AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

83TACD2024

Between

[redacted]

Appellants

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission (hereinafter the "Commission") pursuant to and in accordance with the provisions of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997").

2. This appeal is brought by [redacted] (hereinafter the "Appellant") against a decision made by the Revenue Commissioners (hereinafter the "Respondent") refusing the Appellant Returned Goods Relief from Customs Duties and Value Added Tax (hereinafter "VAT") for the importation of a truck into the State from the United Kingdom.

3. The amount of tax in dispute in this appeal is €11,759.79.

Background

4. The Appellant is a business which is involved in the importation of trucks from the United Kingdom and selling them into the Irish market.

5. In or around March 2023, the Appellant imported a [redacted] with the Vehicle Identification Number [redacted] (hereinafter the "Vehicle") into the State from the United Kingdom.

6. The Vehicle was manufactured within the customs territory of the European Union (hereinafter the "customs territory of the Union"). The Vehicle was exported as an unregistered new vehicle from the customs territory of the Union to the United Kingdom in 2022, having its first date of registration on 1 September 2022 and was given the registration number [redacted].

7. The Appellant purchased the vehicle in the United Kingdom from [redacted] for GBP£46,500.00 with an invoice date of 21 March 2023. The invoice contained the following note under the section "*Conditions of Sale*":

> "*The vehicle is not in a roadworthy condition and is sold with no warranty and without M.O.T and must not be used on any public highway until it is repaired to a standard which will enable it to be driven on a public road and comply with all legal requirements. You must obtain a certificate to this effect from an independent motor engineer who currently holds a qualification of the Institute of Automotive Engineer Assessors. This vehicle is sold as damaged or as an insurance company total loss.*"

8. On 20 June 2023, the Appellant, through a Customs Agent, submitted a claim for Returned Goods Relief pursuant to the provisions of Article 203 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down

the Union Customs Code (hereinafter the "Union Customs Code") to the Respondent on the basis that the Vehicle had been exported from the customs territory of the Union within 36 months of its return to the customs territory of the Union.

9. On 21 June 2023, the Respondent notified the Appellant of its decision to refuse Returned Goods Relief. The Appellant appealed this refusal under the two stage customs appeals process and on 21 August 2023 a Designated Appeals Officer refused the appeal stating the reason for the refusal as:

> "*It is my opinion that while the vehicle meets the majority of the criteria for the application of Returned Goods Relief, sufficient evidence that any repairs carried out did not alter the vehicle beyond its state when exported from the Customs Territory of the Union was not provided.*"

10. On 19 September 2023, the Appellant appealed the Respondent's decision of 21 August 2023.

11. The oral hearing of this appeal took place on 19 April 2024.

Legislation and Guidelines

12. The legislation relevant to the within appeal is as follows:

Article 203 of the Union Customs Code:

> "*CHAPTER 2: Relief from import duty*
>
> *Section 1: Returned goods*
>
> *Article 203*
>
> *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.

5. The relief from import duty shall be granted only if goods are returned in the state in which they were exported.

6. The relief from import duty shall be supported by information establishing that the conditions for the relief are fulfilled."

Article 158 of the Commission Delegated Regulation (EU) 2015/2446 of July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (hereinafter the "UCC-DA"):

"*Article 158 Goods considered to be returned in the state in which they were exported (Article 203(5) of the Code)*

1. Goods shall be considered to be returned in the state in which they were exported where, after having been exported from the customs territory of the Union, they have not received a treatment or handling other than that altering their appearance or necessary to repair them, restore them to good condition or maintain them in good condition.

2. Goods shall be considered to be returned in the state in which they were exported where, after having been exported from the customs territory of the Union, they have received a treatment or handling other than that altering their appearance or necessary to repair them, restore them to good condition or maintain them in good condition but it became apparent after such treatment or handling had commenced that that treatment or handling is unsuitable for the intended use of the goods.

3. Where the goods referred to in paragraph 1 or 2 have undergone treatment or handling that would have rendered them liable to import duty if they had been placed under the outward processing procedure, those goods shall be considered to be returned in the state in which they were exported only on the condition that that treatment or handling, including the incorporation of spare parts, does not exceed what is strictly necessary to enable the goods to be used in the same way as at the time of export from the customs territory of the Union."

<u>"Note on Returned Goods" issued on 31 March 2021 by the European Commission Directorate-General Taxation and Customs Union</u>

"*1. BACKGROUND Article 203 UCC establishes a relief from import duty, upon application of the person concerned (i.e. the declarant), for non-Union goods that are released for free circulation provided that such goods fulfil the following conditions:*

a) The goods were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.

b) The goods are returned in the state in which they were exported.

c) The fulfilment of these conditions is supported by documentary evidence to be provided by the declarant.

It has to be stressed that the ECJ considers that the suspension of customs duties is an exceptional measure intended to facilitate certain economic activities. Since this involves a risk for the correct collection of duties, the beneficiaries of regimes involving the suspension of duties are required to comply strictly with the obligations resulting therefrom.

Despite this case law refers to the inward processing procedure, it could be applied by analogy to the relief from import duty resulting from returned goods, as it also involves a risk for the correct collection of duties. Therefore, economic operators releasing goods for free circulation as returned goods should comply strictly with these conditions and the competent customs authorities should also enforce strictly such compliance, particularly taking into account that Article 203 UCC expressly says that it is applicable only upon application and that the relief depends on information supporting the conditions.

These conditions are explained below in detail.

a) Union goods exported and returning within a period of three years and application from the declarant

This condition is fulfilled also when only a part of the goods that were exported are brought back to the customs territory of the Union (see second subparagraph of Article 203(1) UCC).

The 3-year period may be extended in order to take into account special circumstances, not being the end of the transition period, established in Article 126 of the Withdrawal Agreement of the UK, considered as one of them.

The declarant will normally apply for the relief from import duty by including a code (e.g. F01) in box 37(2) of the declaration for release for free circulation, according to Annex B of the UCC-DA and IA. For certain goods, e.g. means of transport, the declaration can be lodged by any other act and, in this case, no explicit application is requested.

The goods may return into any part of the customs territory of the Union, i.e. they do not necessarily have to be brought back to the place from where they were exported as there is no legal provision establishing this condition.

b) The goods are returned in the same state in which they were exported

These conditions are established in Articles 203(5) UCC and 158 UCC-DA. The latter stems from the delegation of power established in Article 206 UCC and mentions the cases in which the reimported goods are considered to be returned in the state in which they were exported. According to Article 158 UCC-DA, the goods can be considered to be returned in the same state if:

1) they do not receive any treatment or handling, or

2) they only receive a treatment or handling in order to:

a. alter their appearance,

b. repair them,

c. restore them in good condition, or

d. maintain them in good condition, or

3) they receive a treatment or handling other than the ones mentioned in 2), but it becomes apparent after such treatment or handling had commenced that the treatment or handling is unsuitable for the intended use of the goods, or

4) any of the treatment or handling mentioned in 2) or 3):

a. would have rendered the goods liable to import duty if they had been placed under outward processing (i.e. the operations had a cost, see Article 86(5) UCC), and

b. that treatment or handling does not exceed what is strictly necessary to enable goods to be used in the same way as at the time of the export.

Conclusions:

1) Operations considered as handling or treatment under certain conditions are the limit to determine that goods are imported in the same state. Some of the usual forms of handling established in Annex 71-03 UCC-DA, such as packing or unpacking, simple cleaning operations, change of packaging or testing of machines to control the compliance with technical standards can be carried out to goods that are afterwards considered as returned goods because in principle these operations do not change the state of the goods (see below the exception applicable where the state is unforeseeably changed). Other usual forms of handling mentioned, such as any usual forms of handling improving the marketable quality of the import goods, cannot be carried out to goods if they are afterwards to be considered as returned goods, because those operations change their state. Therefore, goods undergoing processing operations as established in Article 5(37) UCC (with the exception of repair) do not fulfil the conditions established in Article 203(5) UCC. This means that apples may be considered as returned in the same state if they are exported from the Union to a third country to be repacked. However, if they are processed into apple juice, and then returned to the Union the month after the export, then they cannot be considered as returned in the same state as they were exported. A non-exhaustive list of examples may be provided, but every case has to be individually assessed to determine whether the goods can benefit from relief from import duty as returned goods or not.

2) The EU legislation on returned goods does not say anything on possible change of CN codes, which means that, although not excluded, a change in the CN code does not necessarily mean that the goods are not returned in the same state. An example of this could be wine vinegar, which has CN code 2209 00 11 (import duty of EUR 6.4/hl) if it is transported in containers holding 2 litres or less and CN code 2209 00 19 (import duty of EUR 4.8/hl) if it is transported in containers holding more than 2 litres. So wine vinegar taken out of the customs territory of the Union in 5-litre containers and returned to this territory the week after in 1- litre containers,

undergoing no additional treatment or handling, may be considered as returned in the same state in the sense of Article 203(5) UCC.

3) Goods that undergo any treatment or handling may be considered as returned in the same state, provided that the goods can be used in the same way as at the time of export. The goods can be considered as returned goods even if they cannot be used as at the time of export only when after the treatment or handling had commenced it becomes clear that that treatment or handling is unsuitable for the intended use of the goods. This means that if it is known before the treatment or handling that afterwards the goods will not be suitable for their intended use, then such goods cannot be considered as returned goods. An example of this can be a machine exported to undergo stress tests after which a piece of the machine is broken, without this being reasonably predictable. Despite this machine cannot be used in the same way as when it was exported, it can still be considered as returned goods.

4) For goods that are repaired in a third country, two cases must be distinguished:

a. Goods that were exported in good state, they are broken abroad and get repaired therein in order to allow the continuation of its normal use can be considered as returned goods, provided that the repair operations do not entail any upgrade to the goods. In accordance with Article 158(3) UCC-DA, the repair can entail operations included under the scope of the outward processing procedure, including the incorporation of spare parts. However, this repair must be limited to what is strictly necessary to enable the goods to be used in the same way as when they were exported, where the goods would become liable to import duty if they had been placed under outward processing. An example of this can be the machine mentioned above, whose piece breaks after a stress test. In this example, if the broken piece is replaced by another piece of the same technical characteristics as the one that was broken, i.e. of the same kind as the one that was used when the machine was exported, it can still qualify as returned good upon re-entry.

b. Goods that are exported broken in order to be repaired in a third country and brought back to the Union cannot be considered as returned goods as they do not come back in the same state as they were exported. However, those goods might still be imported under duty free relief under the conditions and procedural requirements of the outward processing procedure as stated in Articles 260 and 260a UCC.

*c) **The relief is supported by information establishing that the conditions are fulfilled.***

Articles 203(6) UCC and 253 UCC-IA establish that the declarant must make this information available to the customs office where the declaration for release for free circulation is lodged. This can be done by:

a) access to the declaration of export where the goods were exported (either electronic access or by means of an authenticated document),

b) by means of an INF3 document (see Annex 62-02 UCC-IA), which can be issued by means other than electronic.

This document can be requested to the customs office of export at the time of the export or after this moment providing the data established in Part A of Annex 62-01 UCC-DA. In certain cases, like goods that can be declared orally or by any other act (for instance, means of transport), this information does not have to be provided in the customs by any of the means mentioned in a) or b).

Conclusions:

1) The purpose of the provision of this information is to allow the customs authorities check that the goods exported are actually the same goods as the ones returning to the customs territory of the Union.

2) Exchange of information between the concerned customs authorities is established in Article 256 UCC-IA. The customs office where the goods were exported must provide all the information at its disposal establishing that the conditions for returned goods are fulfilled, if requested to do so by the customs office where the declaration for release for free circulation is lodged.

*2. **VAT ASPECTS***

Article 143(e) of VAT Directive provides for the exemption of import VAT up on the reimportation, by the person who exported them, of goods in the state in which they were exported, where those goods are exempt from customs duties.

Therefore, although overall, the VAT legislation follows the customs rules in order to determine whether the basic conditions for VAT exemption are fulfilled, the VAT exemption upon re-importation as returned goods is applicable only if the exporter and the importer of the goods are the same person.

3. PROCEDURAL ASPECTS

The duty relief for returned goods needs to follow the following steps:

1) The Union goods are exported by means of an export declaration. The exporter can declare the goods for permanent export (i.e. code 10 in data element 11 09 001 000 of Annex B to UCC-DA or box 37(1) of the SAD) and then move them back to the customs territory of the Union as returned goods. However, if the exporter is already aware that the goods will move back to the customs territory of the Union, he will use the customs code 23, as the goods are moved to a third country without being altered (e.g. due to an event, exhibition or competition). He can also use customs code 22 if the goods are going to be tested or if they are going to undergo a treatment or handling included within the scope of Article 158 UCC-DA.

2) The exporter may request an INF 3 sheet to the customs office of export, either at the time of export or after, according to the procedure established in Article 255 UCC-IA. This is one of the possibilities established in Article 253 UCC-IA in order to comply with the requirements established in Article 203(6) UCC. This document is a certification of the customs office of export that the conditions for returned goods are fulfilled, but such conditions have to be checked again by the customs authority of entry/import once the goods are released for free circulation when they are moved back to the customs territory of the Union. This means that the INF 3 itself is not enough to obtain the relief from import duty.

3) Upon return to the Union, when the goods are declared for release for free circulation, the declarant/importer has to request explicitly the relief for import duty. This is done by adding the code F01 to F03 or F05 for data element 11 10 000 000 (Annex B to the UCC-IA), 1/11 (Annex C to the UCC-IA), box 37(2) of the SAD (Annex 9 to the UCC-TDA). The declarant/importer has to mention in data element 12 03 000 000 (Annex B to the UCC-DA), 2/3 (Annex D to the UCC-DA), box 44 of the SAD (Annex 9 to the UCC-TDA) the documents establishing that the conditions for the relief from import duty for returned goods are fulfilled. Such documents have to be (digitally) attached to the customs declaration or made available by other means mentioned in Article 253 UCC-IA to allow the customs authorities check that such conditions are fulfilled. In accordance with Art 253 UCC IA, this can 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).

4) The competent customs authorities have to check that the goods imported are actually the same as the ones that were previously exported (e.g. by means of checks). This means that customs have to match the goods declared for export with the goods declared for release for free circulation to ensure that they are the same.

4. PROVISIONS ON RETURNED GOODS APPLICABLE TO VEHICLES

Vehicles must fulfil the general conditions mentioned above to be considered as returned goods, namely:

a) The vehicles were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.

b) The vehicles are returned in the state in which they were exported.

c) The fulfilment of these conditions is supported by documentary evidence to be provided by the beneficiary of the procedure.

As mentioned above, the change of CN code does not necessarily entail per se that the goods are returned in a different state from the one in which they were exported. This means that in principle new Union cars brought to a third country can be returned to the EU as a used car (i.e. with a different CN code) and yet be considered as returned goods, provided that all the relevant conditions are fulfilled. However, the change of CN code can be an indicator showing that the state of the car has changed.

The value of the car is in principle not relevant in order to determine that the vehicles are returned goods or not. This means that the vehicles can be exported from the EU to a third country declaring a certain customs value and returned to the EU with a different customs value and yet be considered as returned goods, provided that all the relevant conditions are fulfilled. However, the fact that a vehicle is released for free circulation with a different customs value from the one it was declared when it was exported can be considered as a strong indicator that the state of the car has changed. For instance, the vehicles should have been upgraded if the value declared when they are released for free circulation is higher than the one declared for export, and therefore these vehicles should not be eligible as returned goods.

However, it is important to analyse the first two conditions mentioned above taking into account the particularities concerning vehicles:

a) ***The vehicles were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.***

It is important to stress that the vehicle that is returned to the EU has to be exactly the same vehicle as the one that was brought from the EU to the third country. The competent customs authorities in the customs territory of the Union must be certain that the specific vehicles for which the declarant is requesting duty relief as returned goods:

a) were previously Union goods,

b) were exported from the EU to a third country no longer than 3 years ago from the date in which the customs declaration for release for free circulation is accepted, and

it can be proven without any doubt that the car declared for export in exactly the same as when the car is returned. An example of this can be the physical identification of chassis number both at EU exit and entry. The crossed check of such chassis number (physically checked at EU entry) with the one mentioned in the export declaration and in the transport documents at EU exit can be an indicator showing that the exported car is the same as the one that is returned. A declaration from the supplier or an invoice is not enough evidence to consider that the cars declared at entry and exit are the same.

b) The vehicles are returned in the state in which they were exported.

As mentioned above, if broken vehicles are brought from the EU to a third country for repair and then they are brought back to the EU, they cannot be considered as returned goods because the goods are not returned in the same state as they were exported.

Whether there has been a change in the state of the vehicle or not, ***it has to be analysed on a case-by-case basis and for each individual vehicle****. That is, for a single vehicle importation by an individual for private use but also for each of the vehicles imported by a professional car dealer. It is therefore for the importer/beneficiary to provide irrefutable supporting documentary evidence for each individual vehicle in the consignment in order to enable Customs to assess that each individual vehicle fulfils all the conditions to be considered as returned goods, (including the 3 years provision mentioned above).*

Any change in the vehicle is in principle considered as a change of its state. A non-exhaustive list of examples where the state of the vehicle is changed, and hence it is not considered as returned goods, is shown below:

1) A vehicle is exported from the EU to a third country, where the tyres are replaced into tyres with different technical characteristics (e.g. different brand, model or material).

2) A vehicle is exported from the EU to a third country, where it is painted with a different paint from the one it had before (e.g. different colour or quality).

3) A vehicle is exported from the EU to a third country, where the engine is replaced into a different one from the one it had before (e.g. different model, brand or technical characteristics).

Only handlings or treatments necessary to repair the vehicles, restore them to good condition or maintain them in good condition can be accepted, as long as the reparation or the bad condition of the vehicle is due to an event that took place in the third country. This is because, as said above, if the car is brought broken from the EU to a third country and it is repaired in the third country, then it cannot be considered as returned in the EU in the same state as it was exported. A non-exhaustive list of examples where the state of the vehicle is not changed, and hence it can be considered as returned goods, is shown below:

1) A vehicle is exported from the EU to a third country. After some days in the third country the car is dirty and it is washed before it is returned to the EU.

2) A vehicle is exported from the EU to a third country, where it has a puncture. The damaged tyre is replaced by another tyre of the same brand, model and characteristics.

3) Vehicles are exported to undergo stress tests after which their tyres are not able to be used anymore in the same way as they could be used when the vehicle was exported (e.g. because they have suffered too much erosion and/or they suffered a puncture), without this being reasonably predictable. Despite these vehicles cannot be used in the same way as when they were exported, they can still be considered as returned goods.

4) The vehicles mentioned in the previous example, if they receive in a third country where the tests are carried out tyres of the same technical characteristics as the ones the vehicles were using when they were exported (incorporation of spare parts)."

Submissions

Appellant's submissions

13. The Appellant submitted the following grounds of appeal in its Notice of Appeal:

    "*We want to appeal the decision on the duties that were paid* [redacted]*. At the time we weren't asked for any other information regarding the repairs to the truck, we have attached an engineer's report on the repairs to the truck.*"

14. The Appellant was then invited to submit a Statement of Case in support of its appeal and on 6 February 2024 the Appellant's Agent replied to the Commission stating:

    "*We have nothing further to add from the information initially provided.*"

15. The Commissioner heard submissions from the Appellant's owner, [redacted] (hereinafter the "Owner"), who stated that the basis of the Appellant's business is the importing of vehicles from the United Kingdom which have suffered damage in the form of a crash or other incident. These vehicles are then repaired by the Appellant and sold on to the Irish market.

16. It was submitted that the Vehicle had been purchased in the United Kingdom in March 2023. No details as to the date, or the manner, of the physical importation of the Vehicle

was given despite the Commissioner asking how and when the Vehicle arrived into the State.

17. It was submitted that the Vehicle the subject matter of this appeal was imported in an un-roadworthy, damaged state. After importing the Vehicle in the State, the Appellant repaired the Vehicle using new and second hand genuine original equipment manufacturer parts and restored it to a roadworthy condition.

18. The Owner submitted that since Brexit, he was of the opinion that if a vehicle, which had been manufactured within the customs territory of the Union and which was subsequently exported to a non-union State, was returned to the customs territory of the Union within 36 months then there would be an entitlement to Returned Goods Relief on that vehicle.

19. It was submitted by the Owner that it is not possible for a vehicle to be returned to the customs territory of the Union in the same state as they are exported. It was submitted that vehicles require regular maintenance including oil and tyre changes and, as a result, they cannot be returned to the customs territory of the Union

20. He stated that he considers it unfair that, as he sees it, "overnight" there has been an imposition of duties and Value Added Tax which were not payable on goods returned to the customs territory of the Union within 36 months prior to Brexit.

21. During the course of the oral hearing, the Engineer's report referred to in the Appellant's Notice of Appeal was submitted to the Commissioner and a copy of same was given to the Respondent. The Engineer's report was dated 6 September 2023 and stated the following:

"REF: TRUCK MAKE [redacted]

REG NUMBER [redacted]

CHASSIS NO. [redacted]

YEAR OF MANU. 2022

MILAGE N/A KM

The purpose of this visual inspection was to examine the vehicle and to access the condition of repair.

The vehicle was inspected in [redacted] *on 06/09/2023.*

The following is a report on my findings:

I have examined the above vehicle and found it to be in very good condition. The vehicle suffered heavy cab damage and has been repaired to a very high standard using a combination of new and second hand genuine [redacted] *parts.*

In my opinion the vehicle is safe to be used on the road and will not present any danger to other road users on the day of my examination."

Respondent's submissions

22. The Respondent accepted that the Vehicle had been exported from the customs territory of the Union to the United Kingdom in 2022 and that it had been returned to the customs territory of the Union within 36 months of leaving the customs territory of the Union.

23. The Respondent submitted that, as the Vehicle had been deemed un-roadworthy in the United Kingdom prior to it being imported into the State, it not been returned to the customs territory of the Union in the state in which it had been exported. As a result, the Respondent submitted, it did not comply with the provisions of Article 203(5) of the Union Customs Code and is therefore not entitled to Returned Goods Relief.

24. As the Respondent had been supplied with a copy of the Appellant's Engineer's report dated 6 September 2023 during the course of the oral hearing, the Commissioner granted time during the oral hearing for the Respondent to consider the report.

Material Facts

25. The following material facts are not at issue in this appeal and the Commissioner accepts same as material facts:

    25.1. The Appellant is a business which is involved in the importation of trucks from the United Kingdom and selling them into the Irish market.

    25.2. In or around March 2023, the Appellant imported a [redacted] Truck with the Vehicle Identification Number [redacted] into the State from the United Kingdom.

    25.3. The Vehicle was manufactured within the customs territory of the Union.

    25.4. The Vehicle was exported as an unregistered new vehicle from the customs territory of the Union to the United Kingdom in 2022 having its first date of registration on 1 September 2022 and was given the registration number [redacted].

25.5. The Appellant purchased the vehicle in the United Kingdom from [redacted] for GBP£46,500.00 with an invoice date of 21 March 2023. The invoice contained the following note under the section "*Conditions of Sale*":

> "*The vehicle is not in a roadworthy condition and is sold with no warranty and without M.O.T and must not be used on any public highway until it is repaired to a standard which will enable it to be driven on a public road and comply with all legal requirements. You must obtain a certificate to this effect from an independent motor engineer who currently holds a qualification of the Institute of Automotive Engineer Assessors. This vehicle is sold as damaged or as an insurance company total loss.*"

25.6. On 20 June 2023, the Appellant through a Customs Agent, submitted a claim for Returned Goods Relief to the Respondent on the basis that the Vehicle had been exported from the customs territory of the Union within 36 months of its return to the customs territory of the Union.

25.7. On 21 June 2023, the Respondent notified the Appellant of its decision to refuse Returned Goods Relief. The Appellant appealed this refusal under the two stage customs appeals process and on 21 August 2023 a Designated Appeals Officer refused the appeal stating the reason for the refusal as:

> "*It is my opinion that while the vehicle meets the majority of the criteria for the application of Returned Goods Relief, sufficient evidence that any repairs carried out did not alter the vehicle beyond its state when exported from the Customs Territory of the Union was not provided.*"

25.8. On 19 September 2023, the Appellant appealed the Respondent's decision of 21 August 2023.

26. The following material fact is at issue in this appeal:

26.1. The Vehicle was returned to the customs territory of the Union in the same state as it was exported.

27. The appropriate starting point for the examination of material facts is to confirm that in an appeal before the Commissioner, 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 (hereinafter "*Menolly Homes*"), at paragraph 22, Charleton J. stated:

> *"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".*

The Vehicle was returned to the customs territory of the Union in the same state as it was exported.

28. The Vehicle was exported as an unregistered new from the customs territory of the Union in 2022 and was first registered in the United Kingdom on 1 September 2022, as already found as material facts in this appeal.

29. There is no dispute between the parties that the vehicle was damaged whilst in the United Kingdom such that, when it was bought by the Appellant, it was in an un-roadworthy condition. By the Owner's submissions, repairs were not carried out in the Vehicle until such time as it had been returned to the State and therefore to the customs territory of the Union.

30. Article 203(5) of the Union Customs Code provides that:

> "*The relief from import duty shall be granted only if goods are returned in the state in which they were exported.*"

31. In considering this material fact, the Commissioner has had regard to Article 158 of the UCC-DA specifically addresses Article 203(5) of the Union Customs Code and states:

> "*1. Goods shall be considered to be returned in the state in which they were exported where, after having been exported from the customs territory of the Union, they have not received a treatment or handling other than that altering their appearance or necessary to repair them, restore them to good condition or maintain them in good condition.*
>
> *2. Goods shall be considered to be returned in the state in which they were exported where, after having been exported from the customs territory of the Union, they have received a treatment or handling other than that altering their appearance or necessary to repair them, restore them to good condition or maintain them in good condition but it became apparent after such treatment or handling had commenced that that treatment or handling is unsuitable for the intended use of the goods.*

3. Where the goods referred to in paragraph 1 or 2 have undergone treatment or handling that would have rendered them liable to import duty if they had been placed under the outward processing procedure, those goods shall be considered to be returned in the state in which they were exported only on the condition that that treatment or handling, including the incorporation of spare parts, does not exceed what is strictly necessary to enable the goods to be used in the same way as at the time of export from the customs territory of the Union."

32. The Commissioner has also had regard to the "Note on Returned Goods" issued on 31 March 2021 by the European Commission Directorate-General Taxation and Customs Union. In particular the Commissioner has had regard to section 4 of that Note which specifically deals with the issue of vehicles returned to the customs territory of the Union which states:

"*4. PROVISIONS ON RETURNED GOODS APPLICABLE TO VEHICLES*

Vehicles must fulfil the general conditions mentioned above to be considered as returned goods, namely:

a) The vehicles were originally Union goods that were exported from the customs territory of the Union that return to this territory within a period of three years.

b) The vehicles are returned in the state in which they were exported.

c) The fulfilment of these conditions is supported by documentary evidence to be provided by the beneficiary of the procedure.

As mentioned above, the change of CN code does not necessarily entail per se that the goods are returned in a different state from the one in which they were exported. This means that in principle new Union cars brought to a third country can be returned to the EU as a used car (i.e. with a different CN code) and yet be considered as returned goods, provided that all the relevant conditions are fulfilled. However, the change of CN code can be an indicator showing that the state of the car has changed.

The value of the car is in principle not relevant in order to determine that the vehicles are returned goods or not. This means that the vehicles can be exported from the EU to a third country declaring a certain customs value and returned to the EU with a different customs value and yet be considered as returned goods, provided that all the relevant conditions are fulfilled. However, the fact that a vehicle is released for free circulation with a different customs value from the one it was declared when it was

exported can be considered as a strong indicator that the state of the car has changed. For instance, the vehicles should have been upgraded if the value declared when they are released for free circulation is higher than the one declared for export, and therefore these vehicles should not be eligible as returned goods.

However, it is important to analyse the first two conditions mentioned above taking into account the particularities concerning vehicles:

…

b) The vehicles are returned in the state in which they were exported.

As mentioned above, if broken vehicles are brought from the EU to a third country for repair and then they are brought back to the EU, they cannot be considered as returned goods because the goods are not returned in the same state as they were exported.

Whether there has been a change in the state of the vehicle or not, ***it has to be analysed on a case-by-case basis and for each individual vehicle****. That is, for a single vehicle importation by an individual for private use but also for each of the vehicles imported by a professional car dealer. It is therefore for the importer/beneficiary to provide irrefutable supporting documentary evidence for each individual vehicle in the consignment in order to enable Customs to assess that each individual vehicle fulfils all the conditions to be considered as returned goods, (including the 3 years provision mentioned above).*

Any change in the vehicle is in principle considered as a change of its state. A non-exhaustive list of examples where the state of the vehicle is changed, and hence it is not considered as returned goods, is shown below:

> *1) A vehicle is exported from the EU to a third country, where the tyres are replaced into tyres with different technical characteristics (e.g. different brand, model or material).*
>
> *2) A vehicle is exported from the EU to a third country, where it is painted with a different paint from the one it had before (e.g. different colour or quality).*
>
> *3) A vehicle is exported from the EU to a third country, where the engine is replaced into a different one from the one it had before (e.g. different model, brand or technical characteristics).*

Only handlings or treatments necessary to repair the vehicles, restore them to good condition or maintain them in good condition can be accepted, as long as the

reparation or the bad condition of the vehicle is due to an event that took place in the third country. This is because, as said above, if the car is brought broken from the EU to a third country and it is repaired in the third country, then it cannot be considered as returned in the EU in the same state as it was exported. A non-exhaustive list of examples where the state of the vehicle is not changed, and hence it can be considered as returned goods, is shown below:

1) A vehicle is exported from the EU to a third country. After some days in the third country the car is dirty and it is washed before it is returned to the EU.

2) A vehicle is exported from the EU to a third country, where it has a puncture. The damaged tyre is replaced by another tyre of the same brand, model and characteristics.

3) Vehicles are exported to undergo stress tests after which their tyres are not able to be used anymore in the same way as they could be used when the vehicle was exported (e.g. because they have suffered too much erosion and/or they suffered a puncture), without this being reasonably predictable. Despite these vehicles cannot be used in the same way as when they were exported, they can still be considered as returned goods.

4) The vehicles mentioned in the previous example, if they receive in a third country where the tests are carried out tyres of the same technical characteristics as the ones the vehicles were using when they were exported (incorporation of spare parts).”

33. The Commissioner has considered the invoice for the purchase of the Vehicle submitted by the Appellant along with the Owner’s oral submission and the Engineer’s report submitted and notes:

    33.1. The invoice for the purchase of the Vehicle clearly states that the Vehicle was not roadworthy when it was purchased by the Appellant;

    33.2. The Owner submitted that the vehicle was imported into the State, and therefore returned to the customs territory of the Union, in an un-roadworthy condition and that the Appellant had carried out repairs to the Vehicle to restore it to a roadworthy condition; and

    33.3. The Engineer’s report dated 6 September 2023 confirms that the Vehicle has been repaired to a roadworthy condition.

34. Having considered all of the above, the Commissioner finds that when the Vehicle was returned to the customs territory of the Union it was not in the same state as when it was

exported. When it was exported from the customs territory of the Union, the Vehicle was in a roadworthy condition and suffered damage in the United Kingdom to such an extent that, when the Appellant purchased it, the Vehicle was not roadworthy. This was specifically stated on the invoice which further stated that the Vehicle must not be driven on a public roadway prior to repair and subsequent certification of roadworthiness from an independent motor engineer who currently holds a qualification of the Institute of Automotive Engineer Assessors.

35. In addition, the Owner confirmed to the Commissioner that the repairs which restored the Vehicle to a roadworthy condition were carried out by the Appellant after the Vehicle had been returned to the State, that is to say, to the customs territory of the Union. No documentation has been submitted to the Commissioner which contradicts the Owner's submission in this regard.

36. As a result of the Vehicle returning to the customs territory of the Union in an un-roadworthy condition, having been exported from the customs territory of the Union in a roadworthy condition, the Commissioner must, and does, find as a material fact that the Vehicle did not return to the customs territory of the Union in the state in which it was exported.

37. If the Commissioner is incorrect in this finding, the Commissioner has not been provided with any documentary evidence as to whether the "*combination of new and second hand genuine* [redacted] *parts*" used by the Appellant to repair the Vehicle were the same parts as were used when the Vehicle was first manufactured. The Commissioner notes that the "Note on Returned Goods" issued on 31 March 2021 by the European Commission Directorate-General Taxation and Customs Union places an onus on the person applying for Returned Goods Relief to provide irrefutable supporting documentary evidence for each vehicle in order to enable Customs, and therefore the Commissioner, to assess that each individual vehicle fulfils all the conditions to be considered as returned goods. The Appellant has not done so.

Findings of Material Fact

38. For the avoidance of doubt, the Commissioner makes the following findings of material fact in this appeal:

    38.1. The Appellant is a business which is involved in the importation of trucks from the United Kingdom and selling them into the Irish market.

38.2. In or around March 2023, the Appellant imported a [redacted] Truck with the Vehicle Identification Number [redacted] into the State from the United Kingdom.

38.3. The Vehicle was manufactured within the customs territory of the Union.

38.4. The Vehicle was exported as an unregistered new vehicle from the customs territory of the Union to the United Kingdom in 2022 having its first date of registration on 1 September 2022 and was given the registration number [redacted].

38.5. The Appellant purchased the vehicle in the United Kingdom from [redacted] for GBP£46,500.00 with an invoice date of 21 March 2023. The invoice contained the following note under the section "*Conditions of Sale*":

> "*The vehicle is not in a roadworthy condition and is sold with no warranty and without M.O.T and must not be used on any public highway until it is repaired to a standard which will enable it to be driven on a public road and comply with all legal requirements. You must obtain a certificate to this effect from an independent motor engineer who currently holds a qualification of the Institute of Automotive Engineer Assessors. This vehicle is sold as damaged or as an insurance company total loss.*"

38.6. On 20 June 2023, the Appellant through a Customs Agent, submitted a claim for Returned Goods Relief to the Respondent on the basis that the Vehicle had been exported from the customs territory of the Union within 36 months of its return to the customs territory of the Union.

38.7. On 21 June 2023, the Respondent notified the Appellant of its decision to refuse Returned Goods Relief. The Appellant appealed this refusal under the two stage customs appeals process and on 21 August 2023 a Designated Appeals Officer refused the appeal stating the reason for the refusal as:

> "*It is my opinion that while the vehicle meets the majority of the criteria for the application of Returned Goods Relief, sufficient evidence that any repairs carried out did not alter the vehicle beyond its state when exported from the Customs Territory of the Union was not provided.*"

38.8. On 19 September 2023, the Appellant appealed the Respondent's decision of 21 August 2023.

38.9. the Vehicle did not return to the customs territory of the Union in the state in which it was exported

Analysis

39. The Appellant seeks an exemption from Customs Duties and VAT under the Returned Goods Relief provided for under Article 203 of the Unions Customs Code.

40. In circumstances where the Appellant is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in *Revenue Commissioners -v- Doorley* [1933] IR 50 must be considered. The Commissioner has had regard to the dictum of Kennedy C. J. at p. 766, wherein he stated that:

> "*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 applicable."*

41. Article 203 of the Unions Customs Code provides that:

> "*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.

5. The relief from import duty shall be granted only if goods are returned in the state in which they were exported.

6. The relief from import duty shall be supported by information establishing that the conditions for the relief are fulfilled."

42. It is not in dispute between the parties that the Vehicle was a non-union good which had previously been exported from the customs territory of the Union and which was returned to the customs territory of the Union within a period of three years of its export.

43. However, the Commissioner has found as a material fact that the Vehicle did not return to the customs territory of the Union in the state in which it was exported. As a result, the Vehicle does not, and cannot, comply with the provisions of Article 203(5) of the Union Customs Code and therefore the Commissioner cannot grant Returned Goods Relief in relation to the return of the Vehicle to the customs territory of the Union.

Determination

44. For the reasons set out above, the Commissioner determines that the Appellant in this appeal has not succeeded in showing that the Appellant was entitled to Returned Goods Relief in relation to the return of the Vehicle to the customs territory of the Union pursuant to the provisions of Article 203 of the Union Customs Code.

45. The Commissioner has every sympathy with the Appellant's position and understands that there will be disappointment with the outcome of this appeal, however the Commissioner must apply the relevant provision of the Union Customs Code.

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

Notification

47. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section

949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the 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

48. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Clare O'Driscoll
Appeal Commissioner
1 May 2024