

## **Mobile Cranes and the *Nationwide* Case**

**by Nicola Shaw**

Nationwide Access Limited v. Commissioners of Customs & Excise (not yet reported) is a welcome recent decision of the High Court, which helps to firmly establish the parameters of the permitted use of red diesel.

Road vehicles generally are required to pay hydrocarbon oil duty. However, anyone using oil for “excepted vehicles” is entitled to a rebate of excise duty. Schedule 1 of the Hydrocarbon Oil Duties Act 1979 lists such “excepted vehicles” and paragraph 9 provides an exception in respect of mobile cranes. Nationwide Access Limited was concerned with the proper construction of the term “mobile crane”.

The particular vehicles under consideration were the “Bronto Skylift” and the “Simon Galaxy”. At first instance, the VAT & Duties Tribunal found that the vehicles did not fall within the term “mobile crane” because they were essentially telescopic booms designed to raise or lower platforms to required positions. The Tribunal rightly pointed out that not every vehicle that is capable of lifting and moving objects will be classified as a crane – take fork lift trucks, mechanical grabs or tower wagons as examples. It considered that the meaning of the term “crane” was firmly entrenched in the English language and

essentially conveyed the image of an item of plant with a projecting boom or jib over which were braced lifting wires and pulleys. Thus, the Tribunal decided that the vehicles in question were not mobile cranes, because the lifting operations that they undertook were effected by means of a hydraulic telescopic lifting arm and not by rope and pulleys.

This decision is patently wrong. The Tribunal disregarded the unchallenged evidence before it that the term “mobile crane” was common industrial usage to describe the vehicles. Furthermore, it drew an artificial divide between vehicles which essentially perform the same function, albeit by different means. It cannot be right that the determining feature of the “mobile crane” is not what the vehicle does, but the mechanical process by which it does it.

The taxpayer appealed the decision to the High Court and succeeded. It was held that whilst a crane usually did consist of a projecting arm and jib with a rope and pulley mechanism, these features were not essential attributes. Mr. Justice Dyson disagreed with the Tribunal. He held:

“The essential feature of a crane is that it is a machine that lifts objects and moves them to a radius. It is the lifting to a radius that distinguishes a crane from, say, an ordinary lift, which goes up and down on its vertical axis.”

He also affirmed the evidence of those in the industry. He considered the terminology of those who manufacture and deal in the vehicles to be a “good starting point” for the proper classification of the vehicles:

“If those in the industry choose to call these vehicles “mobile cranes” (admittedly, as well as “booms” and “platforms”), then there needs to be some basis for saying that this is a misnomer.”

Mr Justice Dyson therefore held that the Tribunal had given an unduly restrictive meaning to the term “mobile crane” and he allowed the taxpayer’s appeal.

### **The Implications of the Decision**

Not only does this decision clarify the position with regard to what is required from a “mobile crane”, but it also indicates an encouraging willingness on the part of the Courts to take account of technological advances in implementing legislative intention. Certainly, when red diesel treatment for mobile cranes was first introduced (in 1947), the vehicles in question would not have been in common use. However, there is nothing to justify a different treatment for the vehicles in question from the treatment granted to rope and pulley cranes, given that they both perform the same function.

The position with regard to the particular vehicles in question is now clear, and the decision will also help users of other vehicles determine whether

or not they qualify as mobile cranes. Furthermore, it is not thought that Customs intend to appeal the decision and despite an anticipated change in the law to combat the effects of the decision, this year's Finance Bill in fact introduces no such provisions, so the position will remain the same, at least until the next Budget.