[2011] UKFTT 658 (TC)

TC01500

Appeal number: TC/2010/1689

VAT & customs duty – relief on importation – whether conditions of onward supply relief met – no - whether conditions of returned goods relief met – yes in respect of some cars – appeal allowed in part

FIRST-TIER TRIBUNAL

TAX

RADFORD RACING LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: Mrs B Mosedale (Tribunal Judge)

Sitting in public at 45 Bedford Square, London WC1 on 13 September 2011

Mr Salvage, Director of and representing the Appellant

Mr S Singh, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. HMRC issued the Appellant with a post-clearance demand note for £28,605.85 on 7 February 2009 relating to imports made in 2007. This figure comprises £8,705.84 in customs duty and £19,900.01 in VAT. HMRC upheld the decision to issue the demand in a review letter issued on 9 April 2009 and it is against that decision that the Appellant appeals.

2. The appeal is out of time but HMRC took no issue with this. As explained below a letter of Mr Salvage's went astray which led to a delay.

The Facts

3. Certain facts were not in dispute: for those that were I set out my reasons for the findings of fact I make.

4. The Appellant company was in the business of importing and exporting cars. Following a visit, the VAT and customs duty treatment of 3 batches of cars by the company were considered to be incorrect by HMRC who issued the post clearance demand note referred to above. It was accepted by both sides that the Appellant company acted as an importer for all 3 batches of cars. The import declarations were made by the Appellant's freight agent on its behalf.

5. Those three batches were as follows:

The Renaults

6. The Tribunal had undisputed evidence in the form of a letter from Renault France that twenty-one (21) Renault cars had been manufactured in August 2006 and exported to Singapore on the ship Grande Sicilia arriving there in October 2006. What was in dispute at the hearing was whether the cars were manufactured in France. The letter does not explicitly state the place of manufacture nor the port of departure, although it was on Renault headed notepaper and issued from a Renault address in France. It was the Appellant's oral evidence that the cars were manufactured in France, and that had he understood this point was in dispute, he could have written to Renault in advance of the hearing to get it put in writing.

(a) Place of manufacture

7. HMRC's view was that Mr Salvage was well aware the place of manufacture was in dispute because the letter from the HMRC review officer dated 9 April 2009 said that "From the evidence that has been supplied with this case it appears that you have not been able to provide proof of when the goods were originally exported from the EU."

8. However, I find Mr Salvage replied on 6 May 2009 and referred to the paperwork from Renault France. This letter was not received by HMRC. Eventually, this was realised and a copy of the letter was passed to the HMRC review team who replied to

it on 7 January 2010. This letter said nothing other than Mr Salvage's only option now was to agree with HMRC or appeal their decision to the Tribunal.

9. In an email dated 11 January, Mr Salvage queried why HMRC's response of 7 January 2010 failed to deal with the points raised in his letter of 6 May and in particular the letter from Renault France which he described as proving year of manufacture and shipment from the EC. HMRC's reply to this (dated 12 January) was that they would wait to be notified of the appeal and his points would be dealt with by their Solicitor's Office.

10. There is no evidence that the point was ever dealt with by HMRC and it was not raised in the Statement of Case. Therefore, I find that it was *not* apparent to Mr Salvage that HMRC would query whether the Renault letter actually proved shipment from France. And the relevance of this is that it is, I find, a good explanation of why Mr Salvage took no further steps to clarify this particular point.

11. I accept his evidence that the cars were manufactured in France. He ought to know where the cars were manufactured and at the hearing I considered that he was genuinely surprised that this point was in dispute because he had no doubt that they were manufactured in France. I did not find all Mr Salvage's evidence reliable but on this I considered from his demeanour that it was reliable. Further, as I find HMRC had never put him on notice that the point would be disputed, I read nothing into his failure to get the point clarified with Renault France or obtain the shipping records for the Grande Sicilia. Further, as Renault in France wrote the letter with the engine numbers and date of shipment it is more likely than not that this was because the cars were manufactured in France. I find as a fact the 21 cars listed in the Renault letter were manufactured in France.

(b) Re-import within 3 years?

12. Evidence from Mr Salvage was that these 21 cars were purchased from Renault by a main dealer in Singapore called Exklusiv Auto Services. He explained that main dealers frequently have to purchase more than they can sell locally in order to maintain their position and discount as main dealer. As even new cars are cheaper in the Far East than in Europe, it can make economic sense for the surplus vehicles to be immediately resold by the main dealer back to Europe. And this is what happened with these 21 cars.

13. Twenty-five (25) Renault cars were imported by the Appellant company into the UK on 27 February 2007. It was Mr Salvage's evidence was that these 25 cars included the 21 cars exported as set out in the paragraph above. The Appellant's freight agent declared them to Customs Procedure Code (CP) 420000 which is the code for onward supply relief (OSR). On import all 25 cars were immediately sent on to the Appellant's customer in Germany which Mr Salvage referred to as Autorama in the hearing but which on the invoices is described as Herzog Rehm.

14. I find, based on the Appellant's invoice to Herzog Rehm (referred to below in paragraph 24), that only 18 of the 25 vehicles shown on the invoice were also listed in the letter from Renault France. There was no documentary evidence of date of export

from the EU in respect of the other Renaults. However, in a letter dated 6 May 2009 to HMRC Mr Salvage implied that it was only the cars listed on the letter from Renault France that were less then 3 years old, although at the hearing he suggested he could produce similar evidence for the remaining cars. I find that the Appellant has not satisfied this Tribunal that these remaining 7 cars were re-imported within 3 years from date of export.

15. The nature of the Appellant's contractual relationship with the supplier in Singapore and its buyer in Germany was in dispute. As the issue is the same for the MGs as the Renaults I deal with this below.

The MGs

16. The Appellant imported two MGs on 19 March 2007. There was undisputed evidence in front of the Tribunal which I accept that both MGs were manufactured in the UK, one in 1995 and the other in 1994. The vendor of the cars was FB International Ltd in Japan.

17. Mr Salvage had no direct evidence of when they were first exported but accepted it would have been more than 3 years before the date of re-import. His reason for this is that he said the cars were manufactured for the Japanese market and it is therefore most likely that they would have been exported to Japan shortly after their manufacture. I find that they were re-imported more than 3 years after their original export from the EU.

Renaults and MGs: The Appellant's contractual relationship

18. HMRC pointed out various statements by Mr Salvage that indicated his role was as agent rather than principal. In a letter written by Mr Salvage on 9 February 2009 he said he did not complete an EC sales list as the German buyer had paid FB International direct. In his Grounds of appeal he stated:

> "…[the cars] were being paid by the end user (German dealer) on whose behalf we were importing them …."

Mr Salvage also said that he had agreed with HMRC in general that an EC Sales list did not have to be completed on sales of this type *because* they were not strictly sales.

19. At the hearing Mr Salvage said he bought and sold the cars. However, he also said that in the case of the Renaults and MGs he had expected the German customer to pay his supplier direct but in the event this did not happen: they paid him and he paid the supplier. He did not explain why, some years after the event in his letter of February 2009 referred to above, he had said the opposite.

20. His oral evidence at the hearing was also that the goods were sent to him on a consignment basis: he only had to pay when he had sold them. However, he also said that he did not purchase speculatively: he said he would not buy cars unless he had a buyer lined up.

21. I did not find Mr Salvage's evidence to be consistent. His oral evidence that he was paid and then paid his supplier was not consistent with what he had put in writing

before the hearing. Further, he said in oral evidence that his German customer did not know the Appellant company's supplier but later qualified this by saying the German customer knew the identity of the supplier but did not have a personal relationship with anyone there. Nor was his evidence consistent on whether he earned profit or commission.

22. In conclusion, I did not find Mr Salvage's view of his contractual relationships to be reliable.

23. I considered what I did know. The MGs were invoiced to Radford Racing by FB International Co Ltd on an invoice dated 8 February 2007 (although not faxed to the Appellant it appears until 18 March 2007). The cars arrived in the UK about 19 March 2007. The Appellant had already issued two separate invoices, one for each MG, to Herzog Rehm on 13 November 2006. A further invoice was raised to Herzog Rehm on 28 February 2007 covering commission, auction charges etc.

24. At the hearing the invoice for the Renaults was not in evidence and I directed that the Appellant be permitted to submit after the hearing its invoice to its German customer. Mr Salvage submitted this on 21 September. Also in accordance with permission given at the hearing, HMRC made a response on 29 September. On the question of the Appellant's contractual relationship, I find it does not really advance the matter. It does not make it clear whether the relationship was seller to buyer or as agent: the reference to "direct purchase" is ambiguous as it could mean either direct purchase from the Appellant or from Ezklusiv.

25. I find that the cars were bought to order. It was Mr Salvage's evidence, and consistent with the invoices, that the German buyer knew the price the appellant paid for the vehicle. This is only consistent with the Appellant being an agent: it would not reveal its margin nor the name of its supplier if it acted as principal. Mr Salvage's evidence was that the company was paid a profit or commission and reimbursed expenses such as freight: again this is only consistent with an agency relationship. A principal would not be reimbursed its costs. Mr Salvage's explanation of his business model was that his German client saved on freight costs if the goods were imported into the UK. Again this implies that the German client was the real buyer of the car and the Appellant merely a kind of freight agent.

26. My conclusion is that the Appellant company acted as an agent of its German customer (Herzog Rehm) in sourcing and buying these cars. That for whatever reason in this case Herzog Rehm paid the Appellant the price of the cars and the Appellant then paid this money to Ezklusiv and FB International in no way alters my conclusion that the relationship was one of agency. It is not clear if Ezklusiv and FB International knew whether the Appellant bought as agent or principal: this does not matter: a trader can act as an undisclosed agent.

The Rolls Royce

27. The third batch was a Rolls Royce car imported by the Appellant company into the UK on 25 July 2007. Freight insurance shows that it was originally exported from the EU in 2001.

28. The vehicle was brought into the UK for repair. The ownership of the vehicle did not change hands. It was already registered in Germany and Switzerland and belonged, Mr Salvage believed, to a Russian Oligarch who wanted his car wherever he was in the world. So Radford Racing imported it, and arranged for a specialist Rolls Royce workshop to undertake the necessary repairs. It was then collected by agents of the owner and taken somewhere on the Continent.

29. It was not clear on Mr Salvage's evidence whether the Appellant company merely arranged for the repairs to be carried out or whether they were actually responsible for the repairs. His evidence was that the work was sub-contracted but at the same time it was his evidence that the specialist repair workshop invoiced the owner directly.

30. Although an invoice was issued for the car to Radford Racing, Mr Salvage said that this was done because UK port authorities insist on knowing the value of the vehicle and so effectively a false invoice was issued by the owner. It was not apparent to me why the port authorities were presented with a false invoice rather than a valuation but nothing turns on this in this appeal. What I do find is that the ownership of the car did not change hands and Radford Racing made no supply of it.

Agreements with HMRC?

31. It was the Appellant's case that he had agreements with HMRC on which he had relied and on which, by charging the VAT and duty, HMRC were reneging. HMRC's view was that even if there were such agreements (which they disputed), this Tribunal had no jurisdiction to hear the Appellant's case based on them.

32. I set out below whether I find as a fact that the Appellant had an agreement with HMRC as to the VAT or duty treatment of his imports.

Agreement no need for EC Sales List?

33. Mr Salvage said that he had been informed by an HMRC officer Mr Puri on 15/01/08 that he did not need to complete EC Sales Lists because the Appellant was not paying for the vehicles but rather its "buyer" was paying its "seller" direct. I find this advice was too late to be relevant to this appeal.

34. In a letter dated 23 February 2009 he refered to being informed in 2007 that EC sales lists were not required: but I find he made a number of mistakes over dates in his evidence at the hearing and I am not satisfied that the advice was given any earlier than by Mr Puri in 2008.

35. Further, Mr Salvage overlooks the inconsistency in his own story: he says he understood the EC Sales List was not required *because* his buyer paid his seller direct *but* he says that ultimately with the MGs and Renaults his buyer paid him and he paid his seller. So not only was Mr Puri's advice too late to have been relied on by the appellant: it did not apply to the actual facts of imports in this appeal in any event.

36. On this basis I do not need to consider whether I have any jurisdiction over a legitimate expectation claim: the appellant did not have a legitimate expectation

engendered by HMRC, at the time of the imports, that it did not need to complete an EC Sales List on these imports.

Agreement 3 year rule did not apply?

37. Mr Salvage claimed that he had an agreement with HMRC that cars of any age could be re-imported into the EU by the Appellant company on payment of £50 duty.

38. No written copy of an alleged agreement was produced. In oral evidence Mr Salvage said this agreement was with Mr Callaghan of NIRU (National Imports Relief Unit), although a letter of 9 February 2009 he said it was with a "senior officer" and subsequently with a Mr S O'Dare. In a letter dated 22 September 2010 Mr Salvage says that he has not managed to locate a copy of the email in the early part of the decade from a Mr Gerry Gallagher about the £50 rule.

39. Bearing in mind that in places I have found, as already mentioned, Mr Salvage's evidence to be confused and not entirely reliable, and that there was no written copy of an agreement, and that Mr Salvage was vague about with whom the agreement was reached, I am not satisfied that an agreement was ever entered into.

40. Nevertheless, I am satisfied that Mr Salvage believed that such an agreement had been entered into. This is because he mentions it in a letter in dated 12 December 2006 to HMRC. That letter followed a letter dated 11 July 2005 in which he was clearly informed that a 3-year rule applied and also a subsequent telephone conversation in August 2006 in which he was informed the 3 year rule applied to commercial importers but might be waived for private importers. In his reply in December he said that:

> "therefore as I have written before this [£50] was the accepted figure from yourself and I am told that this is still the case with "Private individuals but why this prejudice against proper motor dealers I do not know."

41. So I find, that even though at some time he had believed he only had to pay £50 on any re-imports, by December 2006 he was clearly aware that this was no longer the position.

42. At the hearing, however, the Appellant said he disregarded the July 2006 letter because HMRC in effect cancelled it by later allowing him to benefit from Returned Goods Relief.

43. I find that on 20 July 2005 a Mr O'Dare of NIRU did email Mr Salvage to say that a letter written by Mercedes-Benz and produced by Mr Salvage was sufficient to prove re-import to the EEC and the duty would be only £50. No mention was made of 3 years but, on the other hand, the letter from Mercedes-Benz was not produced so it is equally possibly it was re-import within the 3 years. And again, as mentioned above, subsequent to this in August 2005 (the next month) Mr Salvage had the telephone conversations with an HMRC office in which he was informed the 3 year rule did apply to commercial importations.

44. I also find that on 1 February 2006, Mr Callaghan emailed Mr Salvage to thank him for his letter of 12 December 2005 and cancel the demand for duty contained in HMRC's letter of 11 July 2005. No reason was given and therefore Mr Salvage could not take this as a reversal of what he had just been told which was that the 3 year rule applied.

45. In conclusion, I find Mr Salvage has not satisfied me that HMRC ever made an agreement with him that the 3 year rule did not apply to the Appellant, and that in any event although he believed that they had, it was unreasonable to persist in this belief beyond July 2006.

46. I find Mr Salvage did not have a legitimate expectation that the 3 year rule was waived in the case of the Appellant company. I do not therefore need to consider whether this Tribunal would have had jurisdiction in relation to such a claim. I was addressed by HMRC on why HMRC do not think this Tribunal has jurisdiction. I do not recite their arguments here (they are set out in their skeleton argument): the issue is to be shortly considered in the Upper Tribunal and it would be pointless to express my view when I have concluded as a matter of fact there was no legitimate expectation.

The law

Onward supply relief

47. Onward Supply Relief (OSR) is a VAT Relief. VAT is chargeable on the importation of goods into the UK from outside the EU. Section 1(2)(c) of the Value Added Tax Act 1994 ("VATA") provides:

> "(1) Value added tax shall be charged, in accordance with the provisions of this Act –
>
> (a) …..
>
> (b) …..
>
> (c) on the importation of goods from places outside the member States, …..
>
> (2) …
>
> (3) ….
>
> (4) VAT on importation of goods from places outside the member States shall be charged and payable as if it were a duty of customs.

48. Section 15 of VATA sets out when goods are imported. They are imported when they arrive in the UK from outside the EU and a customs debt arises on them. The person liable to pay the VAT is the person liable to pay the customs debt: section 15(2)(b). Mr Salvage did not suggest that the goods were not imported and accepted that he was the importer and liable to the duty and VAT if any was payable. Indeed I consider on the facts as found by the Tribunal this could not have been sensibly disputed.

49. The vires for the relief from this charge to VAT known as onward supply relief is set out in section 30(8) VATA and provides in so far as relevant:

> "Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where –
>
> (a) the Commissioners are satisfied …. that the supply in question involves both –
>
> (i) the removal of goods from the United Kingdom; and
>
> (ii) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with the provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and
>
> (b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled."

The effect of this provision is that a supply of goods could be zero-rated if they were sold to a person registered for VAT in another member State. However, in order to qualify for the relief any conditions specified in regulations had to be met.

50. The regulations referred to were the VAT Regulations 1995 which provide at Regulation 123 (1) that:

> "Subject to such conditions as the Commissioners may impose, the VAT chargeable on the importation of goods from a place outside the member States shall not be payable where –
>
> (a) a taxable person makes a supply of goods which is to be zero-rated in accordance with sub-paragraphs (a)(i) and (ii), and (b) of section 30(8) of the Act,
>
> (b) the goods so imported are the subject of that supply, and
>
> (c) the Commissioners are satisfied that –
>
> (i) the importer intends to remove the goods to another member State, and
>
> (ii) the importer is importing the goods in the course of a supply by him of those goods in accordance with the provisions of sub-paragraphs (a)(i) and (ii), and (b) of section 30(8) of the Act and any Regulations made thereunder."

51. The vires for the UK legislation is Art 138 and 143 of the Principal VAT Directive 2006/112/EC (in force on 1 January 2007 and therefore in force at the time of the importations the subject of this appeal).

52. OSR is mandatory under the Principal VAT Directive 2006/112/EC Article 143 which provides:

> "Member States shall exempt the following transactions:
>
> (a)…
>
> (b) …

(c)….

(d) the importation of goods dispatched or transported from a third territory…..where the supply of such goods by the importer designated or recognised under Article 201 as liable for payment of VAT is exempt under Article 138;"

(e) ….."

53. Article 138 provides for exemption on cross-border transactions. The effect of Article 143 (d) is therefore that an import is free of VAT *if* the onward supply to a taxable person in another member State is exempt from VAT. However, HMRC are allowed to some extent control the application of this relief as Article 145 (2) provides:

"….Member States may adapt their national provisions so as to minimise distortion of competition and, in particular, to prevent non-taxation or double taxation within the Community."

Member States may use whatever administrative procedures they consider most appropriate to achieve exemption."

54. HMRC do impose conditions on the relief. The conditions are contained in Notice 702/7 at paragraph 2.5:

"The following conditions have the force of law

Condition. You must …

1. be a UK VAT registered trader, note you cannot claim OSR if you use a non VAT EORI number or the code GBPR

2. be making a zero-rated supply of goods to a taxable person in another EC country

3. dispatch the same goods as imported. Note you cannot process them first

4. remove the goods to another EC country within one month of the date of importation (which is the date when the goods enter free circulation). If you cannot meet this deadline you can apply to NIRU for an extension (see below for contact details) and

5. complete EC sales lists and record EC trade figures on VAT returns. (If you are an agent you need to read paragraph 2.2.)"

It is HMRC's case that the last condition, the requirement for completion of an EC sales list, was not met. Mr Salvage agrees he did not complete an EC Sales list.

55. Member States are given a wide discretion in imposing conditions on the relief. The Principal VAT Directive anticipates that national provisions will aim to prevent non-taxation or double taxation. The purpose of an EC Sales List is to ensure that there is a list of cross-border despatches which can be used to check that the corresponding acquisitions are correctly declared by the acquirer, so that the VAT relief for the supplier is matched by a corresponding VAT charge on the buyer. Therefore, I consider that the requirement imposed by HMRC for completion of the EC Sales List when claiming OSR is within the wide margin of appreciation given to

the UK government by the EU in Article 145. The requirement for an EC sales list to be completed must be met.

Decision on OSR

56. HMRC are wrong to say that Mr Salvage could not rely on OSR because he did not act as principal. I have found that the Appellant, although acting as an agent, was acting in its own name. Section 47(2A) VATA provides:

> "where….goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent."

HMRC's own guidance at paragraph 2.2 of Notice 702/7 confirms that an agent who acts in his own name can claim OSR. So as far as the MGs and Renaults are concerned OSR could be claimed if the conditions were met. This is not the case with the Rolls Royce as there was no supply of this car: it remained in the same ownership. Whether or not the Appellant acted as principal in arranging the repairs is immaterial: the car itself was not supplied.

57. However, even in respect of the MGs and Renaults, the conditions imposed by HMRC for claiming OSR, in particular the completion of the EC Sales List, were not met by the appellant. As I have said above, the conditions in Notice 702/7 paragraph 2.5 do have force of law and were permitted by the VAT Directive. The Appellant is not entitled to OSR. It is liable to pay all of the £19,900.01 VAT claimed because it did not complete an EC Sales list.

58. Mr Salvage's last point on OSR was that if I reached the conclusion that the Appellant was not entitled to OSR, the Appellant was nevertheless entitled to recover the VAT. HMRC also recognised this in their review letter to him dated 9 April 2009, although, as they stated, any claim for recovery of input tax is subject to the normal rules. I was not asked to determine whether the Appellant's input tax claim will be valid: it will depend (amongst other things) on proof of despatch of the cars to its Continental customer and proof of payment of the import VAT. So in any event the VAT on import of the Rolls Royce cannot be reclaimable as the car was not despatched in the VAT sense.

59. I note in passing that the claim in respect of the MGs and Renaults is not time-barred. Regulation 29 of the VAT Regulations 1995/2518 provides in so far as relevant:

> "….a person claiming deduction of input tax under second 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable save that, where he does not at that time hold the document or invoice required by paragraph (2) below, he shall make his claim on the return for the first prescribed accounting period in which he holds that document or invoice."

Sub-paragraph (2) provides that:

> "At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of –
>
> (a) ….
>
> (b) …
>
> (c) an importation of goods, hold a document authenticated or issued by the proper officer, showing the claimant as importer, consignee or owner and showing the amount of VAT charged on the goods."

60. Until the Appellant pays the import VAT he will not hold the proper document referred to above. It is only when this happens that time will begin to run. So if the Appellant can meet the conditions for input tax recovery (such as proving export to Germany) it will be in time to reclaim it.

61. So although I am unable to agree with Mr Salvage that the Appellant has a current right to recover this VAT, it may be that it will be able to establish that right in respect of the Renaults and MGs.

Returned goods relief

62. Returned goods relief (RGR) is principally a relief from customs duties. It is provided for in Article 185(1) of Council Regulation 2913/92 which states:

> "Community goods which, having been exported from the customs territory of the Community, are returned to that territory and released for free circulation within a period of three years shall, at the request of the person concerned, be granted relief from import duties."

63. It was HMRC's case that the Appellant declared the goods to OSR and not RGR and the two are mutually exclusive. And, HMRC said, even if he had declared the goods to RGR the Appellant was not entitled to it as the goods were not re-imported within 3 years of original export.

Decision

64. I find no authority for HMRC's view that the VAT relief for onward supply is mutually incompatible with the duty relief on goods re-imported within 3 years of original export. OSR is a relief aimed at the position where an importer immediately despatches the goods elsewhere in the EU: the duty relief is for goods which originated within the EU. I can see no reason why both cannot be claimed if the conditions for both reliefs are met. In any event I have found that the Appellant is not entitled to OSR.

65. HMRC's next point was that the Appellant declared the goods to the wrong CPC for RGR. It is the case that the Appellant did not claim RGR at the time of the import: but I cannot see that that disentitles it to the relief. I find for the reasons explained above that in respect of the 18 Renaults mentioned on the letter from Renault France Mr Salvage has proved that the cars were re-imported into the EU within 3 years and therefore the Appellant was entitled to RGR in respect of those 18 cars. And to that extent the appeal succeeds.

66. The Appellant has failed to prove in respect of the other vehicles (7 Renaults, 2 MGs and the Rolls Royce) that they were re-imported into the EU within 3 years of export. Therefore there is no entitlement to duty relief on these vehicles and I uphold the duty assessment to that extent.

67. This decision will therefore lead to an apportionment and I was not given the data on which to calculate this. My decision is therefore one in principle only and if the parties are unable to agree on the apportionment they will need to revert to this Tribunal.

Postscript on the Rolls Royce

68. The position with respect to the Rolls Royce seems particularly unfortunate. If Mr Salvage is correct in believing that the vehicle did not change hands and was being brought into Europe on behalf of the person who originally exported it and that that person was acting as a private individual then it seems, had the owner had it imported in his own name no VAT or duty would have been payable.

69. This is because, as mentioned above, for RGR HMRC do not insist on the 3 year rule where the import is by a private individual and further there is also VAT relief under Regulation 121D where the re-importation is by the person who originally exported the goods.

70. However, the importer was the Appellant and in any event the Tribunal had no proof that Mr Salvage was correct in his beliefs about the Russian oligarch. So in the event neither OSR nor RGR is applicable to the import of the Rolls Royce.

71. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Barbara Mosedale

TRIBUNAL JUDGE
RELEASE DATE: 10 October 2011