[2022] UKFTT 00127 (TC)

TC 08458

CUSTOMS & EXCISE – Convention on International Trade in Endangered Species – importation of agarwood products – importation relying on invalid re-export certificates and an invalid import permit – goods seized – restoration of the goods – whether decision refusing restoration was unreasonable – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01540

BETWEEN

ARABIAN OUD COMPANY LIMITED **Appellant**

-and-

THE DIRECTOR OF BORDER REVENUE

Respondents

TRIBUNAL: JUDGE JONATHAN CANNAN
MR IAN SHEARER

Sitting in public by way of video hearing on 17 January 2022

Howard Watkinson instructed by JMW Solicitors LLP for the Appellant

Racheal Muldoon instructed by HM Revenue and Customs Solicitor's Office and Legal Services for the Respondents

DECISION

INTRODUCTION

1. The Appellant ("AOCL") is a retailer of fragrances and perfumes and associated products. It is part of an international group which has over 900 stores worldwide trading under the name "Arabian Oud". Oud is the Arabic term for a highly prized incense that is cultivated from the agarwood tree. The trees, which are members of the genus *Aquilaria*, are indigenous to remote regions of South East Asia. Diseased trees form a dense aromatic resinous substance called agarwood or Oud. They must mature for many years before the fragrant wood and oil can be extracted.

2. Agarwood trees and products derived from agarwood trees are internationally protected by the Convention on International Trade in Endangered Species 1973 ("CITES"). The EU gives effect to CITES through Council Regulation EC/338/97 on the protection of species of wild fauna and flora by regulating trade therein ("the Regulation"). A separate Commission Regulation EC/865/2006 ("the Implementing Regulation) sets out detailed provisions for implementing the Regulation, including the contents of necessary permits and certificates.

3. CITES recognises that international co-operation is essential to protect certain species of wild fauna and flora from over-exploitation through international trade. It protects those species by reference to definitions in various Appendices. Appendix I includes all species threatened with extinction which are or may be affected by trade. Trade in specimens of those species must be subject to particularly strict regulation in order not to endanger their survival and is only authorised in exceptional circumstances. Appendix II includes all species which are not necessarily now threatened with extinction but may become so unless trade in specimens is subject to strict regulation. The Appendices are replicated in Annexes A and B of the Regulation.

4. AOCL imported various goods from Saudi Arabia, arriving by air at Heathrow Airport on 29 March 2019. The goods included agarwood products protected under CITES ("the Goods"). Border Force officers examined the shipment and associated documentation. They concluded that the Goods had been imported contrary to the Regulation and seized the Goods as liable to forfeiture.

5. There was no challenge to the legality of the seizure. However, AOCL requested restoration of the Goods and subsequently instructed JMW Solicitors LLP ("JMW"). The Border Force wrote to JMW on 24 December 2019 refusing restoration. JMW requested a review of that decision and the decision not to restore was confirmed in a review letter dated 18 March 2020 from Higher Officer Mark Summers ("the Review Decision").

6. AOCL lodged an appeal against the Review Decision on 17 April 2020. AOCL contends that the decision not to restore the Goods is unreasonable. We set out below the detailed basis on which AOCL challenges the Review Decision. First, we consider the statutory and regulatory framework relevant to the appeal followed by our detailed findings of fact.

LEGAL FRAMEWORK

7. Agarwood is a species of flora protected by CITES and the Regulation. At all material times the Regulation had direct effect in the UK. Thymelaeaceae (aquilariaceae) agarwood, commonly referred to as Oud, is listed in Appendix II of CITES and Annex B of the Regulation. Inclusion in Annex B includes all parts and derivatives of the listed

species. A Note on Interpretation in the Regulation states that this does not include exhausted agarwood powder, including compressed powder in all shapes.

8. Article IV(2) and (4) of CITES make provision for prior presentation of an export permit or a re-export certificate on the export and import of agarwood:

> 2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:
>
> (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
> (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
>
> …
>
> 4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

9. Additionally, Article 4(2) of the Regulation makes provision for the prior presentation of an import permit where specimens of the species listed in Annex B are imported into the EU:

> The introduction into the Community of specimens of the species listed in Annex B shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.
>
> The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when:
> …
> (c) the conditions referred to in paragraph 1(b)(i), (e) and (f) have been met.

10. The condition in paragraph 1(b)(i) of Article 4 is as follows:

> (i) the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned which, in the case of import from a third country of specimens of a species listed in the Appendices to the Convention, shall be an export permit or re-export certificate, or copy thereof, issued in accordance with the Convention by a competent authority of the country of export or re-export;

11. The importation of agarwood products into the UK from a third country therefore requires prior presentation of:

    (1) An export permit or re-export certificate from the country of export issued in accordance with CITES, and

    (2) An import permit issued by the management authority in the UK.

12. Article 13 of the Regulation provides that each Member State shall designate a management authority with primary responsibility for implementation of the Regulation. In the UK, that body is the Department for Environment, Food and Rural Affairs which

acts through its executive agency, the Animal and Plant Health Agency ("APHA"), in relation to the issue of permits.

13. Article 5 of the Implementing Regulation makes provision as to the contents of permits, certificates and applications for those documents. They must include a description of specimens by reference to one of the codes contained in Annex VII. Units of quantity and net mass must be those contained in Annex VII.

14. The relevant codes for present purposes are as follows:

> *CHP* – Applies to chips of timber, especially Aquilaria. The preferred unit of measurement is expressed to be "kg".
>
> *OIL* – Applies to oil, including from plants. The preferred unit of measurement is expressed to be kg, or in the alternative "l" (litres).
>
> *POW* – Applies to powder. The preferred unit of measurement is expressed to be kg.
>
> *WPR* – Applies to wood product. The preferred unit of measurement is expressed to be the number of specimens, or in the alternative, kg.

15. Article 7(5) of the Implementing Regulation requires export permits and re-export certificates issued by third countries to be endorsed with certain information:

> 7(5) Export permits and re-export certificates shall be endorsed, with quantity, signature and stamp, by an official from the export or re-export country, in the export endorsement block of the document. If the export document has not been endorsed at the time of export, the management authority of the importing country should liaise with the exporting country's management authority, considering any extenuating circumstances or documents, to determine the acceptability of the document.

16. Resolutions made under CITES provide for the standard form of certificates and permits to be used in relation to the export and import of protected species. Box 14 is the "Export endorsement" and requires details of the quantity of goods, port of export, date of export together with a signature and official stamp. An explanatory note to Box 14 states as follows:

> To be completed by the official who inspects the shipment at the time of export or re-export. Enter the quantities of specimens actually exported or re-exported.

Alongside Box 14 is a further Box 15 "Bill of Lading/Air waybill number", for which the explanatory note states:

> Enter the number of the bill of lading or air way-bill if the method of transport used requires the use of such a document.

17. Box 9 requires a description of the specimens. The explanatory note to Box 9 states as follows:

> Describe, as precisely as possible, the specimens entering trade (live animals, skins, flanks, wallets, shoes, etc.)…

18. Article 13 of the Implementing Regulation requires applications for an import permit to be made allowing sufficient time for the import permit to be issued prior to importation.

19. The recitals to the Regulation refer to the need to lay down provisions for controlling trade and movement of endangered specimens within the Community and the need for common rules on the issue, validity and use of certificates issued under the Regulation. Further, in order to guarantee compliance, the recitals state that it is important for Member States to impose sanctions for infringement in a manner which is both sufficient and appropriate to the nature and gravity of the infringement.

20. Article 16 of the Regulation provides that Member States shall take appropriate measures to ensure the imposition of sanctions for various infringements of the Regulation, including:

> 1(a) introduction into, or export or re-export from, the Community of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorisation by the issuing authority...
>
> (b)-(m) ...
>
> 2. The measures referred to in paragraph 1 shall be appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens.

21. Article 8 of the Regulation provides for the control of commercial activities:

> 1. The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.
>
> ….
>
> 5. The prohibitions referred to in paragraph 1 shall also apply to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora.

22. In relation to agarwood items within scope, the restriction on commercial use including transporting them for sale therefore applies unless it can be proved to the satisfaction of the competent authority that they were introduced into the UK in accordance with the Regulation and the Implementing Regulation.

23. Breach of these prohibitions constitutes an offence in the UK by virtue of the *Control of Trade in Endangered Species (Enforcement) Regulations 1997* ("the Control of Trade Regulations"). In so far as relevant, regulation 8 of those regulations provides as follows:

> (2) Subject to paragraphs (4) and (5), any person who, contrary to Article 8 of the Principal Regulation, purchases, offers to purchase, acquires for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex B to the Principal Regulation which has been imported or acquired unlawfully shall be guilty of an offence.
>
> (5) A person shall not be guilty of an offence under paragraph (2) if he proves to the satisfaction of the court—

(a) that at the time when the specimen first came into his possession he made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully; and

(b) that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully.

24. Where agarwood items are imported into the UK without the prior presentation of the relevant permits and/or certificates, they are liable to forfeiture and seizure pursuant to provisions in the Customs and Excise Management Act 1979. There is also provision for such goods to be restored. The relevant provisions are as follows:

49(1) Where –

(a) …

(b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment;…

those goods shall, subject to subsection (2) below, be liable to forfeiture.

139 Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's armed forces or coastguard.

152 The Commissioners may, as they see fit —

(a) …

(b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts;

25. Sections 14 to 16 of the Finance Act 1994 provide a system of formal reviews and appeals in relation to decisions concerning the restoration of seized goods. It was common ground that the powers of the tribunal on an appeal against a review decision refusing to restore goods, which is an ancillary matter, are set out in section 16(4):

16(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say —

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

26. The approach which we should take in testing the reasonableness of the Review Decision in this appeal was not in dispute. The test to be applied is whether the review officer reached a conclusion which no reasonable review officer could have reached, whether he took into account an irrelevant matter, or whether he disregarded something to which he should have given weight (see Lord Lane in *Customs and Excise v JH Corbitt (Numismatists) Ltd* [1980] STC 231 and Lord Phillips in *Lindsay v C&E Commissioners* [2002] STC 588).

27. Both parties agreed that the if the Review Decision amounted to a disproportionate response to the application for restoration then that decision would be unreasonable. The position was succinctly stated following a review of the authorities by the FTT (Judge Redston and Mr Simon) in *Smouha v Director of Border Revenue* [2015] UKFTT 0147 (TC):

> 145. Drawing this together, the Border Force must exercise their discretion proportionately as that term is understood both under EU law and under the Convention, and that a failure to do so will make the decision unreasonable. In considering our jurisdiction under FA94 s 16(4) we are therefore required to consider not only the traditional *Wednesbury* test but whether Mr Brenton exercised the discretion given to the Border Force in a proportionate manner.

28. In determining the reasonableness of the Review Decision, we may consider evidence that was not before the review officer. We may find facts based on that evidence from which we may conclude that the decision under appeal was reasonable or unreasonable (see *Gora v Customs and Excise Commissioners* [2003] EWCA Civ 525 and *HM Revenue & Customs v Behzad Fuels (UK) Ltd* [2019] EWCA Civ 319). The burden is on AOCL to establish that the Review Decision was unreasonable and that we should exercise our powers under s 16(4).

FINDINGS OF FACT

29. Evidence on behalf of AOCL came from Mr Hussam Hassan, an accountant with AOCL who in March 2019 was the UK deputy regional manager. He gave evidence as to the nature of AOCL's business and the transactions which led to seizure of the Goods. His evidence included documentary evidence in relation to transactions in the Goods, and previous transactions in which AOCL had imported similar Oud products. Evidence on behalf of the respondent came from Officer Summers.

Background facts

30. We have briefly described above how Oud products are sourced from agarwood trees. There are various Oud products which come in various qualities and which are used for different purposes.

31. Oud oil is distilled from resin derived from the agarwood tree. It is generally very expensive and used in perfumes and scents.

32. Oud wood chips are used in bakhoor. Bakhoor is the Arabic term for the process of burning wood chips to create an aroma. Oud wood chips are naturally scented and may be used in bakhoor. Less expensive Oud wood chips known as mabtooth, mabsoos or majoon may be mixed with oils such as musk and sandalwood for burning.

33. Oud powder is used to create incense sticks for burning. It may also be compressed and used in bakhoor.

34. The Goods in the present case included wood chips which had been shipped to Saudi Arabia. They had been treated there with perfume oil before being shipped to AOCL in the UK.

Previous importations

35. Prior to 2018, AOCL had imported products similar to the Goods from Saudi Arabia. We were referred to the documentation in relation to two such importations in 2017 and 2018.

36. A re-export certificate for the first transaction was issued in Saudi Arabia on 1 June 2017 with a certificate number. The exporter was Arabian Oud Company and the importer was AOCL. The certificate was expressed to be valid until 24 November 2017. The goods were described as 183 kg of Agarwood Powder. The country of origin was Indonesia and details from the export permit from Indonesia were identified. Box 14 "Export endorsement" was not completed.

37. An import permit was issued by APHA and dated 27 June 2017 with reference 556732/02. The last day of validity was 24 November 2017. It referred to the same goods, including the code "POW". It also identified details from the Saudi Arabian re-export certificate, such as the certificate number, and from the Indonesian export permit.

38. The invoice for these goods from Arabian Oud was dated 23 July 2017 and covered various agarwood products. There were 10 items on the invoice cross referenced to the import permit using the import permit reference. It was suggested that goods described on the invoice as Mabsoos Kalemat, Mabsoos Kingdom and Mabsoos Al Shioukh were covered by the import permit. Mr Hassan described these as the same "powder product that was seized in 2019". However, the invoice also referred to various types of majoon as being covered by the import permit. We infer that the items on the invoice cross-referenced to the import permit are wood chips and not powder, as with the importation in 2019. The invoice referred to unit quantities for all these goods, ranging between 60 and 360, rather than weight.

39. The invoice also included goods imported by reference to different import certificates. One referred to "Agar wood chips" and another to "Dehn Oud (oil)". The agarwood chips were said to weigh 17 kg and the oil was said to weigh 11 kg.

40. The re-export certificate for the second transaction was issued in Saudi Arabia and was dated 5 July 2018 with a certificate number. It was expressed to be valid until 5 December 2018. The exporter was Arabian Oud Company, Riyadh. The importer was AOCL. The name of the plant was Agarwood and the description was "POWDER". The quantity was 69 kg. The country of origin was identified as Indonesia and details from the export permit from Indonesia were identified. Box 14 was not completed.

41. The import permit was issued by APHA with reference 571680/03 and dated 9 August 2018. The last day of validity was expressed to be 5 December 2018. It identified details from the Saudi Arabian re-export certificate and the Indonesian export permit. The specimens were described as: "POW: 69 kg of Agarwood powder".

42. The invoice referred to goods cross-referenced to a number of import permits. There were 6 types of goods referenced to the import permit just described – Mabsoos Kalemat, Mabsoos Al Shioukh, Majoon Kingdom, Majoon Kalemat, Majoon Al Shioukh and Majoon Al Arabia Al Mutawwar. Unit quantities were given rather than weight, ranging from 80 to 200.

43. The invoice also included goods imported by reference to different import certificates. One referred to "Agarwood chips" and another to "Dehn Oud – oil". The agarwood chips were said to weigh 36 kg but the oil appeared to have unit quantities.

Importation of the Goods

44. We now consider the documentation in relation to importation of the Goods which were seized. The re-export certificates which we refer to below were all in a form similar if not identical to various standard forms annexed to CITES.

45. The documentation in relation to the wood chip which was seized starts with a re-export certificate issued in Singapore on 6 March 2018. The exporter was identified as Ecimex and the consignee was identified as Arabian Co, Riyadh. The re-export certificate referred to two separate items. The first item was 3963 kg of agarwood powder originating in Indonesia with an export permit dated 29 November 2016. The export permit reference from Indonesia was identified as 17386/IV/SATS-LN/2016. The second item was 1033 kg of agarwood powder originating in Indonesia with an export permit dated 27 February 2017. The export permit reference from Indonesia was identified as 21927/IV/SATS-LN/2016. The re-export certificate was said to be valid until 5 June 2018. We note that Box 5 of the Singapore re-export certificate referred to the following special condition:

> BOX 15 OF PERMIT MUST BE ENDORSED BY AVA OR ICA PRIOR TO OR AT THE TIME OF EXPORT/RE-EXPORT. THIS PERMIT IS VALID FOR ONE CONSIGNMENT ONLY.

46. Box 15 of the re-export certificate was an "Export Endorsement by CITES Authority", equivalent to Box 14 of the standard form. It was an endorsement by "AVA" to the effect that the goods were exported from Singapore on 17 April 2018. We infer that the reference to "AVA" was to the "Agri-Food & Veterinary Authority" of Singapore whose stamp appears in Box 15 and who had issued the re-export certificate.

47. AOCL produced two re-export certificates:

(1) a re-export certificate issued in Saudi Arabia on 24 January 2019. It was expressed to be valid until 23 July 2019 and had reference 19-SA-000148-PD. The exporter was Arabian Oud Company, Riyadh. The importer was AOCL. The name of the plant was Agarwood and the description was "Wood Product". The quantity was 158 kg. The country of origin was identified as Indonesia. Box 14 "export endorsement" was not completed. The certificate also referred in Box 12 to country of origin as Indonesia and to the permit reference 17386/IV/SATS-LN/16 which was the same as one of the references on the Singapore re-export certificate.

(2) a second re-export certificate issued in Saudi Arabia also dated 24 January 2019 with the same reference 19-SA-000148-PD. It contained the same details as the re-export certificate just mentioned but significantly, the description of the goods was "POWDER".

48. We consider below the circumstances in which there came to be two Saudi Arabian re-export certificates for the same consignment.

49. A further re-export certificate related to the oil which was seized. It was issued in Saudi Arabia on 24 January 2019 with reference 19-SA-000149-PD. It was in the same form as the re-export certificates just mentioned, but referred to 1 kg of Agarwood "OIL". The country of origin was identified as Thailand with an associated export permit reference. We do not appear to have a copy of the Thai export permit but nothing appears to turn on that. Again, Box 14 "Export endorsement" was not completed.

50. Two import permits referencing these re-export certificates and the Indonesian export permit reference were issued by APHA.

51. The first import permit was dated 19 March 2019 with reference number 577878/01. The last day of validity was expressed to be 23 July 2019. It identified details from the first two Saudi Arabian re-export certificates described above and also the Indonesian permit reference referred to above. The specimens were described as: "WPR… (158 kg) powder". WPR is the code for wood products. Box 25 states "The importation of the goods described above is hereby permitted". It is stamped and signed by an officer of the APHA.

52. The second import permit was also dated 19 March 2019 with reference number 577878/02. The last day of validity was expressed to be 23 July 2019. It identified details from the third Saudi Arabian re-export certificate and also the Thai export permit reference referred to above. The specimens were described as: Agarwood "OIL" 1 kg. Box 25 states "The importation of the goods described above is hereby permitted". It is stamped and signed by an officer of the APHA.

53. There was no evidence as to the circumstances in which APHA issued the import permits. We did not have a copy of AOCL's application for the permits or any detail of the information supplied to APHA. We do not know what procedures APHA has to verify information to support the issue of import permits, in particular its procedures where re-export certificates have not been endorsed in Box 14.

54. The invoice from Arabian Oud Riyadh to AOCL for these importations identified 31 items and is dated 25 March 2019. There are 15 items referenced to the first import certificate and 1 item referenced to the second import certificate. The items referenced to the first import certificate were mainly varieties of mabsoos and majoon. There were also three items of "Dakhoun" which we infer is another type of bakhoor. Most included unit quantities, but there was one item of Mabsoos Arabian Oud Saib given a weight of 5 kg and one item of Majoon Al Asalah Saib given a weight of 4 kg. The item referenced to the second import certificate was described as Dehn Oud – Oil of which there were 216 units, which we understand were small bottles of oil. The value of the wood chips stated in the invoice was approximately US $19,700, and the value of the oil was approximately $11,500.

55. The Goods were shipped by reference to an Air Waybill from Riyadh to London Heathrow on 28 March 2019 and we understand they arrived on 29 March 2019. The Air Waybill was dated 25 March 2019. There is no reference in Box 15 of the re-export certificates to details of the Air Waybill.

56. Based on our findings of fact we can summarise the chronology as follows:

Date	**Action**
24 January 2019	Re-export certificates issued in Saudi Arabia
19 March 2019	Import certificates issued in UK
28/29 March 2019	Date of shipment

Seizure and the request for restoration

57. The shipment including the Goods was examined by Border Force officers at Heathrow Airport on 2 and 3 April 2019. An officer noted there were 292 boxes, of which 171 boxes were declared as including powder but which in fact contained wood chips.

58. On 4 April 2019 the Goods were seized. A notice of seizure was sent to AOCL identifying that 177 boxes of packaged agarwood wood chips had been seized. There was no mention of oil in the seizure notice, although the oil was identified in a covering letter. The notice stated that the Goods were liable to forfeiture pursuant to Article 4 of the Regulation. It is not clear why there was a discrepancy between the 171 boxes referred to in the officer's notebook and the 177 boxes identified in the notice of seizure. It was not suggested that anything turns on that discrepancy for present purposes.

59. By covering letter dated 4 April 2019, the Border Force informed AOCL that the agarwood chips were "unlicensed", the invoice made no mention of chips, only powder, and there were no valid CITES permits for agarwood chips. In fact the invoice did refer to various types of bakhoor wood chips, although it did not use the term "wood chips". The letter continued:

> I note you have supplied Saudi CITES export permits 19 -SA-000148PD and 19-SA-000149PD covering 158 kgs of *Aquilaria filaria* powder and 1 kg of *Aquilaria crassna* oil. Neither of these permits have been endorsed which is now a mandatory requirement for the permit to be deemed valid, further enquiries will need to be undertaken with the CITES Management Authority in Riyadh.

60. The evidence before us did not include any documentary evidence of such further enquiries, for example communications between the Border Force and either the Saudi Arabian authorities or APHA, or between APHA and the Saudi Arabian authorities. Officer Summers told us that enquiries were made by Border Force. The Border Force CITES team at Heathrow asked APHA to make enquiries with the Saudi Arabian authorities on 5 April 2019 and later in April 2019. We were not told the nature of those enquiries, but Officer Summers said that there was no response from the Saudi Arabian authorities. We accept that evidence, although it is unsatisfactory that AOCL was not informed of those enquiries prior to Officer Summers giving oral evidence.

61. AOCL did not challenge the legality of the seizure of the Goods. By letter to the Border Force received on 17 April 2019, AOCL requested restoration of the Goods, describing them as "177 boxes (158kg)" of woodchips and separately, 1kg of oil. In that letter, AOCL accepted that the Goods had been legally seized due to the "lack of valid CITES permits". It went on to say as follows in relation to the wood chips which were imported:

> … the discrepancy between the items listed and the CITES certificate 19-SA-000148PD we provided for this shipment, are due to us following the wording on the original CITES permit, number 17386/IV/SATS-LN/16, expedited in Singapore, which describes the product as "powder" instead of chips, please find enclosed a copy of this document.
>
> In the Saudi Arabia CITES certificate used to apply for the UK import permit (please find a copy enclosed) the items are described as "Wood Product", however when we sent the permit application with this wording, we were contacted by CITES UK stating that "Wood Product" wasn't a precise enough description of the material and that it should be changed to "Oud Chips". When importing Oud, we refer to "Oud Chips" as the larger pieces of wood that we also sell in our shops and therefore we believed this wasn't the correct description of the items, consequently we referred back to the original Singapore CITES where the materials are described as "Powder" as we thought this was the most suitable description of the product.

62. The contents of this letter were effectively confirmed by Mr Hassan in his evidence. He further said that it was felt in light of the exchange with APHA, that AOCL could not simply disregard what was on the Singaporean re-export certificate, which described the Goods as powder. His evidence was also that the description on the CITES certificate cannot be changed. It is not clear precisely when the exchange with APHA took place and there was no other evidence of the exchange before us. However, Mr Hassan's evidence was not challenged and we accept it. In the circumstances we find as follows:

    (1) AOCL made their application for an import permit to APHA using the Saudi Arabian re-export certificate identifying "Wood Product".

    (2) APHA questioned this description stating that "Wood Product" was not a sufficiently precise description and that it should be changed to "Oud Chip".

    (3) AOCL then somehow obtained an amended Saudi Arabian re-export certificate identifying "Powder" rather than Wood Product. We were not told how or when that was obtained.

    (4) APHA granted an import permit for the importation of "WPR … (158 kg) powder".

63. We recognise that there are certain difficulties with these findings. For example, the Saudi Arabian authorities appear to have amended the description on the re-export certificate despite Mr Hassan's evidence that descriptions could not be changed. Further, the import permit issued by the APHA uses the code WPR despite Mr Hassan's evidence that they had originally challenged the use of that code. The import permit includes a more specific description of "powder" but we do not know why the APHA did not use the code POW. Whilst it is not ideal, we have made our findings of fact doing the best we can with the evidence available to us.

64. It appears, and we accept, that AOCL eventually used the description of powder in the application for one of the import permits for two reasons:

    (1) For consistency with the Singaporean re-export certificate, and

    (2) Because they considered powder was a more suitable description for the products than Oud chip.

65. In doing so, we are satisfied that AOCL was not following the instruction given by the APHA to the effect that the most precise description of the Goods was Oud Chips. Further, we do not accept that "powder" was a more suitable description for this part of the Goods. Just because AOCL reserves the description Oud chips for larger pieces of wood does not mean that the wood chips being imported could properly be described as powder. In fairness, Mr Watkinson did not suggest that powder was being imported.

66. There were no such issues of description in the documentation supporting importation of the oil. The issue with the oil documentation was solely that the re-export certificate did not include an export endorsement.

67. The Border Force replied to AOCL's request for restoration by letter dated 26 April 2019 seeking copies of any retrospective CITES certificates or permits held or applied for by AOCL. Subsequent correspondence in evidence does not appear to be complete, but by August 2019, AOCL had instructed JMW Solicitors to act on their behalf. In a letter dated 12 August 2019, JMW asked where the Border Force investigation was up

to and what further information was required. We do not know whether there was any response to that letter.

68. In a letter dated 24 December 2019, Border Force refused the request for restoration. The description in that letter of the goods seized was inaccurate. It referred to 77 boxes of Agarwood woodchips, 158 kg of Agarwood powder and 1 kg of Agarwood oil. The letter included a summary of the Border Force's policy for the restoration of restricted or prohibited items which have been seized:

> The general policy regarding the improper importation of prohibited or restricted items into the UK is that they will not be offered for restoration. However, each case is looked at on its merits to consider whether there are any *exceptional* circumstances that would warrant a departure from that policy.

69. The letter went on to give reasons for refusing restoration of the Goods as follows:

> I conclude that there are no exceptional circumstances that would justify a departure from the Commissioners' policy as you did not provide valid re export Saudi CITES permit for the Agarwood powder and agarwood oil which makes the UK CITES import permits invalid. Also you did not provide any permits for the Agarwood woodchips, and taken together this could be construed as a deliberate evasion of CITES legislative requirements.
>
> As the goods do not have CITES permits and are therefore not legally in the UK, if I were to restore them to you, I believe that you would still sell the goods to your customers which would mean you would commit a criminal offence under section 8 (1) or (2) of the Control of Trade in Endangered Species regulations 1997 (COTES)
>
> I can therefore confirm on this occasion **the goods will not be restored.**

70. We note at this stage that neither Officer Summers in his evidence nor Ms Muldoon in her submissions sought to make or rely upon any allegation that AOCL deliberately sought to evade the CITES requirements. Further, the officer refusing restoration appears to have been under the impression that the Goods included powder, wood chips and oil.

The Review Decision

71. JMW wrote on 7 February 2020 requesting a review of the decision to refuse restoration. The basis on which they sought a review was set out in a letter dated 17 March 2020. JMW effectively asserted as follows:

    (1) The Saudi re-export certificates for powder and oil were valid.

    (2) There was no deliberate evasion of CITES requirements.

    (3) The logical way to circumvent any criminal offence if the Goods were to be restored and AOCL were to sell the Goods would be for Border Force to send the Goods back to Saudi Arabia.

72. The review was conducted by Officer Summers, who gave evidence. His review letter is dated 18 March 2020 and he upheld the original decision not to restore the Goods. He referred to the general policy on restoration which we have described above. He went on to consider the circumstances of the seizure and whether there were exceptional or mitigating circumstances which justified restoration and whether the decision not to restore was proportionate. His conclusions may be summarised as follows:

    (1) AOCL had failed to obtain valid re-export certificates for the Goods.

(2) The agarwood wood chips were misdescribed on the re-export certificate and the import permit as powder.

(3) There were no exceptional reasons to justify restoration.

(4) In the absence of a valid import certificate, restoration of the Goods for commercial dealing in the UK would involve AOCL committing an offence.

(5) The decision not to restore was proportionate and reasonable.

73. Officer Summers said he would consider any new information which JMW wished to provide. JMW wrote on 14 April 2020 inviting Mr Summers to consider the following matters:

(1) The review letter did not deal with the points they had made in their letter dated 17 March 2020, acknowledging that this letter may have crossed with the review letter.

(2) The reasons given by AOCL in their letter dated 17 April 2019 as to why the Goods were described as powder in the import certificate.

(3) An investigation by the National Crime Agency had found no evidence of deliberate evasion.

(4) AOCL had successfully imported the same items in the same way previously.

(5) The goods could be sent back to Saudi Arabia to avoid any offences being committed.

74. It is not clear what response there was to this letter, but JMW lodged a notice of appeal with the Tribunal on 17 April 2020. Mr Watkinson acknowledged that at some stage there had been an investigation into the importation by the National Crime Agency but that no proceedings arose as a result of that investigation.

75. Officer Summers confirmed in his oral evidence that he did not view AOCL has having deliberately sought to evade CITES requirements. It was put to Officer Summers that AOCL as an innocent defaulter was being treated in the same way as someone who deliberately sought to avoid CITES requirements which was wholly disproportionate. Officer Summers did not accept that was the case.

76. In the course of his oral evidence, Officer Summers addressed the possibility of the Goods being returned to Saudi Arabia, either by Border Force or AOCL. He maintained that was not an option because APHA would not issue a re-export certificate for goods without a valid import permit. However, he had not confirmed with APHA that was the case. Further, he took the view that the Goods could not be restored on condition that AOCL re-exported them because there would be a breach of Regulation 8 of the Control of Trade Regulations. AOCL would be transporting the Goods ultimately with a view to sale of the Goods where the Goods had been imported unlawfully.

77. Officer Summers had not considered the previous importations of similar goods by AOCL. In his evidence he noted that the re-export certificates for those importations were not endorsed in Box 14 and the import permits mis-described the goods as powder. As a result, he considered that if those goods had been examined at Heathrow then they too would have been seized.

78. As we have said, there was no evidence as to the practices and procedures of APHA. Officer Summers had no knowledge of their practices and procedures. He could not comment on whether APHA would view as significant the absence of any endorsement in Box 14. His focus was on the fact that the re-export certificates were invalid and the

import permits mis-described the wood chip. Further, he did not consider it relevant that this was AOCL's first "offence". He was concerned that restoration would enable AOCL to use the Goods for an unlawful purpose. He also considered that AOCL had shown a blasé attitude when it took it upon itself to describe the Goods as powder after APHA had told them to use the description Oud chips.

79. Officer Summers accepted that if the Goods could not be restored because AOCL would inevitably commit an offence by dealing with the Goods, then he had very little discretion to restore the Goods. He gave an example of goods being imported for purposes other than commercial purposes, where there would still be a discretion. In the case of goods being imported for a commercial purpose, he suggested it would be necessary to obtain a retrospective re-export certificate or import permit as necessary which might then give rise to exceptional circumstances justifying restoration. However, he did not know whether APHA would issue a retrospective import permit other than in circumstances where they had made a mistake.

80. Officer Summers did acknowledge that in his view the mis-description of the Goods in the import permit was a "minor infraction". He said that if the only error had been one of mis-description and the re-export certificates had been valid with Box 14 completed, then the Goods may have been restored. In this case, however, it was not simply a misdescription. AOCL had been told to describe the wood chip as Oud chips but for their own reasons did not do so.

81. During his evidence, Officer Summers referred to the existence of quotas on the export of agarwood products from the countries of production. He suggested that information available from the CITES system of record-keeping was necessary to ensure compliance with those quotas. This was not something Officer Summers took into account in his Review Decision. Further, without evidence as to system of quotas and how it works in practice it is not something we can take into account in assessing the reasonableness of the Review Decision.

CONSIDERATION OF THE ISSUES

82. AOCL has not sought to challenge the legality of the seizure. It is common ground therefore that the Goods were lawfully seized because the re-export certificates and the import permit in the case of the wood chips were invalid. There is no suggestion that the import permit for the Oud Oil was invalid. The issue we must decide is whether or not the Review Decision refusing to restore the Goods was reasonable. The burden is on AOCL to establish all facts and matters by reference to which it says that the Review Decision was unreasonable.

83. AOCL contends that the Review Decision was unreasonable and that the Respondent should be directed to re-review the original decision. It relies on four broad grounds:

    (1) It failed to take into account relevant factors.

    (2) It took into account irrelevant factors

    (3) The policy on which the Review Decision was based is unreasonable. In particular, it fails to take into account whether lesser sanctions would still meet the aims of the policy.

    (4) The Review Decision gave rise to a result which was disproportionate on the facts.

84. We shall consider each of these criticisms in turn, recognising that there is some overlap between the four headings. At this stage, we make a number of general observations as to some of Mr Watkinson's criticisms of the Review Decision. Firstly, in relation to the

absence of export endorsements on the Saudi Arabian re-export certificates. Secondly, in relation to mis-description of the wood chips being imported in the relevant import permit.

Absence of export endorsements

85. Article 7(5) of the Implementing Regulation specifically requires a re-export certificate to have an export endorsement in Box 14. Where the re-export certificate has not been endorsed, DEFRA, as the management authority presumably acting through the APHA, is required to liaise with the exporting country's management authority, to consider any extenuating circumstances or documents, and to determine the acceptability of the document. We note that it is implicit in Article 7(5) that a re-export certificate which is not endorsed at the time of export may still be accepted as a valid certificate.

86. We have found on the basis of Officer Summers' evidence that the APHA at least attempted to liaise with the Saudi Arabian management authority, without success. There is no evidence that it considered any extenuating circumstances or determined the acceptability of the Saudi Arabian re-export certificates.

87. It is unfortunate that neither party sought to adduce evidence from the APHA as to its attempts to contact the Saudi Arabian management authority, any determination it made as to the acceptability of the re-export certificates or as to its practices and procedures generally. In the circumstances we do not know whether the APHA did determine the acceptability of the re-export certificates without the export endorsements. We have already identified that Border Force ought to have informed AOCL that the APHA had attempted unsuccessfully to liaise with the Saudi authorities. Further, there appears to be no reason why AOCL should not itself have engaged with the APHA to determine its position in relation to the defects in the re-export certificates. AOCL had previously engaged with APHA when it was applying for the import certificates. Indeed, it had previously engaged with the Saudi authorities and obtained an amended re-export certificate.

88. Mr Watkinson submitted that where APHA has issued an import permit pursuant to Article 4(2) of the Regulation, it must have been satisfied that the requirements in Article 4(1)(b)(i) had been satisfied. Namely, that there was documentary evidence that an export permit or re-export certificate had been issued in accordance with the Convention by a competent authority of the country of export or re-export.

89. There is force in that submission. Ultimately however, we cannot accept it. The importer requires an import permit before the goods leave the country of export. Article 13 of the Implementing Regulation therefore requires applications for an import permit to be made allowing sufficient time for the import permit to be issued prior to importation. The import permit must therefore be issued prior to the endorsement of Box 14 on the re-export certificate.

90. This was the case in relation to the Goods. The import permits were issued on 19 March 2019. At that stage, the export endorsement could not have been completed because the goods were not re-exported from Saudi Arabia until 28 March 2019. The explanatory note to Box 14 requires it to be completed by an official who inspects the shipment at the time of re-export. We have no evidence as to the practices and procedures of the APHA in relation to these requirements, in particular as to how it satisfies itself in such circumstances that there is a valid re-export certificate. It may be that the APHA leaves it to the Border Force to ensure the export endorsement is validly completed. We simply cannot say on the evidence before us.

91. We do have reservations as to the implications for legitimate trade where a re-export certificate is found not to include an export endorsement. However, without detailed evidence as to how such a situation might arise and how the system works in practice where Article 7(5) is engaged, those reservations cannot affect this decision.

Mis-description of the Goods

92. Mr Watkinson submitted that the descriptions used in the import permit and by extension the re-export certificates do not make a difference to the effectiveness of CITES protection. Having said that, he accepted that the purpose of the regime was to provide a documentary audit trail for protected goods being traded internationally. He submitted that what was significant was that the description of the goods in the import permit matched the description in the Singaporean re-export certificate. The wood chips being imported were described as powder in the import permit and also in the re-export certificate.

93. We initially considered this to be a bold submission. We had difficulty seeing why it should not be significant that goods described in the certificates and permits supporting importation did not match the description of the goods actually being imported. How is the Border Force to know that the goods being imported are the same goods as those described in the re-export certificate and the import permit? It seemed to us fundamental to any system requiring the movement of goods to be supported by certificates and permits, for the actual goods to match the description in the documentation.

94. Having said that, Officer Summers' evidence was that the mis-description in this case was a "minor infraction". That evidence was not challenged in any way. We must therefore put aside our misgivings and accept Officer Summers' evidence at face value.

95. AOCL accepts that it did not follow the APHA's instruction to describe the wood chips as Oud Chips. It described them as powder. We are not satisfied that there was any good reason for AOCL to take that approach. We note that the APHA did issue an import certificate describing those goods as powder. However, we have not been provided with sufficient evidence as to the detail of the exchange between AOCL and the APHA to make any finding as to how that came about. It is not clear to us why the APHA issued an import permit with the description powder having told AOCL to use the description Oud chips. There is no reason AOCL could not have adduced evidence from the APHA in this regard.

96. We turn now to the four grounds on which AOCL says that the Review Decision was unreasonable.

(1) Failure to take into account relevant factors

97. Mr Watkinson submitted that the Review Decision failed to take into account various relevant factors.

98. We accept that AOCL imported similar agarwood products in 2017 and 2018 in the same way as 2019 and without any controversy. However, we do not regard that as a relevant factor. There is no evidence that those goods were examined by the Border Force. It cannot be said that AOCL was entitled to consider that Border Force had in some way waived the defects in the supporting documentation.

99. It is not disputed that AOCL was acting in good faith in relation to its CITES obligations. The original decision maker stated that AOCL's conduct could be taken to be deliberate evasion of the compliance regime. Officer Summers did not refer to that observation in his Review Decision. We do not consider that he thereby adopted the view of the original

decision maker. We accept Officer Summers' evidence that he did not view AOCL as having deliberately sought to evade the compliance regime.

100. We refer above to Mr Watkinson's submission that the APHA had been satisfied as to the validity of the re-export certificates and the description of the wood chip in the import permit. Mr Watkinson says that Officer Summers failed to take this into account.

101. For the reasons given above we cannot be satisfied that the APHA regarded the re-export certificates as valid without the export endorsement.

102. In relation to mis-description of the wood chips, Officer Summers did say that this was a minor infraction and that if that was the only defect in the documentation then the wood chips may have been restored. However, it was not the only defect because the re-export certificates did not include the export endorsement. Further, in relation to the wood chips, the APHA had instructed AOCL to describe those goods as Oud Chips.

103. We are not satisfied that Officer Summers failed to take into account the position of the APHA. The material before Officer Summers did not identify that the APHA had accepted the re-export certificates as valid without the export endorsement. The material did identify that the APHA had instructed AOCL to use the description Oud chips in its application, but also that the APHA had issued an import permit describing those goods as powder. Officer Summers was clearly not satisfied with the reasons given by AOCL for describing the wood chips as powder, and neither are we on the basis of the evidence before us. We do not know why APHA issued an import permit with the description powder when the relevant goods were wood chips.

104. Officer Summers did not expressly refer to these matters in the Review Decision, but it was clear from his evidence that his decision would have been the same taking the evidence we have heard into account. We are satisfied that Officer Summers would have been entitled to reach the same decision if he had taken them into account. Indeed, there was no mis-description in relation to the Oud oil. The decision not to restore the Oud oil was therefore solely based on the invalidity of the re-export certificate.

105. Mr Watkinson submitted that the Review Decision failed to take into account the possibility of the Goods being exported back to Saudi Arabia. We deal with this criticism under our third heading below.

106. Mr Watkinson criticised the Border Force for having failed to make enquiries as to why Box 14 of the re-export certificates was not endorsed, either directly with the CITES authority in Saudi Arabia or through APHA. We have found that the Border Force did ask APHA to make enquiries with the Saudi Arabian authorities and that there was no response from the Saudi Arabian authorities. The failure to inform AOCL of that fact does not affect the question of whether the Review Decision was reasonable or not.

107. In the circumstances AOCL has not satisfied us that the Review Decision failed to take into account any relevant factors.

(2) Taking into account irrelevant factors

108. Mr Watkinson submitted that the Review Decision took into account an irrelevant factor. Namely, the suggestion that AOCL had deliberately contravened the Regulations and the Implementing Regulation.

109. For the reasons given under the previous heading, we are satisfied from Officer Summers' evidence that he did not make the Review Decision on the basis that AOCL had deliberately contravened the Regulations.

(3) Reasonableness of the policy

110. The Respondents' policy on the restoration of seized goods was described in the original decision refusing restoration dated 24 December 2019. We repeat it here for the sake of convenience:

> The general policy regarding the improper importation of prohibited or restricted items into the UK is that they will not be offered for restoration. However, each case is looked at on its merits to consider whether there are any *exceptional* circumstances that would warrant a departure from that policy.

111. We did not understand Mr Watkinson to be challenging the reasonableness of the policy itself. Rather, he challenged the reasonableness of the result of the policy when applied to the facts of this case. For the sake of completeness, we can say that we are satisfied that the general policy described above is a reasonable policy which is intended to encourage and help to ensure compliance with the CITES regime.

112. Mr Watkinson's particular criticism under this heading was that Officer Summers did not consider whether a lesser sanction falling short of non-restoration would still fulfil the legitimate aims of the Regulation and CITES. He submitted that the failure to consider a lesser sanction meant that AOCL was treated in the same way as a party who had deliberately and in bad faith failed to comply with the CITES regime.

113. The lesser sanction which Mr Watkinson proposed was primarily restoration on terms that the Goods were re-exported to Saudi Arabia. At one stage he suggested that restoration for a fee was a possible sanction. However, he did not pursue that suggestion. We consider he was right not to do so because commercial dealing with the Goods would fall foul of the offence created by Article 8 of the Regulation and regulation 8 of the Control of Trade Regulations.

114. Mr Watkinson maintained that if the Goods remained under the control of the Border Force then they could be re-exported to Saudi Arabia. We are not satisfied that is a realistic condition. In particular, we do not know whether the APHA would grant a re-export certificate. In our view, it was for AOCL to enquire with the APHA as to whether, in the circumstances, it would grant a re-export certificate.

115. In the course of submissions, Mr Watkinson acknowledged two possibilities in relation to re-exporting the Goods to Saudi Arabia:

    (1) Restoration to AOCL on condition that the goods were immediately exported to Saudi Arabia. This would involve AOCL obtaining a re-export certificate from the APHA.

    (2) Border Force themselves obtaining a re-export certificate from the APHA and sending the goods back to Saudi Arabia.

116. Mr Watkinson clarified that he was not saying that the Border Force should take responsibility for re-exporting the Goods. Rather, Mr Summers should have recognised the possibility that APHA might grant AOCL a re-export certificate so that they could be re-exported to Saudi Arabia. By taking the view that this was impossible, Mr

Summers fettered his discretion. He should have enquired with APHA whether they would have sanctioned the goods being re-exported to Saudi Arabia.

117. Ms Muldoon submitted that it was not for the Border Force to explore the possibility of APHA granting a re-export certificate for the Goods to be returned to Saudi Arabia. It was for AOCL to explore that possibility with APHA in support of their application for restoration. We agree with that submission. It is not therefore necessary for us to consider whether action taken by AOCL to re-export the Goods, even with a re-export certificate from APHA, would amount to a breach of regulation 8 of the Control of Trade Regulations. There is certainly an argument that AOCL would also require a valid import permit to be retrospectively granted by the APHA in relation to the wood chips.

118. In all the circumstances we are not satsified that it was unreasonable of Officer Summers not to consider applying a lesser sanction.

119. We acknowledge that without restoration of the Goods, AOCL is being treated in the same way as someone who deliberately seeks to avoid the CITES regime. Mr Watkinson submits that this should lead us to a conclusion that the decision not to restore must be unreasonable. We do not accept that submission. There are other criminal sanctions which might apply to such persons, including for example prosecution for offences under the Control of Trade Regulations for using false certificates.

(4) Proportionality of the Review Decision

120. Mr Watkinson submitted that the result of the Review Decision was wholly disproportionate to what he described as "simple technical errors by a company acting in good faith". He submitted that the Review Decision did not properly apply the Article 16 sanctions. It wrongly took a binary approach: If there was a breach of the law then the reason did not matter and there should be no restoration. This led to the same outcome whether the breach was deliberate or innocent. We have already dealt with the latter point.

121. We accept that the proportionality of sanctions is at the heart of the compliance regime. Article 16(2) of the Regulation clearly establishes that proposition. However, it is aimed at all the infringements identified in Article 16(1), not just cases involving invalid permits and certificates. For many of those infringements different sanctions may be appropriate depending on the nature and gravity of the infringement. For example, Article 16(1)(a) covers both using a false certificate and using an invalid certificate. Where a false certificate is used, the goods may be seized and not restored. The importer may also be prosecuted for an offence under the Control of Trade Regulations.

122. We are not satisfied on the evidence before us that the defects in the re-export certificates in particular were simple technical errors. The CITES regime requires certificates and permits to contain the information set out in the standard forms in Annex 2, including the export endorsement. Article 1(b)(i) of the Regulation requires the re-export certificate to be issued in accordance with CITES. Not only that, but Article 7(5) of the Regulation expressly requires completion of the export endorsement, with certain requirements where it has not been completed. There is no evidence as to the position of the APHA in relation to the acceptability of the re-export certificates. Against that

background, we cannot be satisfied that failure to complete the export declaration was a simple technical error.

123. We have had regard to the helpful discussion in *Smouha* at [136] – [159]. Each case must be considered on its own facts. Overall, on the facts of this case we are not satisfied that the refusal to restore the Goods is disproportionate to the nature of the default.

CONCLUSION

124. For the reasons given above we must dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

125. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 11 April 2022