Neutral Citation Number: [2017] EWCA Civ 332

Case No: A3/2016/0213

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
Upper Tribunal (Tax and Chancery Chamber)
Mr Justice Hildyard
[2015] UKUT 80 (TCC)

Royal Courts of Justice,
Strand, London, WC2A 2LL
Date: 04/05/2017

Before :

LADY JUSTICE ARDEN
LORD JUSTICE LINDBLOM
and
LORD JUSTICE HENDERSON

- -

Between:

	Colaingrove Limited	**Appellant**
	- and -	
	The Commissioners for Her Majesty's Revenue and Customs	**Respondent**

- -

- -

Roderick Cordara QC (instructed by **PricewaterhouseCoopers LLP**) for the **Appellant**

Jeremy Hyam QC (instructed by **HMRC's Solicitor's Office**) for the **Respondents**

Hearing dates: 7 February 2017

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Judgment Approved **Order at foot of this judgment.**

Lady Justice Arden:

1. The issue on this appeal is whether the reduced rate for VAT on supplies of fuel applies where the supply of fuel would otherwise be treated for VAT purposes as part of a larger supply of other goods or services, and VATable at the rate applicable to those goods or services. It is common ground that this is the sole issue and that it falls to be determined as a matter of the interpretation of the relevant domestic legislation, namely Group 1 in Schedule 7A to the Value Added Tax Act 1994 ("VATA"). The relevant legislation is set out in the Appendix to this judgment. Schedule 8 deals with zero rating for VAT

purposes.

2. The appellant owns a holiday park with static caravans. It had a contract with the *Sun* newspaper to provide caravan holidays to *Sun* readers ("*Sun* holidaymakers"). It was a term of the holiday let that the customer would pay a sum for accommodation in the caravan and using its facilities, including electricity for lighting and cooking and so on. The electricity was a minor part of the charge for the supply of the accommodation in the caravan, which carried VAT at the normal rate. Under the general principles of VAT law, laid down in C-349/96 *Card Protection Plan ("CPP")* [1999] 2 AC 600, the supply of electricity was, subject to any special provision, treated as part of a single, composite supply ("a composite supply") of accommodation taxable at the rate for that supply.

3. There is a reduced charge for the supply of domestic fuel or power in VATA ("the fuel charge"): see section 29A, which incorporates Group 1 of Schedule 7A ("Group 1"). A feature of the fuel charge is that it is defined by reference to the use of fuel, which must be domestic use.

4. However, the respondents ("HMRC") determined that the fuel charge did not apply as the electricity was supplied as part of the holiday let.

5. The appellant appealed from the determination of HMRC to the First-tier Tribunal ("FTT"), who disagreed with HMRC's determination and allowed the appeal. The FTT held, because of the further decision of the European Court of Justice (now the Court of Justice for the European Union or "CJEU") in C-94/09 *EC v France* ("the *French Undertakers* case"), that *CPP* did not apply. Supplies could be taxed at separate rates where it was clear that Parliament intended this result, as it had done in Schedule 7A.

6. In the *French Undertakers* case, France had applied a reduced rate of VAT, which under EU legislation member states could apply to funeral services generally, only to that element of the service performed when the funeral undertakers transported the body. The CJEU accepted that, where permitted by EU legislation, member states could apply a reduced VAT rate on an individual item of a single supply, subject to the principle of fiscal neutralitiy.

7. It is common ground that EU legislation permits member states to elect to tax the supply of fuel at a reduced rate. (There is some disagreement between the parties as to precisely which option to derogate applies, but that point does not matter in this case). The UK took advantage of this option by enacting the fuel charge.

8. The FTT went on to hold that the individual element of a single composite supply of electricity had to be a "concrete and specific" aspect of the larger supply. The FTT found that that requirement was satisfied in this case. It held:

> Put shortly, these provisions seem to us to indicate that, quite apart from the expectations of a typical consumer of the supply as to what he/she was enjoying by receiving the supply, Parliament has provided for other criteria to apply in determining the nature of a supply of domestic fuel and power which is chargeable at the reduced rate. We agree with Mr Cordara that these provisions indicate Parliament's intention that a supply of fuel or power may qualify to be taxed at the reduced rate by reference not only to the nature of what is supplied (the 'characteristics of the goods or services themselves' – see: section 29A(4) VATA) but also by reference to the beneficial social purpose to be achieved by the supply – for example, the supply of gas or electricity in whatever quantity for use in self-catering holiday accommodation or a caravan (see: Note 6, Group 1, Schedule 7A, VATA).

9. The result was that the appellant was only liable to VAT on the supply of electricity at the lower rate.

10. The FTT considered that that conclusion preserved the principle of fiscal neutrality and avoided the distortion of competition.

11. HMRC appealed to the Upper Tribunal ("UT").

12. Before its appeal was heard, the UT (Vos J) decided in *Wm Morrison Supermarkets plc v Revenue and Customs Commissioners* [2013] STC 2176 that the *French Undertakers* case was not relevant because VATA imposes no specific restriction on the application of the reduced rate for domestic fuels. *Wm Morrison* concerns the supply of a barbeque with charcoal. Charcoal carries VAT at a reduced rate. Vos J held that the *French Undertakers case* can only apply where the domestic legislation makes specific provision for the reduced rate to apply to a concrete and specific situation.

13. Following that decision, HMRC's appeal to the UT was limited to the single issue that the fuel charge on its true interpretation does not authorise the reduced rate where the supply forms part of a single composite supply (UT Judgment, paragraph 38).

14. In its judgment dated 10 March 2015, the UT (Hildyard J) disagreed with the FTT and by its order reversed that of the FTT. In terms of general approach, the UT applied the decision in *AN Checker Heating & Service Engineers v HMRC* [2013] UKFTT 506 ("*Checker*"). In that case, HHJ Paines QC decided that it had to be clearly shown that Parliament intended a reduced rate for energy-saving materials to apply to a composite supply of those and other materials ([28]-[43]). The UT held that Section 29A of VATA did not clearly use the word "supply" in its sense of a single, composite supply as found by applying the principles of the jurisprudence of the CJEU, and that therefore there was no mandate for the reduced rate of VAT to be charged on an element of a composite

supply. The key paragraphs in the UT's judgment are the following:

> 88 Despite the lucidity of Mr Cordara's arguments, and their initial appeal in general terms, I have eventually concluded that (as identified in *AN Checker*) the stumbling block is the combined effect of the *CPP* line and the provision (both in the former section 2(1A) and the current section 29A of the VAT Act) that a reduced rate of VAT may only be charged on a "supply that is of a description for the time being specified in Schedule 7A ".
> 89 As to the *CPP* line, I have been persuaded by Vos J's exegesis of the cases in *WM Morrison* that neither the *French Undertakers* case nor the other CJEU cases he addressed (*French Republic*, *Talacre* , *Zweckverband* and *Purple Parking*) 'trump' or oust the *CPP* analysis. I agree that the two lines of cases concern different questions: the *CPP* line being concerned with "defining the nature of transactions for VAT purposes" consistently with the general principle of a uniform rate and the requirement of fiscal neutrality, the *French Undertakers* line being concerned whether and within what confines Member States can "identify specific aspects of what would otherwise be a single supply and treat them as falling inside or outside an exemption or reduced rate". I must therefore construe the provisions of the VAT Act consistently with the CPP line.
> 90 As to section 29A of the VAT Act, notwithstanding the attraction of Mr Cordara's submission that 'supply' has no special or autonomous meaning, and that the emphasis in item 5 of Schedule 7A on the domestic use of the electricity as being the qualifying characteristic attracting a reduced rate, it is still necessary to determine whether an element of what the CPP line requires to be treated as a single complex supply is itself a 'supply' within the meaning of the section.
> 91 I have been persuaded by the analysis in *AN Checker* that there is at least doubt that this was Parliament's intention, that the doubt is increased by the fact that Parliament should be taken as being aware of the distinction by then drawn in the cases between a supply and its component or ancillary elements, and that the benefit of such doubt as there may be must fall in favour of a strict interpretation.
> 92 Applying together the logic of the *CPP* line and the actual wording of section 29A of the VAT Act, the 'supply' (being, in line with the *CPP* case, the single complex supply of serviced accommodation) is not a supply specified in Schedule 7A, even though a supply of electricity to such accommodation is.

15. The appellant appeals to this Court.

Appellant's submissions

16. The appellant's case is essentially that EU law permits a member state to apply a reduced rate to an individual element of a composite supply, that this is also permitted by Group 1 on its true interpretation, and that this interpretation is consistent with fiscal neutrality

and fulfils the intention of Parliament in enacting the fuel charge.

EU law

17. Mr Roderick Cordara QC, for the appellant, submits that EU case law is clear that a member state can carve out "concrete and specific" parts of supplies, and apply different rates across what would be a *CPP* single supply: see (Case C-251/05) *Talacre Beach Caravan Sales Ltd v Customs and Excise Comrs* [2006] STC 1671, cited by the Upper Tribunal at [89], above.

18. In order to fall within the exception permitted by EU law to the principles laid down in *CPP*, there has to be an explicit departure on the basis of a notion of concrete and specific supplies: see *Talacre*, and *Mauritius Revenue Authority v Central Water Authority* [2013] UKPC 4. He describes such a departure as a departure "from the *CPP* world".

19. Accordingly, on Mr Cordara's submission the only question is whether Parliament has achieved this. On his submission it has achieved this by carving out in Schedule 7A a class of supply based on use, and by thus applying a "use-based" test.

Domestic legislation

20. Mr Cordara submits that the word "supply" can have a different meaning in the fuel charge from its meaning in other parts of VATA or under VAT law.

21. Mr Cordara submits that the court should approach the word "supply" in VATA without any preconception that it means only a supply in the technical sense resulting from the jurisprudence of the CJEU, or, as he puts it "agnostically". Mr Cordara explains that Schedule 7A was enacted as a response to *EC v UK* [1988] STC 456, where the CJEU held that a reduced rate could only be given for the benefit of final consumers and thus, he submits, for a social purpose.

22. Mr Cordara submits that the word "supply" in VATA must be construed contextually. Under section 5(2)(a) VATA, a supply might be "any form of supply". That might be a supply which was part of some larger supply. Mr Cordara submits that the mere fact that the supply of one matter forms part of a larger supply does not mean that it ceases to exist (see *Mauritius* at [26]).

23. Mr Cordara submits that section 29(4) VATA, which confers power to describe a supply of goods or services by reference to matters unconnected with the characteristics of the goods themselves and by reference to their use, is an indication that Parliament intended

that the fuel element of a composite supply should be separated for VAT purposes.

24. On Mr Cordara's submission, the UT should not have applied *Checker*. The judge was wrong to look for degrees of clarity in the legislation as that was not a proper approach to statutory interpretation.

Fiscal neutrality

25. Mr Cordara submits that his interpretation is consistent with fiscal neutrality. By contrast the UT's interpretation applies VAT to similar transactions in a different manner. To demonstrate this, Mr Cordara presents his '"caravan on the hill" argument'. Some caravans are let for holidays. Their occupants do not have the benefit of the fuel charge. But other caravans are parked by their owners on Colaingrove's pitches, and they have a separate supply. In those cases, HMRC has accepted that there is no single supply of serviced accommodation and accordingly VAT is applied at the lower rate on the supply of power.

26. In addition, he points out that, if the electricity had been metered and supplied direct by the energy supplier, rather than a fixed charge by the accommodation provider, there would have been a separate supply to which the fuel charge attached. Yet in all those cases the supply is for domestic use. Mr Cordara submits that this offends fiscal neutrality.

Intention of Parliament

27. It would, he submits, be odd if, applying that use-based test, where the same use was being made of the supply in each instance, the reduced rate was sometimes available, and sometimes not, as would be the result if the fuel charge does not apply where fuel is a minor part of a composite supply but otherwise applies.

28. Moreover, submits Mr Cordara, that result can be avoided under the UT's reasoning, by having a contract for two separate supplies. He accepts that *CPP* establishes that supplies must not be artificially split, but submits that the FTT in this case found in the appellant's favour that there was no value shifting involved in the charging mechanism for the fuel element. In so far as the UT or HMRC considers that the fuel charge should not be applied to composite supplies because of the risk that an excessive proportion of the total consideration was attributed to the reduced charge element, there are on Mr Cordara's submission adequate tools to deal with value-shifting: see *CR Smith Glaziers v HMRC* [2003] STC 419.

29. On Mr Cordara's submission, it is clear that Parliament intended that any domestic supply of fuel should carry VAT at the reduced rate, and this would be so even if it was

part of a larger supply. The court should also recognise the reality of holiday accommodation. Residents are unlikely to have separate contracts for the supply of electricity or gas. This is likely to be supplied by the provider of the accommodation.

30. Mr Cordara submits that Parliament's intention can be seen from a number of Groups in Schedules 7A and 8:

a) Group 1, Schedule 7A, Note 4 (fuel). This defines the circumstances in which a single supply of fuel and power for domestic and non-domestic purposes can be apportioned into one supply for domestic use, and one supply for non-domestic use;

b) Group 6, Schedule 7A, Note 1 (dealing with house conversions where there is a supply of building services and only part of the supply is of "qualifying services"). Under this provision, a single supply of residential conversion services can be apportioned so that VAT at a reduced rate is applied to the element of the supply consisting of qualifying conversion services.

c) Group 7, Schedule 7A, Note 1 (residential renovations and alterations). This provides that a single supply of residential renovation services can be apportioned so that VAT at a reduced rate is applied to the element of the supply consisting in qualifying renovation or alteration services.

d) Group 5, Schedule 8, Note 11 (dealing with the zero-rating of the construction of buildings). This enables a single supply of construction services to be split between qualifying and non-qualifying elements.

31. Mr Cordara further submits that the UT failed to give adequate consideration to the social purpose behind the fuel charge. The fuel charge falls within the power to derogate conferred by Article 110 of Directive 2006/112 (the Principal VAT Directive). This power applies where, prior to 1 January 1991, member states applied a reduced rate lower than the minimum laid down in Article 99 of that Directive. It may only be exercised for clearly defined social reasons and the benefit of the final consumer. The fuel charge was designed for a social purpose – to ease the burden on domestic users of fuels without distinction. Mr Cordara repeats his "caravan on the hill" argument. The courts cannot divine Parliamentary intention inconsistently with the language and legislative history of the provision: see *Investment Trust Companies (in liquidation)* [2015] EWCA Civ 82, [81] (since the hearing the Supreme Court has allowed an appeal in this case: [2017] UKSC 29).

32. Mr Cordara submits that electricity is a far more compelling case for a carve-out than the charcoal in the barbeque in *Wm Morrison* since it is an integral part of the provision of

holiday accommodation. Charcoal does not enjoy the same proximity or juxtaposition to the principal supply.

HMRC's submissions

33. Mr Jeremy Hyam QC, for HMRC, submits that the judge rightly identified the single issue in this case which is one of the construction of domestic legislation. He submits that any provision of domestic law which seeks to exercise a power to derogate must be restrictively construed. As HHJ Paines QC held in *Checker*:

> 28 Moreover, since the reduced rate is the exception, the restriction of its application to concrete and specific aspects, such as the standing charge conferring entitlement to a minimum quantity of electricity on the account holders, is consistent with the principle that exemptions or derogations must be interpreted restrictively.

34. Mr Hyam submits that the legislation would also have to make it clear that it was applicable to composite as well as stand-alone transactions. In this case, there is on his submission no clear legislative intention to apply the fuel charge to a sub-element of a complex supply. To the extent that the appellant argues that two caravans on a hilltop would be treated differently, this is unsurprising – the two customers bought different things: one bought a single supply of serviced accommodation, and the other bought the use of a caravan pitch with optional electricity.

35. HMRC support the distinction drawn between *CPP* and *French Undertakers*, and the decision by Vos J in *Wm Morrison* that the latter cannot trump the former: it is still necessary to determine first whether there was a composite supply according to the principles established by *CPP*. There is a distinction between (a) determining which elements within a category of supply may properly be treated as attracting a reduced rate (the *French Undertakers* case) and (b) deciding, on a case-by-case basis, whether any particular supply or purported supply was of an element of a composite transaction (*CPP*): see the decision of the CJEU in Case C-117/11 *Purple Parking Ltd and another v Revenue and Customs Commission*ers [2012] STC 1680 at [40].

36. Mr Hyam submits that the plain meaning of section 29A is that VAT shall be charged at the reduced rate on any supply that is *of a description* specified in Schedule 7A. In this case, the supply was of serviced holiday accommodation, which is not in the Schedule. For the appellant's interpretation to be correct, VATA would on Mr Hyam's submission have to provide in terms that when fuel is supplied as part of a composite supply, it attracts the lower rate. VATA does not so provide.

37. Mr Hyam further submits that neither the reference in section 5(2)(a) VATA to any form of supply nor paragraph 4 of Schedule 4 (Matters to be treated as a supply of goods or services), which makes the supply of fuel a supply of goods and so merely provides a

mechanism for differentiating supplies of goods from supplies of services, assists the appellant. Neither provision has the effect of excluding the principles of a composite supply established by *CPP*. Vos J was correct to conclude, on reviewing the FTT's decision in this case, that, if the FTT had asked whether UK legislation provided for a reduced rate to apply to the "concrete and specific" element of the supply of domestic fuel, it would have concluded it had not because there was no specific provision for domestic fuel provision to caravan rentals: see *Wm Morrison* at [66].

38. Mr Hyam submits that Mr Cordara places excessive weight on the concept of "use" of fuel. The appellant's argument depends on focusing solely on the "use" to which fuel and power is put, regardless of whether it is a single supply, or a complex supply. The appellant cannot show that there is a supply of fuel on EU law principles.

39. Mr Hyam rejects the argument that there is no coherent purpose in excluding final users such as *Sun* holidaymakers from the fuel charge. The purpose of Schedule 7A is to ensure the reduced rate is applied only to supplies of fuel for domestic use. The social purpose of the reduced rate of fuel for domestic use is obvious. The *Sun* holidaymakers, however, are the final consumers of a supply of services (serviced holiday accommodation). There would be no obvious social purpose in expanding the lower rate of VAT to cover serviced holiday accommodation.

40. Mr Hyam submits that the "caravan on the hill" argument does not compare like with like. The *Sun* holidaymaker has purchased a package of goods and services and paid a standard rate, fuel is not optional. The touring caravan owner has purchased the right to use a pitch, and optionally chosen to purchase electricity. This "optionality" is important for understanding the supply in issue: see C-42/24 *Minister Finansow v Wojskowa Agencja Mieszkaniowa v Warszawie*.

41. Mr Hyam also rejects the argument that the UT attached excessive weight to the potential for value-shifting. The UT concluded that there had to be a uniform and consistent approach and meaning to what constitutes a supply (UT judgment, [87]).

42. Mr Hyam submits that fiscal neutrality adds nothing. The two supplies are neither identical nor similar from the consumer's point of view. One is a complex supply of serviced accommodation which must incorporate the provision of power for the rented caravan, the other is the optional supply of goods in the domestic context. The two are only similar if one focuses exclusively on the use to which the electricity is put.

43. For the reasons given by the judge and by HHJ Paines QC in *Checker*, such indications as there are in schedule 7A are not enough. A single supply can yield to segregation (para 92 to 93) but that was not achieved in this case.

44. Mr Hyam also submits that it is no part of his case that the supply of fuel ceased to exist

(see the *Mauritius* case at 1547C).

My analysis

45. In my judgment, HMRC are correct to say that the meaning of VATA is plain. The fuel charge does not apply where the supply is a composite supply of some other service.

46. Section 5 VATA applies to supplies of any form, but, as Mr Hyam submits, that does not mean that something which is not a supply for VAT purposes is to be treated as such. Moreover, a statute is not the place for a variable contextual meaning. Unless there is good reason for some other interpretation, a word used in a statute conventionally has the same meaning wherever it occurs in that statute. Paragraph 4 of Schedule 4, which states that the supply of fuel is to be treated as a supply of goods, throws no light on the issue in this case.

47. Section 29A applies the reduced rate to supplies which are "of a description" specified in Schedule 7A. So the fuel charge is defined not by reference to use but by reference to the supplies described in Schedule 7A. It is not therefore a mere use-based test, as Mr Cordara submits.

48. Within Schedule 7A and 8 are a number of provisions for apportionment, but none of them applies where the fuel is part of a composite supply of fuel and some other goods or services. So the provisions for apportionment are not an indication that Parliament intended the fuel charge to apply where there was a composite supply of which fuel was the minor part, but to the contrary. If it had been Parliament's intention that the reduced rate should apply to an element of the supply, it would have inserted some similar apportionment provision. This is not a case (such as the exclusion of contents from caravans) where the *CPP* principles need to be excluded since fuel forms the minor part of a composite supply and is subject to the limitation that it must be supplied for domestic use.

49. HMRC argue that the fuel charge would have to be clearly worded because the UK is exercising a derogation from the Principal VAT Directive. HHJ Paines QC in *Checker* made this point at [28]. I accept this legal principle, but it is not necessary to go this far in the present case.

50. Because under Schedule 7A the fuel charge depends on a supply of fuel, I agree with Vos J when he held in *Wm Morrison* that there would have to be specific wording in order for the legislation to apply to a composite supply.

51. Mr Cordara submits that this interpretation fails to give effect to the emphasis placed on use by Parliament. I do not accept the premise of this argument. The emphasis in section

29A is not on use but on the description of the supply. Use is necessarily a defining characteristic but need not be a defining purpose. While (except in the case of charities) every supply must be for residential use, not every provision of fuel for domestic purposes will be within the fuel charge.

52. Mr Cordara submits that the UT's interpretation does not give effect to the intention of Parliament to apply the charge to any use of fuel for domestic purposes. His "caravan on the hill" argument has been invoked to show that the line between such a supply and the supply of fuel as part of a composite supply is without justification.

53. I reject that argument. The fuel charge is functional in that it applies according to domestic use but, as explained above, it does not follow that all domestic use is included. In his rejection of this argument, Mr Hyam shows that there is no necessary reason why Parliament should have applied the fuel charge to composite transactions. Its purpose may have been limited to helping people in their homes rather than also subsidising the prices of self-catering accommodation for holidaymakers. That is a rational distinction, and enables the provision to be purposively interpreted on the basis of the language of the provision. In those circumstances the courts cannot say that the provision is inserted for some other purpose. Still less, as HHJ Paines QC pointed out at paragraph 43 of his judgment in *Checker*, can the courts write in any words to enable a different result to be achieved.

54. Finally, I accept the submission of Mr Hyam that the doctrine of fiscal neutrality does not mandate any different result in this case. The supply of holiday accommodation is a different transaction from the supply of fuel to the owner of a caravan parked on a pitch owned by the appellant.

55. For the reasons given above, I would dismiss this appeal.

Lord Justice Lindblom:

56. I agree.

Lord Justice Henderson:

57. I also agree.

Appendix

5 Meaning of supply: alteration by Treasury order

(1) Schedule 4 shall apply for determining what is, or is to be treated as, a supply of goods or a supply of services.

(2) Subject to any provision made by that Schedule and to Treasury orders under subsections (3) to (6) below—

(a) "supply" in this Act includes all forms of supply, but not anything done otherwise than for a consideration;…

29A Reduced rate

(1) VAT charged on—

(a) any supply that is of a description for the time being specified in Schedule 7A, or

(b) any equivalent acquisition or importation,

shall be charged at the rate of 5 per cent.

(2) The reference in subsection (1) above to an equivalent acquisition or importation, in relation to any supply that is of a description for the time being specified in Schedule 7A, is a reference (as the case may be) to—

(a) any acquisition from another member State of goods the supply of which would be such a supply; or

(b) any importation from a place outside the member States of any such goods.

(3) The Treasury may by order vary Schedule 7A by adding to or deleting from it any description of supply or by varying any description of supply for the time being specified in it.

(4) The power to vary Schedule 7A conferred by subsection (3) above may be exercised so as to describe a supply of goods or services by reference to matters unrelated to the characteristics of the goods or services themselves.

In the case of a supply of goods, those matters include, in particular, the use that has been made of the goods.

Schedule 7A: Charge at Reduced Rate

Group 1: Supplies of Domestic Fuel or Power

Item No 1

Supplies for qualifying use of—

(a) coal, coke or other solid substances held out for sale solely as fuel;

(b) coal gas, water gas, producer gases or similar gases;

(c) petroleum gases, or other gaseous hydrocarbons, whether in a gaseous or liquid state;

(d) fuel oil, gas oil or kerosene; or

(e) electricity, heat or air-conditioning.

Notes:

Matters included or not included in the supplies

(1) Item 1(a) shall be deemed to include combustible materials put up for sale for kindling fires but shall not include matches.

(2) Item 1(b) and (c) shall not include any road fuel gas (within the meaning of the Hydrocarbon Oil Duties Act 1979) on which a duty of excise has been charged or is chargeable. …

Meaning of "qualifying use"

3 In this Group "qualifying use" means—

(a) domestic use; or

(b) use by a charity otherwise than in the course or furtherance of a business.

Supplies only partly for qualifying use

4 For the purposes of this Group, where there is a supply of goods partly for qualifying use and partly not—

(a) if at least 60 per cent of the goods are supplied for qualifying use, the whole supply shall be treated as a supply for qualifying use; and

(b) in any other case, an apportionment shall be made to determine the extent to which the supply is a supply for qualifying use.

Supplies deemed to be for domestic use

5 For the purposes of this Group the following supplies are always for domestic use—

(a) a supply of not more than one tonne of coal or coke held out for

sale as domestic fuel;

(b) a supply of wood, peat or charcoal not intended for sale by the recipient;

(c) a supply to a person at any premises of piped gas (that is, gas within item 1(b), or petroleum gas in a gaseous state, provided through pipes) where the gas (together with any other piped gas provided to him at the premises by the same supplier) was not provided at a rate exceeding 150 therms a month or, if the supplier charges for the gas by reference to the number of kilowatt hours supplied, 4397 kilowatt hours a month;

(d) a supply of petroleum gas in a liquid state where the gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the gas is not intended for sale by the recipient;

(e) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such gas;

(f) a supply of not more than 2,300 litres of fuel oil, gas oil or kerosene;

(g) a supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.

Other supplies that are for domestic use

6 For the purposes of this Group supplies not within paragraph 5 are for domestic use if and only if the goods supplied are for use in—

(a) a building, or part of a building, that consists of a dwelling or number of dwellings;

(b) a building, or part of a building, used for a relevant residential purpose;

(c) self-catering holiday accommodation;

(d) a caravan; or

(e) a houseboat.

Interpretation of paragraph 6

7 (1) For the purposes of this Group, "use for a relevant residential

purpose" means use as—

(a) a home or other institution providing residential accommodation for children,

(b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder,

(c) a hospice,

(d) residential accommodation for students or school pupils,

(e) residential accommodation for members of any of the armed forces,

(f) a monastery, nunnery or similar establishment, or

(g) an institution which is the sole or main residence of at least 90 per cent of its residents, except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.

(2) For the purposes of this Group "self-catering holiday accommodation" includes any accommodation advertised or held out as such….

ORDER

UPON HEARING Mr Roderick Cordara QC for the Appellant and Mr Jeremy Hyam QC for the Respondent

IT IS ORDERED THAT:

1. The Appellant's appeal is dismissed.
2. The Appellant do pay the Respondent's costs on the standard basis to be subject to detailed assessment if not agreed.

Dated this 4th day of May 2017