entitlement to later subject the goods to a check or audit. It is the case that the vehicles, the subject of this appeal, were "green" routed at the point of import in 2021, but the green-routing of goods is not dependent upon a check having been made and verified at the point of entry.

11. Subsequent to the Appellant lodging customs declarations to the AIS, the Respondent opened a PCI in relation to the importation of the vehicles. The Respondent submitted that the Appellant was afforded a reasonable opportunity to provide the necessary

documentation to support its claims for GBPO or RGR on the motor vehicles, but it failed to do so.

12. The Respondent submitted that it established a customs debt of €1,235,279.25 plus interest, following a PCI audit of 687 motor vehicle consignments that the Appellant imported/transported into Ireland during the relevant period, and which the Appellant made 425 GBPO declarations, for which the Respondent claimed €750,430.72 of this debt was established, and 235 RGR declarations for which the Respondent claimed €484,848.53 of this debt was established.

13. On 25 January 2021, the aforementioned PCI was initiated, when the Respondent issued correspondence to the Appellant outlining the specific proofs required to claim GBPO for the vehicles being imported into Ireland.

14. On 16 February 2021, the Respondent issued further correspondence to the Appellant clarifying what was required to substantiate a claim of GBPO. In addition, the correspondence included an explanation of RGR.

15. By letter dated 16 February 2021, the Respondent corresponded again with the Appellant to state that "*I am now providing the 3 scenario's that may be eligible to claim the relief, and the documentation required to prove entitlement*".

16. On 27 June 2021, the Appellant wrote to the Respondent stating *inter alia* that:

> *"[the Appellant] are not the importers of the various vehicles, we are the transport company and any Revenue query regarding these vehicles should be directed to the importers, I.E., the relevant Motor Retailer/Garage*".

17. After several months of correspondence between the Appellant and the Respondent, on 24 November 2023, the Respondent wrote to the Appellant to state that it had identified a customs debt of €1,235,279.25, excluding interest to date, and that this amount was now deemed due. Furthermore, the correspondence notified the Appellant that a notification of customs debt would follow the correspondence.

18. On 11 December 2023, a Notification of Customs Debt issued to the Appellant, in the amount of €1,235,279.25, with interest to date amounting to the sum of €62,262.46, being a total amount due of €1,297,541.71. Furthermore, the Notification stated that this was on the basis that:

> *"[i]t has been deemed that the documentation submitted by [the Appellant] to support the reliefs claimed on the Declarations for this period are not sufficient to support the claim. Therefore, it has been deemed that there is an underpayment of duties".*

19. On 15 December 2023, the Appellant lodged a first stage appeal with the Respondent.

20. On 15 February 2024, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld.

21. Thereafter, as set out in the Introduction section to this Determination, the Appellant duly appealed to the Commissioner by submitting its Notice of Appeal. The Appellant's grounds of appeal in its Notice of Appeal focus on the refusal of the Respondent to amend the declarations on the AIS. The Appellant stated *inter alia* that

> *"[t]his appeal center's around box 3/21 not being "ticked" at point of processing the various consignments and [the Appellant] have requested a right to amend and correct this clerical error. This is a clerical error and there is a precedent set in previous handling by revenue customs officials in allowing Post Clearance amendments. [The Appellant] did not benefit in any way financially from the misdeclarations and is not in a position to pay the debt in respect of the identified Revenue Debt. [the Appellant] is not in the business of selling or buying motor vehicles*". [sic]

Legislation and Guidelines

22. The legislation relevant to this appeal is as follows:

23. Article 5 of the Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down the Union Customs Code) ("the UCC Regulation") provides:-

> *Definitions*
>
> *"customs formalities" means all the operations which must be carried out by a person and by the customs authorities in order to comply with the customs legislation;*
>
> *"customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;*
>
> *"declarant" means the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged;*
>
> *"customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force*;

24. Article 15 of the UCC Regulation provides:-

Provision of information to the customs authorities

1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time-limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.

2. The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of an application for an authorisation or any other decision, shall render the person concerned responsible for all of the following:

(a) the accuracy and completeness of the information given in the declaration, notification or application

(b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application

(c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations

The first subparagraph shall also apply to the provision of any information in any other form required by, or given to, the customs authorities.

Where the declaration or notification is lodged, the application is submitted, or information is provided, by a customs representative of the person concerned, as referred to in Article 18, that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph.

25. Article 18 of the UCC Regulation *inter alia* provides:-

Customs representative

1. Any person may appoint a customs representative. Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person.

2. *A customs representative shall be established within the customs territory of the Union. Except where otherwise provided, that requirement shall be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union*.

26. Article 19 of the UCC Regulation provides:-

Empowerment

1. *When dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect.*

2. *Persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf.*

3. *The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented. In specific cases, the customs authorities shall not require such evidence to be provided*.

4. *The customs authorities shall not require a person acting as a customs representative, carrying out acts and formalities on a regular basis, to produce on every occasion evidence of empowerment, provided that such person is in a position to produce such evidence on request by the customs authorities*.

27. Article 46 of the UCC Regulation provides:

Risk management and customs controls

1. *The customs authorities may carry out any customs controls they deem necessary. Customs controls may in particular consist of examining goods, taking samples, verifying the accuracy and completeness of the information given in a declaration or notification and the existence, authenticity, accuracy and validity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts*.

28. Article 48 of the UCC Regulation provides:

Post-release control

For the purpose of customs controls, the customs authorities may verify the accuracy and completeness of the information given in a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification, and the existence, authenticity, accuracy and validity of any supporting document and may examine the accounts of the declarant and other records relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods after having released them. Those authorities may also examine such goods and/or take samples where it is still possible for them to do so.

Such controls may be carried out at the premises of the holder of the goods or of the holder's representative, of any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and data for business purposes.

29. Article 51 of the UCC Regulation provides:

Keeping of documents and other information

1. The person concerned shall, for the purposes of customs controls, keep the documents and information referred to in Article 15(1) for at least three years, by any means accessible by and acceptable to the customs authorities.

In the case of goods released for free circulation in circumstances other than those referred to in the third subparagraph, or goods declared for export, that period shall run from the end of the year in which the customs declarations for release for free circulation or export are accepted.

In the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, that period shall run from the end of the year in which they cease to be subject to customs supervision.

30. Article 61 of the UCC Regulation provides:

Proof of origin

1. Where an origin has been indicated in the customs declaration pursuant to the customs legislation, the customs authorities may require the declarant to prove the origin of the goods.

2. *Where proof of origin of goods is provided pursuant to the customs legislation or other Union legislation governing specific fields, the customs authorities may, in the event of reasonable doubt, require any additional evidence needed in order to ensure that the indication of origin complies with the rules laid down by the relevant Union legislation.*

3. *Where the exigencies of trade so require, a document proving origin may be issued in the Union in accordance with the rules of origin in force in the country or territory of destination or any other method identifying the country where the goods were wholly obtained or underwent their last substantial transformation*.

31. Article 64 of the UCC Regulation provides:-

Preferential origin of goods

1. *In order to benefit from the measures referred to in points (d) or (e) of Article 56(2) or from non-tariff preferential measures, goods shall comply with the rules on preferential origin referred to in paragraphs 2 to 5 of this Article. Page 503 Page 8 of 26 2. In the case of goods benefiting from preferential measures contained in agreements which the Union has concluded with certain countries or territories outside the customs territory of the Union or with groups of such countries or territories, the rules on preferential origin shall be laid down in those agreements.*

…….

32. Article 77 of the UCC Regulation provides:-

Release for free circulation and temporary admission

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. Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part*

of the import duty not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

33. Article 79 of the UCC Regulation provides:-

Customs debt incurred through non-compliance

1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

(b) one of the obligations laid down in the customs legislation concerning the end use of goods within the customs territory of the Union;

(c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

2. The time at which the customs debt is incurred shall be either of the following:

(a) the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;

(b) the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:

(a) any person who was required to fulfil the obligations concerned;

(b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or

who participated in the act which led to the non-fulfilment of the obligation;

(c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled.

4. In cases referred to under point (c) of paragraph 1, the debtor shall be the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or the customs declaration of the goods placed under that customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods.

Where a customs declaration in respect of one of the customs procedures referred to in point (c) of paragraph 1 is drawn up, and any information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is given to the customs authorities, which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the customs declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

34. Article 104 of the UCC Regulation provides:-

Entry in the accounts

1. The customs authorities referred to in Article 101 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article. The first subparagraph shall not apply in cases referred to in the second subparagraph of Article 102(1).

2. The customs authorities need not enter in the accounts amounts of import or export duty which, pursuant to Article 103, correspond to a customs debt which could no longer be notified to the debtor.

3. Member States shall determine the practical procedures for the entry in the accounts of the amounts of import or export duty. Those procedures may differ according to whether, in view of the circumstances in which the customs debt

was incurred, the customs authorities are satisfied that those amounts will be paid.

35. Article 105 of the UCC Regulation *inter alia* provides:-

Time of entry in the accounts

1. Where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure, other than temporary admission with partial relief from import duty, or of any other act having the same legal effect as such acceptance, the customs authorities shall enter the amount of import or export duty payable in the accounts within 14 days of the release of the goods. However, provided that payment has been guaranteed, the total amount of import or export duty relating to all the goods released to one and the same person during a period fixed by the customs authorities, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of that period. Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.

2. Where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection, entry in the accounts shall take place within 14 days of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed. However, where the customs debt relates to a provisional commercial policy measure taking the form of a duty, the amount of import or export duty payable shall be entered in the accounts within two months of the date of publication in the Official Journal of the European Union of the Regulation establishing the definitive commercial policy measure.

3. Where a customs debt is incurred in circumstances not covered by paragraph 1, the amount of import or export duty payable shall be entered in the accounts within 14 days of the date on which the customs authorities are in a position to determine the amount of import or export duty in question and take a decision.

4. Paragraph 3 shall apply with regard to the amount of import or export duty to be recovered or which remains to be recovered where the amount of import or export duty payable has not been entered in the accounts in accordance with paragraphs 1, 2 and 3, or has been determined and entered in the accounts at a level lower than the amount payable.

5. The time-limits for entry in the accounts laid down in paragraphs 1, 2 and 3 shall not apply in unforeseeable circumstances or in cases of force majeure.

36. Article 150 of the UCC Regulation provides:-

Choice of a customs procedure

Except where otherwise provided, the declarant shall be free to choose the customs procedure under which to place the goods, under the conditions for that procedure, irrespective of their nature or quantity, or their country of origin, consignment or destination.

37. Article 154 of the UCC Regulation provides:-

Loss of customs status of Union goods

Union goods shall become non-Union goods in the following cases:

(a) where they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply;

(b) where they have been placed under the external transit procedure, a storage procedure or the inward processing procedure, insofar as the customs legislation so allows;

(c) where they have been placed under the end-use procedure and are either subsequently abandoned to the State, or are destroyed and waste remains;

(d) where the declaration for release for free circulation is invalidated after release of the goods.

38. Article 163 of the UCC Regulation provides:-

Supporting documents

1. The supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.

2. Supporting documents shall be provided to the customs authorities where Union legislation so requires or where necessary for customs controls.

3. *In specific cases, economic operators may draw up the supporting documents provided they are authorised to do so by the customs authorities*.

39. Article 173 of the UCC Regulation provides:-

Amendment of a customs declaration

1. *The declarant shall, upon application, be permitted to amend one or more of the particulars of the customs declaration after that declaration has been accepted by customs. The amendment shall not render the customs declaration applicable to goods other than those which it originally covered.*

2. *No such amendment shall be permitted where it is applied for after any of the following events:*

   (a) *the customs authorities have informed the declarant that they intend to examine the goods;*

   (b) *the customs authorities have established that the particulars of the customs declaration are incorrect;*

   (c) *the customs authorities have released the goods.*

3. *Upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration may be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned*.

40. Article 203 of the UCC Regulation inter alia provides:-

Scope and effect

1. *Non-Union goods which, having originally been exported as Union goods from the customs territory of the Union, are returned to that territory within a period of three years and declared for release for free circulation shall, upon application by the person concerned, be granted relief from import duty. The first subparagraph shall apply even where the returned goods represent only a part of the goods previously exported from the customs territory of the Union.*

2. *The three-year period referred to in paragraph 1 may be exceeded in order to take account of special circumstances.*

3. *Where, prior to their export from the customs territory of the Union, the returned goods had been released for free circulation duty-free or at a reduced rate of import duty because of a particular end-use, relief from duty under paragraph 1 shall be granted only if they are to be released for free circulation for the same end-use. Where the end-use for which the goods in question are to be released for free circulation is no longer the same, the amount of import duty shall be reduced by any amount collected on the goods when they were first released for free circulation. Should the latter amount exceed that levied on the release for free circulation of the returned goods, no repayment shall be granted.*

4. *Where Union goods have lost their customs status as Union goods pursuant to Article 154 and are subsequently released for free circulation, paragraphs 1, 2 and 3 shall apply*.

41. Article 208 of Commission Regulation (EU) 2015/2447 (Union Customs Code Implementing Regulation)("the UCC Implementing Regulation") provides:-

Proof of the customs status of Union goods for motorised road vehicles

(Article 153(2) of the Code)

1. *In the case of motorised road vehicles registered in a Member State which have temporarily left and re-entered the customs territory of the Union the customs status of Union goods shall be considered proven where they are accompanied by their registration plates and registration documents and the registration particulars shown on those plates and documents unambiguously indicate that registration.*

2. *Where the customs status of Union goods cannot be considered proven in accordance with paragraph 1, the proof of the customs status of Union goods shall be provided by one of the other means listed in Article 199 of this Regulation.*

42. Article 253 of the UCC Implementing Regulation, Commission Regulation 2015/2447, provides:-

Information required

(Article 203(6) of the Code)

1. *The declarant shall make the information establishing that the conditions for relief from import duty have been fulfilled available to the customs office where the customs declaration for release for free circulation is lodged.*

2. The information referred to in paragraph 1 may be provided by any of the following means:

(a) access to the relevant particulars of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;

(b) a print out, authenticated by the competent customs office, of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;

(c) a document issued by the competent customs office, with the relevant particulars of that customs declaration or re-export declaration;

(d) a document issued by the customs authorities certifying that the conditions for the relief from import duty have been fulfilled (information sheet INF3).

3. Where information available to the competent customs authorities establishes that the goods declared for release for free circulation were originally exported from the customs territory of the Union and at that time fulfilled the conditions for being granted relief from import duty as returned goods, the information referred to in paragraph 2 shall not be required.

4. Paragraph 2 shall not apply where goods may be declared for release for free circulation orally or by any other act. Nor shall it apply to the international movement of packing materials, means of transport or certain goods admitted under specific customs arrangements unless where provided otherwise.

43. Article 38 of the Trade and Cooperation Agreement between the European Union (EU) and the United Kingdom (UK) of Great Britain (GB) and Northern Ireland (NI) ("the TCA"), provides:-

Definitions

(d) "importer" means a person who imports the originating product and claims preferential tariff treatment for it

……

(f) "non-originating material" means a material which does not qualify as originating under this Chapter, including a material whose originating status cannot be determined;

44. Article 54 of the TCA provides:-

Claim for preferential tariff treatment

1. The importing Party, on importation, shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements provided for in this Chapter.

2. *A claim for preferential tariff treatment shall be based on:*

(a) a statement on origin that the product is originating made out by the exporter; or

(b) the importer's knowledge that the product is originating.

3. The importer making the claim for preferential tariff treatment based on a statement on origin as referred to in point (a) of paragraph 2 shall keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority.

45. Article 55 of the TCA provides:

Time of the claim for preferential tariff treatment

1. A claim for preferential tariff treatment and the basis for that claim as referred to in Article 54(2) shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party.

2. By way of derogation from paragraph 1 of this Article, if the importer did not make a claim for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid provided that:

(a) the claim for preferential tariff treatment is made no later than three years after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party;

(b) *the importer provides the basis for the claim as referred to in Article 54(2); and*

(c) *the product would have been considered originating and would have satisfied all other applicable requirements within the meaning of Section 1 of this Chapter if it had been claimed by the importer at the time of importation. The other obligations applicable to the importer under Article 54 remain unchanged*.

46. Article 56 of the TCA provides inter alia that:-

Statement of Origin

1. *A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including, information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.*

2. *A statement on origin shall be made out using one of the language versions set out in Annex 7 in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product. The exporter shall be responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.*

3. *A statement on origin shall be valid for 12 months from the date it was made out or for such longer period as provided by the Party of import up to a maximum of 24 months*.

47. Article 58 of the TCA provides:-

Importers Knowledge

1. *For the purposes of a claim for preferential tariff treatment that is made under point (b) of Article 54(2), the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.*

2. *Before claiming the preferential treatment, in the event that an importer is unable to obtain the information referred to in paragraph 1 of this Article as a*

result of the exporter deeming that information to be confidential information or for any other reason, the exporter may provide a statement on origin so that the importer may claim the preferential tariff treatment on the basis of point (a) of Article 54(2).

48. Article 59 of the TCA *inter alia* provides:-

Record-keeping requirements

1. For a minimum of three years after the date of importation of the product, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:

(a) If the claim was based on a statement on origin, the statement on origin made out by the exporter; or

(b) If the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements for obtaining originating status.

2. An exporter who has made out a statement on origin shall, for a minimum of four years after that statement on origin was made out, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.

49. Article 61 of the TCA *inter alia* provides:-

Verification

1. The customs authority of the importing Party may conduct a verification as to whether a product is originating or whether the other requirements of this Chapter are satisfied, on the basis of risk assessment methods, which may include random selection. Such verifications may be conducted by means of a request for information from the importer who made the claim referred to in Article 54, at the time the import declaration is submitted, before the release of the products, or after the release of the products

2. The information requested pursuant to paragraph 1 shall cover no more than the following elements

(a) if the claim was based on a statement on origin, that statement on origin; and

(b) information pertaining to the fulfilment of origin criteria, which is….

…….

50. Article 63 of the TCA provides:

Denial of preferential tariff treatment

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:

(a) within three months after the date of a request for information pursuant to Article 61(1):

(i) no reply has been provided by the importer;

(ii) where the claim for preferential tariff treatment was based on a statement on origin, no statement on origin has been provided; or

(iii) where the claim for preferential tariff treatment was based on the importer's knowledge, the information provided by the importer is inadequate to confirm that the product is originating;

(b) within three months after the date of a request for additional information pursuant to Article 61(5):

(i) no reply has been provided by the importer; or

(ii) the information provided by the importer is inadequate to confirm that the product is originating;

……...

51. Guidance Note – Withdrawal of the United Kingdom and EU Rules in the Field of Customs (23 December 2020) ("the Commission Guidance Note").

Submissions

Appellant's evidence and submissions

52. The Commissioner sets out hereunder a summary of the evidence and submissions made by the Appellant both at the hearing of the appeal and in the documentation submitted:-

52.1. The Appellant's representative stated that the appeal points are contained in the written documentation submitted in this appeal and he had intended only with the intention of delivering the documentation. The Appellant's representative confirmed that he was the Managing Director of the Appellant and that he was

happy to give evidence as to the background to the appeal, but that the legal arguments are contained within the documentation submitted and which had been prepared by an advisor to the Appellant.

52.2. The Appellant's representative confirmed that the appeal related to the refusal of the Respondent to amend the AIS to reflect the entities that were paying the duty, namely the garages that imported the vehicles. Reference was made to the decision of the Respondent and its refusal to amend the said AIS declarations. The Appellant's representative stated that he was not disputing the amount of the debt, but that the debt was the liability of the Appellant. The Appellant's representative argued that he should be permitted to amend the declarations it made on the AIS and that the Respondent should then pursue the motor dealerships on whose behalf it claims to have acted. He stated that the Appellant was not the importer, but a transport company. The Appellant's representative confirmed that all of the vehicles at issue were released into circulation or "green lighted" in the port.

52.3. The Appellant's representative stated that the vehicles were imported in January 2021, and two years later the Appellant was furnished with a customs debt. The Appellant's representative gave evidence that the trucks with the vehicles were "green lighted" at the port on the basis of the documentation submitted at that point in time and released into free circulation. He said there were 687 cars, of which 235 claimed RGR and 452 claimed GBPO. The Appellant's representative stated that previously the Respondent would look for the customs duties from the garages, but as they could not collect it from the garages herein, in 2023 the Appellant received a notification of customs debt. The Appellant's representative stated that the Appellant had unsuccessfully tried to collect the debt itself from the garages.

52.4. The Appellant's representative submitted that each vehicle was processed, reviewed and cleared by customs, once customs was satisfied that all of the required documentation had been submitted and that the vehicles either qualified for RGR or GBPO. He stated that upon being cleared by customs, this gave the importing garages the necessary documentation to proceed to the VRT office for registration. The witness said that all of the 687 vehicles were green routed by the Respondent after inspection for either RGR or GBPO and cleared for vehicle registration, but have now been deemed invalid as part of the PCI audit, almost 2 years after initial inspection. The Appellant's representative stated that it was up

to the garages to define what the vehicles were in terms of them being classified as being eligible for RGR or GBPO, and in turn, to inform the Appellant, but it was not the Appellant's decision.

52.5. The Appellant's representative testified that article 173(3) of the UCC Regulation, allows an amendment to the documentation to enable the garages to pay the customs duty, which the Appellant can do via its IT system, because it has Trader Account Number ("TAN") documents signed by each garage, allowing for the payment of the customs duties that arise herein. The witness testified that the TAN documents mean that the garages can put the amounts of the customs duties into their TAN account and when the vehicles come through the port, the money for customs duties is automatically taken from their account.

52.6. The Appellant's representative stated that if customs stopped the Appellant's imports on the basis of the documentation, then article 173(3) operates to permit the Appellant to contact the garage and to inform it that duty is owed. The garage would then request the Appellant to make the amendment to the AIS and to pay the customs duty arising.

52.7. The Appellant's representative gave evidence that the Respondent does not accept the TAN documentation now and has requested written documentation between the Appellant and the garages. However, there was only a verbal agreement with the garages in terms of the vehicles. The Appellant's representative said that the TAN documentation is not specific to a particular vehicle. Rather, the garage would telephone the Appellant to inform it what vehicle it would like imported and whether it was of GBPO and the garage would send the Appellant the purchase invoice of the vehicle so that it could calculate if there would be customs duties arising on the imported vehicle. The Appellant's representative confirmed that the Appellant was relying on the TAN documentation in relation to the amendment of the declarations on the AIS herein.

52.8. The Appellant stated that he intended to rely on the legal opinion prepared by [redacted], customs expert. The Appellant's representative stated that he was not challenging the Respondent's right to request information on RGR or GBPO in 2021.[2] The Appellant's representative stated that the Appellant does not have the required information that is being requested by the Respondent in relation to RGR and GBPO and when the Appellant went to the garages to seek

[2] Transcript Day 1, page 30

that information, it was told to go away. He said that the garages cut ties with the Appellant and business was lost as a result. The Appellant stated that the information is based on importers knowledge and he has no information in relation to it.

52.9. The Appellant's representative confirmed that in relation to any arguments made in respect of the GBPO and RGR, he does not have any additional knowledge or documentation in respect of that, over and above what was presented at the time of import to customs. The Appellant's representative confirmed that his argument is that he is not the importer and that he should be permitted to amend the declarations made on the AIS to reflect that position. In respect of any other arguments in the legal submissions, he has no further documentation to support a claim of RGR or GBPO.

52.10. The Appellant's representative confirmed that his appeal is that the Appellant should be allowed amend the declarations on the AIS, that were made at the outset and whilst he does not have the documentation that the Respondent stated it required, he has TAN authorisation which should permit the amendment to the declarations, and which in turn would allow the funds from the garages to be paid to the Respondent. The Appellant submitted that the easiest solution for all involved would be to permit the amendment to the declarations on the AIS to allow the customs debt, established by the Respondent, to be paid to the Respondent.

Respondent's evidence

53. [redacted] gave evidence on behalf of the Respondent ("the Respondent's witness 1). The Commissioner has set out hereunder a summary of the evidence given by the Respondent's witness 1:-

53.1. The witness stated that she is [redacted] in the Origin and Valuation Unit of the Respondent, working in two key areas namely, determining the amount of customs duty that will become due and the classification of the goods. The witness stated that the unit provides advice to trade, agents and other staff that are dealing with clearance at the ports and post-clearance scenarios. In addition, the witness said that the unit is responsible for drafting guidance and manuals.

53.2. The witness testified that importer's knowledge requires the exporter to have all the necessary paperwork to back that up. The witness stated that in relation to vehicles that are not electric vehicles, the requirement is that there can only be a maximum value of 45% non-originating materials used to produce that car, having

regard to the ex-works price of the vehicle. The witness gave evidence that there is a lot more to PO than where the goods were manufactured. The witness said that importer's knowledge places the burden on the importer to have that information which is set down by the rules in the EU-UK Trade Agreement.

53.3. The witness gave evidence that there are two parts to PO, the rules on how something has to be manufactured and the procedural rules. The procedural rules are that the goods have to be accompanied by the relevant proof of PO, to be considered to be of PO. The witness stated that the Respondent has the ability to verify any proof of origin that is presented, but it must be present before it can be declared on an import declaration. The witness stated that article 54 of the TCA states that a claim for PO "shall" be based on a Statement of Origin (U116) or importer's knowledge (U117). The witness said that means that if a person is importing a vehicle into the State that person enters the details into the AIS, which confirms that this vehicle qualifies for PO and that the documentation is to hand to support the claim, if required. The witness confirmed that if it permitted an amendment to change from U117 to U116 that would offend the Trade Agreement that has been negotiated by the EU and the UK. The witness testified that a product cannot be deemed to have PO unless it is accompanied by the correct proof of PO.

54. [redacted] gave evidence on behalf of the Respondent ("the Respondent's witness 2"). The Commissioner has set out hereunder a summary of the evidence given by the Respondent's witness 2:-

54.1. The witness testified that he is a [redacted] a member of the Post Clearance Unit, which carries out a review over the previous three years on imports, to ensure that the correct customs duty has been collected.

54.2. The witness gave evidence that in order to facilitate trade, especially in the early days post Brexit, that to go through the entire amount of documentation at the port, would hold up goods coming in and out of the country, or in and out of the EU and it would have been unfeasible to have a complete documentary check at the point of import.

54.3. The witness confirmed that if a person makes a declaration it is taken by the computer at face value and the goods are released, but the Respondent is entitled to carry out a post customs release check, up to three years after importation to verify if declarations made within that period were accurate and are supported by the documentation in accordance with the declaration.

54.4. The witness testified that in relation to the Appellant, there was a check carried out on the vehicles that had been imported by the Appellant and the Respondent established that the documentation and the information that was inputted was not borne out by the proof that was sought. The witness stated that there was a number of engagements with the Appellant subsequent to the importation of the vehicles in terms of the documentation requested.

54.5. The witness gave evidence that a request was made to amend the declarations on the AIS to show the importer as the declarant and not the Appellant. The witness stated that he made a written request to the Appellant for any Empowerment Agreements that the Appellant had with the importers to show that the Appellant was acting as a direct agent or representative of the importers under Article 18 and 19 of the UCC Regulation.

54.6. The witness stated that the Appellant had not indicated on the declarations whether or not it was a direct or indirect representative, or that it was any sort of an agent or representative, as that box was left blank. The witness testified that leaving that box blank or not was irrelevant, unless the person making the declaration actually has the Empowerment Agreement in their possession at the time of import. The witness gave evidence that by ticking the box and completing the declaration, it is confirming that the required documentation is to hand and can be produced if required. The witness stated that the Appellant confirmed that he had the documentation to support the representation and also to support the claim for PO, but neither were provided or have been to date.

54.7. On cross-examination, the witness stated that he refused the application to amend the declarations on the AIS on the basis of Article 18 and 19 of the UCC Regulation, which governs representation. The witness said that his reason for refusing the amendment to the declarations on the AIS was twofold, namely that his main reason was that the Appellant did not have the Empowerment Agreements with the importers and the second reason was, that the goods had already been released.

55. [redacted] gave evidence on behalf of the Respondent ("the Respondent's witness 3"). The Commissioner has set out hereunder a summary of the evidence given by the Respondent's witness 3:-

55.1. The witness testified that he is [redacted] in the Customs Division of the Respondent and his remit is the collection of customs' debts and the drafting of policies surrounding customs' debts.

55.2. The witness testified that the TAN document, which was submitted in this appeal, is a document that was devised by the Respondent's IT customs helpdesk and the purpose of the document is that it is signed by the declarant and submitted to eCustoms, which allows the declarant to enter a separate EORI, in order to pay the debt at customs clearance. The witness stated that EORI is the VAT number of the trader. The witness stated that it permits the Respondent to enter a different EORI number to defer the debt at clearance and this is to facilitate trade at the ports and airports, so that goods are not held up unduly. However, the TAN document does not confer representation nor does it state what capacity the representation is in, such as whether it is direct or indirect.

55.3. The witness stated that if PO is claimed, the rate of customs duty would be zero percent, thus there would be no financial transaction. He said that the TAN document was originally designed as a way for eCustoms to allow access to a third party's VAT number, for the lodgement of a declaration. However, it does not confer any power of attorney or empowerment to act in any capacity. The witness stated that in a post clearance scenario, the declarant is deemed to be the debtor and the empowerment documentation must be in place at the time that the declaration is lodged. So by virtue of the Appellant having made the declaration, the Appellant has been deemed the declarant and the debtor. The witness testified that article 19 of the UCC Regulation is clear that where there is no representative status ticked on the original declaration that failure means that the declarant is acting in its own name and on its own behalf.

55.4. The witness gave evidence that the Appellant imported the vehicles, made the declaration without supporting documentation and in the post check process has been deemed liable for the debt and the TAN documentation does not state that the Appellant is acting in a direct or indirect capacity.

55.5. The witness testified that both direct and indirect representation have consequences for the representative. The witness stated that in the Appellant's case the declaration was left blank and the absence of the field Data Element 3/21, in a post clearance scenario would automatically lead the witness to the declarant, because it has failed to state in what capacity it was acting. The witness gave evidence that an opportunity is always provided to furnish the empowerment documents later, which would be accepted by the Respondent, if the empowerment documentation was dated prior to the original declaration.

55.6. It was put to the witness in cross-examination that the filed is not mandatory and it may have been the case that the importer was acting on its own behalf and therefore there was no representation.

Respondent's submissions

56. The Commissioner sets out hereunder a summary of the submissions made by counsel for the Respondent:-

56.1. By way of preliminary objection, the issues raised by the Appellant fall outside the jurisdiction of the Commission. Declarations and/or the quashing of decisions for manifest error or for want of reason and/or relief in the form of mandamus to compel an amendment of a record are public law remedies that fall outside the scope of a tax appeal. Reference was made to the decision in *Lee v Revenue Commissioners* [2021] IECA 18, in that regard.

56.2. The declarations made by the Appellant on the AIS cannot be interfered with. The Respondent was requested to amend the declarations on the AIS and it fairly considered the request, but deemed it appropriate to refuse the request. Any decision mandating the Respondent to amend the declarations on the AIS is beyond the remit of the Commission.

56.3. Aside from the jurisdiction of the Commission, the decision of the Respondent was supported both by the law and by the facts. The Appellant's representative agreed that the Appellant does not have the necessary documentation and has indicated that the Appellant contacted the garages for the information, but it was not forthcoming. Thus, the Appellant does not have the information that was required to support the declarations that were made and it was on that basis that the post check intervention was valid and merited, as it found that the claim for PO was not valid.

56.4. The Appellant's request to amend the declarations on the AIS to confirm that it acted as a direct representative for the various importers has been considered and has been refused, having regard to the legislation, including Article 18 (Customs representative), Article 19 (Empowerment) and Article 173 (Amendment of a customs declaration) of the Code.

56.5. The request was refused under Article 173 of the UCC Regulation, as the goods have been released and, while the goods themselves are not available for examination, customs have requested supporting documents for the importer's

claims for PO. The request by customs for supporting documentation was made prior to the Appellant requesting that it be permitted to amend the declarations made on the AIS.

56.6. What is at issue here is whether the Appellant had any agreements with its clients regarding representation. The request to amend the declarations made on the AIS was further refused under Articles 18 and 19, as the Appellant's representative confirmed that he does not have any agreements relating to representation status of the Appellant. Therefore, without any empowerment documentation being provided to the Respondent, the Appellant would remain the debtor for the identified liability.

56.7. The main thrust of the Appellant's appeal is its contention that it should be entitled to amend the declarations it made on the AIS to reflect its present assertion that it acted as "a direct representative" of the garages for whom it transported the vehicles. It describes its error as being of a "box-ticking" variety and it claims to have identified Regulations and Articles that allow for the correction of such errors. It concedes that "*it was [the Appellant] understanding that the completion and Authority form allowing Customs Clearance Agents to use a Traders EORI or C&E Registration (TAN) Account to pay Customs Taxes or Excise Duties allowed it to process the relevant documentation and present to Revenue on the Dealers behalf*."

56.8. To aid efficient processing and to ensure that commercial trade is not unduly delayed, the Respondent does not always request supporting documents at the point of entry, but it is entitled to subject any import to an audit or documentary check within three years. The classification of an import as "orange", "red" or "green" at the point and time of entry does not affect the entitlement to later subject the goods to "post release control" or intervention.

56.9. In this instance, the 687 vehicles imported by the Appellant/declarant were selected for a PCI. The Appellant has been afforded reasonable opportunity to provide the necessary documentation to support its claims for PO or RGR on those vehicles, but it has failed to do so. The debt is properly the responsibility of the Appellant who made the relevant declarations for preferential treatment, but despite several opportunities has failed to prove an entitlement to same.

56.10. Article 19 of the UCC Regulation provides that where persons fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so, shall be deemed to

be acting in their own name and on their own behalf. This provision places the responsibility for any debt on the declarant and not the importer. The Appellant argued that the authority to use a TAN account to pay customs duties is proof that it was representing the importer and not acting in its own name and capacity. The Respondent does not accept that the TAN documentation was proof of empowerment.

56.11. Article 5 of the Code defines the "declarant" as the "person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged". The Appellant herein is the declarant on all of the relevant declarations on the AIS, wherein it failed to indicate whether it acted as a direct or indirect representative.

56.12. Even if the Commission was vested with the jurisdiction to compel the amendment of the declarations made on the AIS, the Appellant would remain the debtor for the identified liability in the absence of empowerment documentation. The Appellant made the relevant declarations for preferential treatment, but has failed to prove an entitlement to same, despite several opportunities.

56.13. Reference was made to a previous decision of the Commission in 19TACD2023 wherein the finding was that the debt had been legally established. The Appellant is the accountable party, it bears the burden of proof in this appeal and it has not discharged same.

Material Facts

57. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

57.1. The Appellant is a [redacted] a company that was engaged in the import of second-hand vehicles from GB to Ireland.

57.2. The Appellant's representative is the Managing Director of the Appellant and during the relevant period, the Appellant had [redacted].

57.3. In relation to the vehicles, the Appellant completed customs formalities and declarations via the "AIS".

57.4. The Appellant left blank or did not complete the "tick box" on the AIS declarations indicating whether it was acting as a direct or indirect representative.

57.5. In 2021, the Appellant lodged customs declarations to the AIS in respect of imported vehicles, for which the Appellant claimed GBPO on 452 declarations and RGR on 235 declarations.

57.6. The Appellant subsequently applied for RGR relief on all 687 declarations after the claim for GBPO relief was refused.

57.7. The Respondent does not always request supporting documents at the point of entry, but within three years of importation the Respondent is entitled to subject any import to an audit or documentary check.

57.8. The classification of an import as “orange”, “red” or “green” at the point and time of entry does not affect the entitlement of the Respondent to later subject the goods to a check or audit.

57.9. It is the case that the vehicles the subject of this appeal were “green” routed at the point of import in 2021, but the green routing of goods, is not dependent upon a check having been made and verified at the point of entry.

57.10. On 25 January 2021, a PCI was initiated, when the Respondent issued correspondence to the Appellant outlining the specific proofs required to claim GBPO for the vehicles being imported into the State.

57.11. On 16 February 2021, the Respondent issued further correspondence to the Appellant clarifying what was required to substantiate a claim of GBPO. In addition, the correspondence included an explanation of RGR.

57.12. By letter dated 16 February 2021, the Respondent corresponded again with the Appellant to state that “*I am now providing the 3 scenario’s that may be eligible to claim the relief, and the documentation required to prove entitlement*”.

57.13. On 27 June 2021, the Appellant wrote to the Respondent stating *inter alia* that *“[the Appellant] are not the importers of the various vehicles, we are the transport company and any Revenue query regarding these vehicles should be directed to the importers, I.E., the relevant Motor Retailer/Garage*”.

57.14. On 24 November 2023, the Respondent wrote to the Appellant to state that it had identified a customs debt of €1,235,279.25, excluding interest to date, and that this amount was now deemed due.

57.15. On 11 December 2023, a Notification of Customs Debt issued to the Appellant, in the amount of €1,235,279.25, with interest to date amounting to the sum of €62,262.46, being a total amount due of €1,297,541.71.

57.16. The Appellant does not dispute the amount of the debt.[3]

57.17. The Appellant submitted no empowerment documentation to support its contention that it acted as a direct representative of the garages for whom it transported the vehicles and not the importer.

57.18. The Appellant had a verbal agreement with the garages as to the particular vehicles that were required to be imported. Thus, no empowerment documentation is available in this appeal.

57.19. On 15 December 2023, the Appellant lodged a first stage appeal with the Respondent.

57.20. On 15 February 2024, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld by the Respondent.

57.21. The TAN documentation allows the declarant to enter a separate EORI in order to pay the debt at customs clearance. It does not constitute empowerment documentation.

Analysis

Burden of proof

58. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law, for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 at paragraph 22, Charleton J. stated that:

> "*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*".

[3] Transcript Day 1 page 10

59. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* wherein he states that:

> "*Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute…"*

60. The law regarding the burden of proof and the reasons for it has been reaffirmed in recent subsequent judgments, such as *McNamara v Revenue Commissioners* [2023] IEHC 15 and *Quigley v Revenue Commissioners* [2023] IEHC 244.

61. However, it is important to state that when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"). At paragraphs 97-98, the Court of Appeal held that:

> "*97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake……..*
>
> *98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the* correct interpretation……."

Statutory interpretation

62. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores* and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders*, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") at paragraph 74:

> "*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were*

reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration*

and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.""

63. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

64. Furthermore, the Commissioner is mindful of the recent decision in *Heather Hill* and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of the legislative scheme. The Commissioner is mindful of the *dictum* of Murray J. at paragraph 108 of his decision in *Heather Hill*, wherein he stated that:

"It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed".

65. The *dictum* of Murray J. in *Heather Hill* was considered and approved by the Court of Appeal in the decision in *Hanrahan*. The Court of Appeal noted that the trial judge had cited and relied on the approach to the interpretation of taxation legislation that Murray J. in the Court of Appeal identified in the decision of *Used Car Importers Ireland Ltd. v Minister for Finance* [2020] IECA 298. Murray J., when considering the provision at issue, at paragraph 162 of the judgment stated that:

"[it] falls to be construed in accordance with well-established principle. The Court is concerned to ascertain the intention of the legislature having regard to the language used in the Act but bearing in mind the overall purpose and context of the statute."

66. The purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the Court or Tribunal is to seek to ascertain the meaning of the words. The general principles of statutory interpretation are tools used for clear understanding of a statutory provision. It is only if, after that process has been concluded, a Court or Tribunal is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.

Substantive issue – Refusal to permit an amendment to the declarations on AIS

67. The Appellant's representative confirmed that the appeal before the Commissioner was in relation to the Respondent's refusal to amend the declarations it made on the AIS to reflect that it was acting as a direct representative, not the importer, in accordance with article 173(3) of the UCC Regulation.

68. The Appellant's representative confirmed that he was not disputing the amount of the customs debt[4] imposed by the Respondent and that he had no additional evidence to offer in relation to whether the amount of the debt was established or not by the Respondent. The Appellant's representative gave evidence that his sole concern was being held accountable for the customs debt in the sum of €1,235,279, excluding interest, which would be ruinous for the Appellant.

69. Moreover, the Commissioner notes that it was accepted by the Appellant that the box for either direct or indirect representation, described by the Respondent's witness 3 as "*the field Data Element 3/21*", was left blank, as it was not a mandatory field. The Commissioner further notes that it was also accepted that the Respondent had the power to enquire after importation, as to the empowerment documentation. However, the Appellant's representative gave evidence that herein, the agreement was a verbal agreement and was not deduced to writing with the various garages.[5] The Respondent submitted that the Appellant imported the vehicles, made the declaration on the AIS without supporting documentation, and in the post check clearance process was deemed liable for the customs debt. The Respondent does not accept that the TAN documentation which the Appellant contended to hold, constituted empowerment documentation. The

[4] Transcript Day 1, page 10
[5] Transcript Day 1, page 77

Commissioner notes the evidence of the Respondent's witness 3 "*that an opportunity is always provided to furnish the empowerment documents later, which would be accepted, if they were dated prior to the original declaration*". However, the Appellant accepted that it did not have the empowerment documentation from the various garages, as agreements to import vehicles were conducted verbally over the telephone.

70. Moreover, the Commissioner notes the submission of the Respondent that the whole system is predicated on trust, such that it is designed to permit the importation of goods on the basis of the declarations made on the AIS, but that the Respondent reserves the right to carry out a PCI to verify the declarations made and the supporting documentation.

Jurisdiction of the Commissioner

71. Before considering the substantive matter in this appeal and the application of article 173 of the UCC Regulation, the Respondent submitted that the Commissioner has no jurisdiction to consider a decision of the Respondent not to permit an amendment to the declarations on the AIS and that it was beyond the remit of the Commissioner to issue a determination requiring the Respondent to amend computer records and the declarations made therein by the Appellant, to reflect that the Appellant was acting as a direct representative and not the importer. The Respondent directed the Commissioner to the decision in *Lee v the Revenue Commissioners* and submitted that the Commissioner's jurisdiction extends to the "*tax and the charge*".

72. The Respondent submitted that it was requested by the Appellant to amend the declarations made on the AIS and due consideration was given to that request by the Respondent, with the result being that it was not prepared, based on its engagement with the Appellant, to amend the declarations made on the AIS and then pursue the garages on whose behalf the Appellant claims to have acted.

73. The Commissioner notes that article 173 of the UCC Regulation provides for the amendment of a customs declaration on the application of the declarant, after it has been accepted by customs. However, the Commissioner notes subsection (2) which states that no amendment shall be permitted where it is applied for after any of the following events and subsection (2)(c) is relevant herein, where it states that "*the customs authorities have released the goods."*

74. Furthermore, the Commissioner notes that subsection (3) provides further opportunity for an amendment of a declaration wherein it states that "*upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration <u>may</u> be permitted after release of the goods in order for the*

declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned". [Emphasis added]

75. The Commissioner notes the use of the word "may" in subsection (3) which denotes a discretion to amend, whereas the Commissioner notes the use of the word "shall" in subsection (1) and (2) which denotes something that is mandatory. Therefore, the Commissioner is satisfied that a discretion is bestowed upon the Respondent in terms of whether or not it will permit an amendment of the declaration by the declarant, being the Appellant herein.

76. The Commissioner is mindful of her jurisdiction which was set out clearly in the decision of *Lee v The Revenue Commissioners,* wherein Mr Justice Murray J stated in the Court of Appeal that:

> "*The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment… That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry*."

77. Having regard to the *dictum* of Murray J. in *Lee v The Revenue Commissioners, the* Commissioner is satisfied that she does not have jurisdiction to direct the Respondent to amend the declarations made on the AIS or to declare that the Respondent was incorrect not to permit the amendment of a customs declaration made on the AIS after the release of the goods, in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.

78. The Commissioner has no supervisory jurisdiction over the Respondent, and does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent. The Respondent's decision in respect of the amendment to the declarations on the AIS was a decision within its discretion and the Commissioner has no jurisdiction in respect of how the Respondent decides to exercise its discretion in its dealings with a taxpayer. The Commissioner's jurisdiction "*is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA*", as per *Lee v The Revenue Commissioners*.

79. Consequently, the Commissioner is satisfied that this is not a valid appeal as the decision of the Respondent is not an appealable matter. The Commissioner appreciates that this will be disappointing to the Appellant. However, the Commissioner is obliged to apply the law and she is satisfied that under section 949N TCA 1997, she must refuse to accept the appeal. This decision to refuse to accept the appeal is final and conclusive and is issued in accordance with section 949N TCA 1997.

80. However, should the Commissioner be wrong in her decision as to her jurisdiction to deal with an amendment to the declarations made on the AIS, pursuant to article 173(3) of the UCC Regulation, the Commissioner notes that it was submitted by the Respondent that the Appellant has not evidenced that it was acting as a direct representative rather than the importer. The Commissioner will therefore proceed to consider the submissions in relation to the application of article 173 of the UCC Regulation.

Regulation 173(3) of the UCC Regulation

81. The Appellant contends that it was acting as a direct representative and not the importer, thus the customs debt should not be attributed to the Appellant. The Respondent does not accept that argument, on the grounds that the Appellant neglected to input the requisite information on the declarations on the AIS that it was acting as a direct representative and no empowerment documentation has been submitted to date, to support its contended position.

82. The Appellant's representative submitted that it did not tick the field for direct or indirect representation on the declarations on the AIS, as it was not a mandatory field. The Appellant's representative further argued that he was in possession of TAN documentation which evidenced that he was not the importer, but only a representative herein. The Respondent does not accept that TAN documentation is evidence of the Appellant's role as representative and only goes to a generic payment mandate from the various garages. The Commissioner notes the evidence of the Appellant's representative, that aside from the TAN documentation, the Appellant has no further documentation in the form of empowerment documentation to support its position that it was acting as a direct representative and not the importer, as the agreements between the Appellant and the various garages were verbal agreements, conducted over the telephone.

83. The Commissioner has considered the evidence in relation to the empowerment documentation that a customs representative is required to retain, in relation to its representation of an importer, for the purposes of importing goods. The Commissioner notes the evidence of the Respondent's witness 3 that in a PCI, the declarant is deemed to be the debtor and the empowerment documentation must be in place at the time the

declaration is lodged. So, by virtue of the Appellant having made the declaration, the Appellant was deemed the declarant and the debtor as a result. The witness testified that article 19 of the UCC Regulation is clear that where there is no representative status ticked on the original declaration, that failure means that the declarant was acting in its own name and on its own behalf. The witness gave evidence that the Appellant imported the vehicles, made the declaration without supporting documentation and consequent to the PCI was deemed liable for the debt, as the TAN documentation does not state that the Appellant was acting in a direct or indirect capacity, nor does it constitute empowerment documentation. The witness stated that in the Appellant's case the declaration was left blank and the absence of the field Data Element 3/21, in a post clearance scenario, would automatically lead the Respondent to the declarant, because the declarant failed to state in what capacity it was acting. The witness gave evidence that an opportunity is always provided to the declarant to furnish the empowerment documents at a later stage and which would be accepted, if they were dated prior to the original declaration. The witness stated that opportunities were provided to the Appellant to furnish the empowerment documentation that was required. However, no empowerment documentation has been forthcoming to date.

84. Furthermore, the Commissioner notes the evidence of the Respondent's witness 2 that the Appellant's request to amend the declarations made on the AIS was further refused under articles 18 and 19 of the UCC Regulation, as the Appellant's representative confirmed that he does not have any agreements relating to representation status of the Appellant. Therefore, without any empowerment documentation being provided to the Respondent, the Appellant remains the debtor for the customs debt.

85. The Commissioner has considered article 18 of the UCC Regulation which provides that any person may appoint a representative in their dealings with the customs authorities to carry out the formalities laid down by the customs rules. It further provides that representation can be direct or indirect. In the case of direct representation, the customs representative shall act in the name of and on behalf of another person and in the case of indirect representation, the customs representative acts in its own name, but on behalf of another person.

86. Article 19 of the UCC Regulation provides that a representative shall state that it is acting on behalf of the person represented and shall specify whether the representation is direct or indirect. The Commissioner has considered the mandatory use of language in article 19 of the UCC Regulation, namely "*shall state*". This means that it was mandatory that the Appellant state that it was acting on behalf of a person either directly or indirectly.

87. Moreover, the Commissioner notes that article 19 of the UCC Regulation provides that persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so, shall be deemed to be acting in their own name and on their own behalf. The Commissioner has had regard to the Respondent's evidence that there was a "tick box" on the AIS that allows a customs representative to input the information required by the UCC Regulation.

88. The evidence of the Respondent was that the Appellant did not complete the representation section on the AIS or the customs declarations. Moreover, the Appellant admitted that was the case, as it was not perceived to be mandatory. Consequently, the Respondent treated the Appellant as if it was the importer of the vehicles. The lack of provision of the requisite information to the Respondent was not disputed by the Appellant's representative, on the basis of verbal agreements having been made with the garages. The Commissioner does not accept that the TAN documentation constitutes documentation sufficient of empowerment and the Commissioner is satisfied on the basis of the Respondent's evidence in relation to what constitutes TAN documentation.

89. The Commissioner is also cognisant of article 15 of the UCC Regulation which provides that documentation and information in relation to the accomplishment of customs formalities or in customs controls shall be produced at the request of the customs authorities, within any time-limit specified. Again, the language used is mandatory in nature. The Commissioner notes that the request for empowerment documentation by the Respondent was not complied with, despite the Appellant indicating in correspondence that the documentation was in fact available for production.

90. The Commissioner notes that the Appellant had experience dealing with customs formalities. In such circumstances, the Commissioner is of the view that the Appellant should have been acutely aware of the importance of establishing customs representation. Article 19 specifically provides a power to the customs authorities to request a customs representative to provide evidence of empowerment. Whilst the customs authorities shall not require a person acting as a customs representative to produce on every occasion evidence of empowerment, a customs representative should be in a position to produce such evidence, if requested.

91. Moreover, article 163 of the UCC Regulation reinforces the burden of responsibility for declarants and the requirements to have in their possession the requisite supporting documentation at the time the declaration is lodged. The Commissioner considers this to be an important provision and aligns to the evidence adduced by the Respondent's witnesses that by making declarations in terms of representation, it is confirming that the

empowerment documentation was in existence. The Commissioner notes that numerous opportunities were provided by the Respondent to the Appellant to comply with the request, yet no empowerment documentation was produced by the Appellant. Accordingly, the Commissioner is satisfied that in failing to do so the Appellant was in breach of article 15 and 19 of the UCC Regulation.

92. In the absence of empowerment documentation being provided by the Appellant, the Commissioner is satisfied that the Appellant has not discharged the burden of proof to establish that it was acting as a direct representative and not the importer. Accordingly, the Commissioner is satisfied that the Respondent was correct to treat the Appellant as the importer and was correct to refuse to permit an amendment to the declarations made on the AIS, pursuant to Article 173(3) of the UCC Regulation. The Respondent submitted that even if the Commissioner was vested with the jurisdiction to compel the amendment of the declarations made on the AIS, the Appellant would remain the debtor for the identified liability in the absence of empowerment documentation. The Commissioner is satisfied that this is a correct statement, having regard to the legislative provisions applicable herein.

Conclusion

93. Accordingly, in conclusion and having considered all of the documentation and submissions in this appeal, including the Appellant's documentary submissions of [redacted] the Commissioner finds that she does not have jurisdiction to direct that the Respondent amend the declarations on the AIS to reflect that the Appellant was acting as a direct representative and not the importer.

94. However, should the Commissioner be wrong in her decision in that regard, the Commissioner finds that the Appellant has not discharged the burden of proof and has not shown that the Respondent was incorrect in its decision to refuse to permit an amendment to the declarations on the AIS. The Commissioner makes this finding on the basis of there being no empowerment documentation submitted by the Appellant to establish that it was acting in the role of customs representative as opposed to the importer, in contravention of article 15 and 19 of the UCC Regulation. Thus, the Appellant was deemed to be the importer for the purposes of the customs debt. The Appellant's representative testified that agreements with the various garages were verbal agreements conducted over the telephone and that the only documentation available is the TAN documentation, which the Commissioner is satisfied does not establish that the Appellant was acting as a direct representative and not the importer herein. Hence, the Appellant's appeal fails.

95. In relation to the question of whether the vehicles were entitled to RGR or GBPO, the Appellant's representative confirmed that the Appellant was not disputing the amount of the customs debt. In light of that submission, the Commissioner makes no finding in relation to an entitlement to RGR or GBPO.

Determination

96. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not shown that the Respondent was incorrect in its decision to refuse to amend the declarations on the AIS. Therefore, the Respondent's decision to impose a customs debt in the sum of €1,235,279, exclusive of interest, must stand.

97. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.

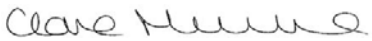
98. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

Notification

99. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

100. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
10 March 2025

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.