



Neutral Citation: [2025] UKFTT 1278 (TC)

Case Number: TC09676

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2023/09638

VALUE ADDED TAX – Credit for import VAT as input tax – Importer not owner of goods – whether goods used for the purposes of the business carried on by the taxpayer – Article 168 Principal VAT Directive – ss 24-27 Value Added Tax Act 1994 – EU principle of fiscal neutrality – extent of Marleasing principle – Appeal Dismissed

Heard on: 23 and 24 September 2025

Judgment date: 29 October 2025

Before

TRIBUNAL JUDGE ROBIN VOS

Between

TSI INSTRUMENTS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Laurent Sykes, of counsel, instructed by Walker Morris LLP

For the Respondents: Thomas Holt, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. The appellant, TSI Instruments Ltd (“TSI”), imports goods into the UK for repair and servicing. Between 2019-2023 it paid import VAT on the import of these goods and claimed credit for the import VAT as input tax in its VAT returns.

2. HMRC however say that TSI is not entitled to an input tax credit for the import VAT as it is not the owner of the goods. They have issued VAT assessments or adjustments for the VAT periods from 10/19-4/23. Following HMRC's acceptance that its original calculations needed to be amended, the amount of VAT at stake is just under £8.5 million.

3. TSI appeals against these assessments and adjustments on the basis that there is no requirement in the relevant legislation that the importer should be the owner of the goods in order for any import VAT to be available as an input tax credit. Instead, it says that, as long as the goods are imported for the purposes of its taxable business and it bears the costs of the import, the import VAT can be credited as input tax.

4. I should mention, as the parties are aware, that a very similar issue came before the Tribunal in *Piramal Healthcare UK Limited v HMRC* [2023] UKFTT 891(TC) in 2023. I was a member of the Tribunal which heard that appeal and which decided the point in question in favour of HMRC. However, significant additional points were deployed by Mr Sykes on behalf of TSI which I have considered carefully and with an open mind.

5. It will be noted that the period which is relevant to this appeal spans the UK's departure from the EU on 31 January 2020 and the end of the implementation period on 31 December 2020. It is however common ground that, for the purposes of this appeal, there is no difference in the treatment of transactions which took place before or after those dates.

6. TSI has confirmed that it does not challenge the validity of any of the assessments/adjustments. Based on the documentary evidence, I am satisfied that the relevant requirements have been complied with. The only issue for the Tribunal to determine is therefore whether, in the circumstances, the import VAT paid by TSI is available as an input tax credit.

FACTUAL BACKGROUND

7. The facts are not in dispute. Although both parties provided witness statements, the content of those statements was accepted and none of the witnesses were called to give oral evidence. As well as the witness statements, the Tribunal also had a bundle of correspondence and documents. Based on this evidence, the relevant background facts can be summarised relatively briefly.

8. TSI Inc is a US company. TSI is a subsidiary of TSI Inc. There is another subsidiary based in Germany, TSI GmbH. The group manufactures scientific equipment mainly used for air and environmental measurement.

9. The main activity of TSI in the UK is the service, repair and calibration of TSI group products which have been sold to customers around the world. At no point does TSI become the owner of the goods which remain in the ownership of the customers.

10. Where the goods are owned by customers outside the UK, they have to be imported into the UK to enable TSI to carry out its services. Some of the items are sent direct to TSI by the customers. However, the majority are sent to TSI in Germany and then imported into the UK from there. In a small number of cases, TSI has to send items to TSI Inc for the repair to be carried out. The goods are sent back to TSI by TSI Inc and then returned by TSI to the customer.

11. TSI uses a number of shippers (such as UPS, FedEx and DHL). TSI is named as the importer and pays the charges made by the shipping company for dealing with the import declaration and customs clearance formalities on behalf of TSI as well as paying the import VAT. The customer pays the actual cost of shipping to the UK or to TSI in Germany. Where goods are sent from TSI in Germany to TSI in the UK, TSI in Germany pays the shipping costs.

12. The costs incurred by TSI in importing the goods into the UK are taken into account in the charges made by TSI to its customers for the services which it provides. These costs are however relatively small and are not separately itemised.

13. Despite a VAT audit in 2019, HMRC did not question TSI's practice of claiming the import VAT as input tax until February 2023 when it raised queries in relation to the VAT return for the 01/23 VAT period. It was this that led to HMRC's decision to refuse the deduction of the import VAT as input tax and to the issuing of VAT assessments for prior VAT periods going back to the 10/19 VAT period.

THE LEGAL PRINCIPLES

14. In interpreting legislation relating to VAT, it remains necessary to interpret that legislation consistently with the relevant EU Directives (subject to any limits of the *Marleasing* principle – see further below) and decisions of the Court of Justice of the European Union (“CJEU”) before 1 January 2021 remain binding on the Tribunal. This is the effect of the relevant provisions of the European Union (Withdrawal) Act 2018 despite the amendments made by the Retained EU Law (Revocation and Reform) Act 2023 given the terms of s 28 Finance Act 2024. It is therefore necessary to look both at the EU legislation and the UK domestic legislation.

EU Legislation

15. The relevant EU provisions are contained in EU Council Directive 2006/112/EC of 28 November 2006 known as the Principal VAT Directive or PVD.

16. Article 1(2) provides that:

“On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.”

17. Article 2(1) PVD describes the transactions which are subject to VAT. As well as supplies of goods and services, this includes “the importation of goods” (Article 2(1)(d)). This confirms that, for VAT purposes, the importation of goods is a “transaction”.

18. The key provision relating to the deduction of VAT incurred by a taxpayer is Article 168 PVD which, to the extent relevant, reads as follows:

“Insofar as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the member state in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

...

(e) the VAT due or paid in respect of the importation of goods into that member state.”

19. Article 168 is supplemented by Article 178 PVD which provides that:

“In order to exercise the right of deduction, a taxable person must meet the following conditions:

...

(e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated;”

20. Mr Sykes notes that none of these provisions contain a requirement that, in order to deduct VAT paid on the importation of goods, the taxable person must be the owner of those goods.

21. As can be seen, the key points in determining whether a deduction is available for import VAT paid by a taxable person is whether the goods are used for the purposes of that person’s taxed transactions and whether the import VAT relates to a cost component of those transactions. I will return to the case law which considers the circumstances in which these requirements can be said to have been satisfied.

Domestic Legislation

22. As is to be expected, the domestic legislation closely follows the PVD although does not refer to the concept of “cost components”.

23. Section 1 Value Added Tax Act 1994 (“VATA”) explains that VAT is charged both on the supply of goods and services as well as “on the importation of goods into the United Kingdom” (s 1(1)(c) VATA).

24. The VAT which can be deducted by a taxable person is referred to as “input tax”. Section 24 VATA provides that:

“(1) Subject to the following provisions of this section, “input tax”, in relation to a taxable person, means the following tax, that is to say –

(a) VAT on the supply to him of any goods or services;

(b) ...; and

(c) VAT paid or payable by him on the importation of any goods,

being (in each case) goods or services used or to be used for the purposes of any business carried on or to be carried on by him.”

25. Section 25 VATA confirms that a taxable person is entitled to a credit for any input tax which is allowable under s 26, which in turn provides that input tax is allowable if it is attributable to taxable supplies.

26. The combined effect of these provisions is that, in line with Article 168 PVD, a deduction for import VAT is available if the goods are used for the purpose of taxable supplies made by the taxable person.

27. Regulation 29 Value Added Tax Regulations 1995 (“VATR”) contains an additional condition for the deduction of input tax in respect of an importation of goods which is that the person claiming the deduction must “hold a document authenticated or issued by the proper officer, showing the claimant as importer, consignee or owner ...” (Regulation 29(2)(c) VATR).

28. Regulation 29 VATR is slightly different to Article 178 PVD as it refers to the taxable person not only being the importer or consignee but also potentially being the owner. As Mr Sykes points out, this carries an inference that there are circumstances in which an importer or consignee who is not the owner of the goods may obtain an input tax credit for any import VAT.

29. Section 27 VATA deals with a situation where goods which belong to another person are imported by a taxable person and are used for private purposes. It reads as follows:

“27 Goods imported for private purposes

(1) Where goods are imported by a taxable person and -

(a) at the time of importation they belong wholly or partly to another person;
and

(b) the purposes for which they are to be used include private purposes either of himself or of the other,

VAT paid or payable by the taxable person on the importation of the goods shall not be regarded as input tax to be deducted or credited under s 25; but he may make a separate claim to the Commissioners for it to be repaid.

(2) The Commissioners shall allow the claim if they are satisfied that to disallow it would result, in effect, in a double charge to VAT; and where they allow it they shall do so only to the extent necessary to avoid the double charge.

(3) In considering a claim under this section, the Commissioners shall have regard to the circumstances of the importation and, so far as appearing to them to be relevant, things done with, or occurring in relation to, the goods at any subsequent time.

(4) Any amount allowed by the Commissioners on the claim shall be paid by them to the taxable person.

(5) The reference above to a person’s private purposes is to purposes which are not those of any business carried on by him.”

30. Mr Sykes makes two points in relation to s 27 VATA. The first is that the part of s 27(1) which states that the import VAT is not input tax which can be deducted would be unnecessary if HMRC are right that import VAT paid by someone who is not the owner of the goods cannot be deducted as input tax in any event.

31. The second is that if, under EU law, the import VAT cannot be deducted, the domestic legislation cannot be interpreted in a way which is consistent with EU law under the *Marleasing* principle as it would be contrary to the clear terms of s 27 VATA.

32. I will return to both of these points in due course. However, before doing so, it is appropriate to look at the case law (both EU and domestic) which sets out the principles to be applied in interpreting the relevant legislation.

Cost components and use for the purposes of taxed transactions

33. The requirement that goods are used for the purposes of taxed transactions or that the VAT in question relates to a cost component of such a transaction has been explained by the CJEU as requiring a “direct and immediate link” between the transaction giving rise to the VAT which the taxable person seeks to deduct and the taxable output transactions undertaken by that person (see *BLP Group Plc v Customs and Excise Commissioners* (Case C-4/94) [1995] STC 424 at [19] and *Midland Bank Plc v Customs and Excise Commissioners* (Case C-98/98) at [24]).

34. Input tax is also deductible if the transactions are part of the general overheads of the business even if there is no direct and immediate link with a particular output transaction as there is a direct and immediate link with the taxable person’s business as a whole (see *Midland* at [31]). However, in this case, TSI does not suggest that the import of the goods forms part of its general overheads and so this aspect is not relevant in this particular case.

35. The search for a “direct and immediate link” is not straightforward. The CJEU confirmed at [25] in *Midland* that it is for the domestic courts to apply the test “to the facts of each case before them and to take account of all the circumstances surrounding the transactions at issue” but declined to give any further guidance.

36. The CJEU did however observe at [30] in *Midland* that the requirement for a direct and immediate link:

“presupposes that the expenditure incurred in obtaining [the goods or services] was part of the cost components of the taxable transactions. Such expenditure must therefore be part of the costs of the output transactions which utilise the goods and services acquired.”

37. This was confirmed by CJEU in *Skatteverket v AB SKF* (Case C-29/08) [2010] STC 419 where the court explained at [60] that:

“... whether there is a direct and immediate link is based on the premise that the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities.”

38. This does not however mean that there has to be a direct correlation between the price charged for the output transaction and the cost of the input transaction. As the Court of Appeal noted in *Revenue and Customs Commissioners v Royal Opera House Covent Garden Foundation* [2021] EWCA Civ 910 at [17]:

“The reference to ‘costs components’ in art 1 might suggest that the cost of the goods or services supplied to the taxable person must be reflected in the price charged for the relevant output supplies made by the taxable person. That is not, however, the case. As art 168 makes clear, it is the fact that the goods or services supplied to the taxable person are used ‘for the purposes of’ the taxed supplies made by the taxable person that gives rise to the right of deduction.”

39. An illustration of this is provided by ‘*Sveda*’ *UAB v Valstybine mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos* (Case C-126/14) [2016] STC 447. In that case, the taxpayer constructed a recreational and discovery path which was offered to the public free of charge but along which the taxpayer sold food, drinks and souvenirs. The CJEU concluded that there was a direct and immediate link between the costs of constructing the path and the sale of refreshments and souvenirs.

40. The Advocate General noted at [45] that:

“The existence of an objective economic link between input and output transactions is therefore crucial to the question whether the costs are incorporated into the price of a service as understood in case law. A merely causal link is clearly not sufficient. However, if an input transaction objectively serves the purpose of the performance of certain or all output transactions of a taxable person, there is a direct and immediate link between the two as understood in case law. This is because in such a case the input transaction constitutes, from an economic perspective, a cost component in the provision of the respective output transaction. As the wording of art 168 of the VAT Directive already indicates, that therefore depends on the objective purpose of the use of an input transaction.”

41. So, whilst an objective economic link between the input transaction and the output transaction is necessary, it is not always the case that the cost of the input transaction must track through to the price charged for the output transaction.

42. It is important to note that the requirement for an economic link is not a “but for” test. This is illustrated by the decision of the Court of Appeal in *Customs and Excise Commissioners v Southern Primary Housing Association Limited* [2004] STC 209. In that case, the taxpayer purchased land in respect of which it paid VAT. It then sold the land to a housing association and entered into a development contract with the housing association for the construction of houses on the land.

43. The taxpayer sought to deduct the VAT paid on the purchase of the land on the basis that there was a direct and immediate link between the purchase of the land and the development contract. The Court of Appeal decided that there was no direct and immediate link explaining at [32] that:

“The land purchase transaction was commercially necessary to make its performance commercially possible, but it was not a cost component of the contract itself in the same way as the costs of materials used. There is a link with the contract but the link was not direct and immediate. The development contract would not have been made but for the associated land purchase and sale. But ‘but for’ is not the test and does not equate to the ‘direct and immediate link’ and ‘cost component’ test.”

44. The principles I take from these cases are as follows:

(1) In determining whether, following a supply or an import, goods have been used for the purposes of taxable transactions or whether the transaction giving rise to the VAT claimed as input tax is a cost component of a taxable transaction, it is necessary to determine whether there is a direct and immediate link between those transactions.

(2) The link must (objectively) be a direct economic link but that does not mean that the cost of the input transaction must be reflected in the price charged for the output transaction.

(3) The relevant link is not established solely because the output transaction would not have happened but for the input transaction. It is still necessary to show a direct economic link between the two.

45. It is worth noting at this stage that TSI’s case is that the cost of the input transaction is in fact reflected in the price of the relevant output transactions. TSI argues that the relevant input transaction is the act of importation of the goods. Mr Sykes submits on behalf of TSI that the direct and immediate (economic) link is established where the taxable person bears the costs of importation.

Direct and immediate link in the context of import VAT

46. All of the authorities mentioned above relate to supplies of goods or services and not to VAT charged on the importation of goods. Very often, of course, the import of goods may be linked to a purchase (and therefore a supply) of goods. In those circumstances, there is unlikely to be any problem in deducting the import VAT as the necessary link between the import and an output supply will be clear.

47. However, in cases such as the present, where the importer is not the owner of the goods, the link is less clear, as, although the import VAT is generally calculated on the market value of the goods imported (see Article 74 of EU Regulation 952/2013 of 9 October 2013 (Union Customs Code or UCC) and Part 12 of the Customs (Import Duty) (EU Exit) Regulations 2018/1248 – in particular regulations 108, 120 and 121), the taxable person does not incur any cost equivalent to the market value of the goods imported and so there cannot be a direct economic link between the value of the goods imported and any output transaction. It is for

this reason that Mr Sykes submits that the direct economic link is present where the taxable person bears the cost of importation.

48. There are relatively few cases where this issue has been considered but there are two decisions of the CJEU which are relevant as well as two decisions of this Tribunal.

49. In *Skatteministeriet v DSV Road A/S* (Case C-187/1) the taxpayer was a Danish transport company transporting goods from Denmark to Sweden. As a result of breaches of the relevant customs procedures, DSV became liable to import VAT in Denmark.

50. One of the questions referred to the CJEU was whether the Danish authorities could refuse “a deduction of the import VAT pursuant to Article 168(e) of the VAT Directive, where the import VAT is charged to a carrier of the goods in question who is not the importer and owner of the goods but has simply transported and been in charge of the customs dispatch of the consignment as part of its freight forwarding operations, which are subject to VAT?”

51. The CJEU stated at [49] the general principle as follows:

“...under the wording of Article 168(e) of the VAT Directive, a right to deduct exists only insofar as the goods imported are used for the purposes of the taxed transactions of a taxable person. In accordance with the settled case law of the Court concerning the right to deduct VAT on the acquisition of goods or services, that condition is satisfied only where the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities (see judgments in *SKF*, C-29/08, EU:C:2009:665, paragraph 60, and *Eon Aset Menidjmont*, C-118/11, EU:C:2012:97, paragraph 48).”

52. Applying this principle to the facts, its conclusion at [50] was that:

“Since the value of the goods transported does not form part of the costs making up the prices invoiced by a transporter whose activity is limited to transporting those goods for consideration, the conditions for application of Article 168(e) of the VAT Directive are not satisfied in the present case.”

53. As can be seen, the reason the CJEU considered that the import VAT could not be deducted was that the value of the goods (on which the import VAT was calculated) did not form part of the costs invoiced by DSV for the transport of the goods.

54. The answer to the specific question referred to the CJEU is set out at [51] as follows:

“It follows from all the foregoing considerations that the answer to the fourth question is that Article 168(e) of the VAT Directive must be interpreted as not precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay.”

55. As Mr Sykes points out, this simply says that a taxpayer who is neither the importer nor the owner of the goods but who just carries out the transport and customs formalities cannot deduct any import VAT for which they become liable. Mr Sykes submits that this is entirely consistent with TSI’s position as, unlike DSV, it is the importer of the goods. He also notes that DSV’s activity was limited to transporting the goods and so did not, in any meaningful sense, “use” the goods.

56. The decision in *DSV* was considered by the CJEU in *Finančné riaditeľstvo Slovenskej republiky v Weindel Logistik Service SR spol. s r.o.*, (Case C-621/19). The judgment in that case is only available in French and Slovak. I was provided with a number of different

translations. I have relied on the translation from French provided by TSI although, in my view, nothing turns on the wording of the different translations.

57. Weindel provided repackaging services. It imported goods from Switzerland, Hong Kong and China into Slovakia, paying the import VAT. Weindel's customer was a Swiss company which remained the owner of the goods throughout the period in question. The invoices issued by Weindel therefore related only to the repackaging services, not to the imported goods. Once the goods had been repackaged they were then delivered to other EU member states or exported to third countries on the instructions of the owner. As in this case, the issue was whether Weindel could obtain a deduction for the import VAT it had paid.

58. Three questions were referred to the CJEU by the Court in Slovakia. In summary, these were as follows:

- (1) Whether the deduction was conditional upon ownership of the goods.
- (2) Whether the right to deduct only arises if the goods are used for the purposes of the taxable person's transactions, such as the sale of those goods domestically, delivery to another member state or export to a third country.
- (3) Whether the test of a direct and immediate link can be met where no costs were incurred for the goods and, as a result, such costs could not be included in the price of any output transaction.

59. The CJEU dealt with the first and second questions, but did not expressly deal with the third question, although it appears that the Court did, to some extent, take into account the third question as it framed the first and second questions at [39] as follows:

“...the referring Court is essentially asking whether Article 168(e) of Directive 2006/112 must be interpreted as excluding the right to deduct VAT for an importer who neither has the goods at their disposal as an owner would, nor uses them for the purposes of their taxable transactions, **particularly where the cost of those goods has no direct and immediate link to the importer's economic activity.**” (my emphasis)

60. The CJEU in *Weindel* explained at [45] the principles to be applied by reference to the decision of the Court in *DSV* (at [49]) confirming that “the right to deduct VAT exists only to the extent that the imported goods are used for the taxable person's taxable transactions” and that “this condition is met only when the cost of the input services is reflected in the price of the specific output transactions”.

61. It went on to note at [46] that the result in *DSV* was that the import VAT could not be deducted as “the value of the goods transported does not form part of the costs included in the prices charged by the carrier”, observing that the Court in *DSV* “clarified that persons who import goods without owning them are not entitled to deduct VAT unless they can demonstrate that the cost of importing them is incorporated into the price of specific output transactions”.

62. At [47], the CJEU in *Weindel* then referred to the guidance provided by the EU VAT committee on 19 October 2011 that a taxable person may not deduct import VAT if both of the following conditions are met:

- (1) the taxable person does not have the goods at their disposal as owner; and
- (2) the cost of the goods has no direct and immediate link to their economic activity.

63. Taking into account the decision in *DSV* and the guidance of the VAT committee, the CJEU concluded at [49]:

“...that Article 168(e) of Directive 2006/112 must be interpreted as precluding the right to deduct VAT for an importer who neither has possession of the goods as an owner nor incurs input import costs that are incorporated into the price of specific output transactions or into the price of goods and services supplied in the course of their economic activities.”

64. As Mr Sykes notes, the conclusion of the CJEU in *Weindel* is that, where the taxable person is not the owner of the goods, the right to deduct the import VAT depends upon whether the “input import costs” are incorporated into the price of a specific output transaction. It does not refer in the conclusion (as the Court had in *DSV*) to “the value of the goods” or, (as the VAT Committee did in its guidance) to “the cost of the goods”.

65. Earlier in its decision in *Weindel*, the CJEU had observed at [44] that:

“In its decision, the referring Court highlights that Weindel acts solely as a service provider, without having acquired the imported goods or incurred the import costs, which suggests that, in the main proceedings, there is no connection between the VAT paid on the import and the price of the services provided by Weindel. It will therefore be for the national Court to verify whether that is the case in the present instance.”

66. Again, this refers to “import costs” rather than the cost of value of the goods imported. Mr Sykes submits that the CJEU must be taken to be aware of the difference between the costs of import and the cost (or value) of the goods and that it must therefore be taken as drawing a deliberate distinction between the two and should be assumed to be developing the CJEU’s case law (which the CJEU is entitled to do - see the opinion of the Advocate General in *Da Costa en Schaake N.V., Jacob Meijer N.V. and Hoechst-Holland N.V. v Nederlandse Belastingadministratie* (Joined Cases 28, 29 and 30/62)) by finding that the necessary link exists where the importer incurs the import costs.

67. Mr Sykes goes on to submit that the reference in *Weindel* to the import costs being reflected in the price of the relevant output transactions is not a literal test but instead requires a consideration of whether the import was for the benefit of Weindel so that a direct and immediate link to those outputs can be established. He notes that, where expenditure is not made in the taxable person’s own interest and there is a benefit to a third party, the input VAT will not be deductible (see *Vos Aannemingen BVBA v Belgium* (Case C-405/19) [2020] STC 2288 at [30] and [33]).

68. Based on this, Mr Sykes suggests that the reason the CJEU in *Weindel* referred the matter back to the national Court was to determine whether the import of the goods was for the benefit of Weindel or whether it was for the benefit of Weindel’s Swiss customer as it provided a method for the Swiss customer to import the goods into the EU for onward distribution.

69. I do not accept these submissions. Taking the second point first, there is no suggestion in the judgment of the CJEU in *Weindel* that the Court had in mind the question as to whether the import of the goods was for the benefit of Weindel or, instead, for its customer.

70. This point is not mentioned in the questions referred to the CJEU and there is therefore no reason to suppose that, in referring the matter back to the national Court, there was any expectation that this issue would be addressed.

71. The question for the national Court (explained at [44]) was whether there was any connection between the VAT paid on the import and the price of the services provided by Weindel. Whilst this could involve a consideration of who really benefitted from the input transaction, it is clear from the references earlier in that paragraph to Weindel not having acquired the goods and not having incurred import costs that this was not the focus of the CJEU.

72. As far as the reference by the CJEU to “import costs” is concerned, whilst I accept that the judges of the CJEU must be assumed to understand the difference between the cost of physically importing goods and the cost or value of the goods themselves, the reference to “import costs” must in my view be considered in context.

73. As Mr Holt points out on behalf of HMRC, the CJEU in *Weindel* decided to deal with the referral by way of a “reasoned order”. As the CJEU explains at [37], this is provided for by Article 99 of the rules of procedure of the Court and is possible where “a question referred to the Court for preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case law, or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt”.

74. It is clear from the reasoning of the CJEU that it considered that these conditions were satisfied based on the previous decision in *DSV* and the guidance given by the VAT Council which, as I have said, refer respectively to the “value of the goods” and the “cost of the goods” and not to the costs of import. In these circumstances, the references made by the CJEU to “import costs” must be taken to be a reference to the cost or value of the goods which are being imported and not (for example) to the costs of physically transporting the goods to their destination or in dealing with the relevant customs formalities.

75. Had the CJEU in *Weindel* wanted to develop the law in the way suggested by Mr Sykes by deciding that the relevant link could be established if the taxable person had incurred importation costs which were reflected in the price of specific output transactions rather than the cost or value of the goods themselves being reflected in those transactions, it is surprising that the CJEU did not explain that it was taking a somewhat different view to the Court in *DSV* and the guidance provided by the VAT Council and it is very hard to understand how the CJEU in *Weindel* could have concluded that it was entitled to deal with the referral by way of a reasoned order.

76. Mr Sykes also suggested that the reference in *Weindel* to import costs rather than the value of the goods can be explained on the basis that, in *Weindel*, the CJEU was applying the general principle explained in *DSV* at [49] (which requires that the cost of the “input services” is incorporated into the cost of a particular output transaction). In applying this principle in *DSV*, the CJEU had, based on the facts of that case, treated the cost of the input services as being the value of the goods transported (see *DSV* at [50]).

77. However, as the facts in *Weindel* were different, Mr Sykes submits that the CJEU in that case considered that the cost of the input services should be taken to be the costs of importation rather than the value of the goods themselves. Mr Sykes suggests that this could well be the case as there were no costs of import in *DSV* given that DSV was just the transporter of the goods and not the importer of the goods whereas, in the case of *Weindel*, there would presumably have been import costs (even if they had not been borne by Weindel).

78. However, again, I cannot accept that, having just referred to the fact that *DSV* was decided on the basis that the value of the goods did not form part of the costs included in the prices charged by DSV, the CJEU in *Weindel* would not have explained why they were basing their decision in *Weindel* on the costs of import as opposed to the value of the goods if the Court intended that the costs of import should, in this context, have a different meaning.

79. This is particularly the case given that, in its explanation of *DSV* at [46], the CJEU in *Weindel* refers both to the value of the goods and the costs of importing them. As the CJEU in *DSV* did not refer to the costs of importing the goods but only to their value, this suggests that the CJEU in *Weindel*, when referring to the cost of importing the goods, intended this to be a reference to the value or the cost of the goods as opposed to the costs involved in importing the

goods. This conclusion is reinforced by the way in which the CJEU framed the questions it was answering in paragraph [39] of its decision (see paragraph [59] above).

80. I was referred by Mr Sykes to a translation of a judgment of the Supreme Court of Slovakia prior to the referral to the CJEU in *Weindel*. This was mentioned by Mr Sykes purely to clarify the factual background. I do however note that this suggests that Weindel did in fact incur import costs. The second page of the translation notes for example that:

“The plaintiff’s claim that he did not claim the costs of the goods at the time of entry, but claimed the costs associated with the import of the goods, which were part of the repackaging service and have a direct and immediate connection with his taxable transactions, is unfounded, according to the regional Court.”

81. On page six of the translation, the Court records Weindel’s position that:

“The plaintiff did not incur costs for the purchase of goods because he was not a buyer and such costs could not have been incurred by him, but it is undisputed that he incurred costs for the acquisition of goods, which were included in the prices of taxable supplies at the output and were directly related to his economic activity.”

82. Taken together, these extracts suggest that Weindel did in fact incur costs relating to the import, although did not incur the cost of purchasing the goods. If that is right, that would provide further support for the inference that the CJEU in *Weindel* intended its reference to “import costs” to refer to the cost of the goods themselves as otherwise the reference in paragraph [44] to Weindel not having incurred “the import costs” would make no sense. However, given the points I have already made, it is clear to me that this must be what the CJEU was referring to and I do not rely on the Slovakian Court judgment as the translation is of very poor quality.

83. Mr Sykes stresses that it is important to identify the input transaction which must have a direct and immediate link with the relevant output transactions (see *Weindel* at [45]). I accept that the import itself is a “transaction” for VAT purposes (see Article 2(1) PVD) and so, when considering what is the “input service”, which must have a direct and immediate link with the relevant output transactions, that can be seen to be the transaction constituted by the import of the goods.

84. However, this does not, in my view, lead to a different result. Both Article 168 PVD and s 24 VATA refer to “goods or services” being used for the purposes of the relevant output transactions. A straightforward reading of these words means that, when considering whether any VAT paid on the services involved in importing the goods can be deducted (for example paying a third party to deal with customs formalities) it must be determined whether the import services are used for the purposes of the relevant output transactions.

85. On the other hand, where the VAT relates to the importation of goods (as opposed to the services related to the import) the question in Article 168 PVD is whether the goods have been used for the purposes of the output transactions not whether any services connected to the import (or the cost of such services) have such a link. As the import VAT is calculated by reference to the market value of the goods it makes sense for this link to be determined by reference to the cost or value of the goods as opposed to the costs of importation. As I have explained, this is, in my view consistent with the EU case law.

86. Taking a slightly different tack, Mr Sykes submits that there is a direct and immediate link between the import of the goods and the repair services on the basis that it was impossible to carry out the repair services without the import of the goods for repair. In support of this he

refers to the decision of the Upper Tribunal in *JDI International Leasing Limited v Revenue and Customs Commissioners* [2018] UKUT 214 (TCC).

87. The question the Upper Tribunal was considering in that case was whether, in establishing a direct and immediate link, a “but for” test of causation was sufficient. In doing so it considered the decision of the CJEU in *Direktor na Direktsia ‘Obzhalyvane i danachno-osiguritelna praktika’ – Sofia v Iberdrola Inmobiliaria Real Estate Investments’ EOOD* (Case C-132/16) [2017] All ER (D) 114 (Sep), ECJ.

88. In that case, Iberdrola intended to construct holiday apartments. It incurred expenditure in reconstructing a waste water pump station owned by the local municipality which therefore benefitted from the work. The apartments which were being constructed would however also be connected to the pump station.

89. The Upper Tribunal in *JDI* rejected the suggestion that *Iberdrola* was authority for a “but for” test of causation explaining at [36] that the conclusion of the CJEU in *Iberdrola* was instead that the reconstruction of the pump station was “essential” to completing the construction project and that “in the absence of such reconstruction, Iberdrola would not have been able to carry out its economic activity”. As the Upper Tribunal notes at [39], the result of this was that Iberdrola would be “using the inputs in making its own taxable supplies”.

90. In my view, this does not however assist TSI in this particular case. Clearly it would have been impossible for TSI to carry out the repair work unless the goods to be repaired were delivered to it. However, it would have been perfectly possible for the customers to send the goods direct to TSI and to pay the import duty themselves. It was not, therefore, impossible for TSI to provide its repair services unless it imported the goods itself. In my judgment, TSI’s position is more analogous to that in *Southern Primary Housing* (see paragraphs [42-43] above), where the construction could not take place without the land, but it was not essential for the taxpayer to have purchased the land and then sold it to the housing association in order for the construction services to be provided.

91. Turning to the domestic case law, there are two decisions of this Tribunal which are relevant. The first is *Associated British Ports v The Commissioners for Her Majesty’s Revenue and Customs* [2016] UKFTT 0491 (TC) which was decided after *DSV* but before *Weindel*. Associated British Ports (“ABP”) provided warehouse facilities. It became liable for import VAT as a result of the unlawful removal of timber products from its warehouse. In some ways, therefore, the case is more similar to *DSV* rather than *Weindel* as ABP was not an importer.

92. The Tribunal in *ABP* observed at [35] and [40] that it is not enough that the import VAT is connected with the taxable person’s economic activities. Instead, it is necessary to show that the goods in question are used for the purposes of taxable transactions which means establishing a direct and immediate link between the relevant transactions.

93. Mr Sykes submits that the decision in *ABP* is consistent with TSI’s case as, in *ABP* there was no “use” of the transaction of importation, unlike, he says, in the case of TSI. However, I do not accept this. It is clear from *ABP* that (consistent with my own conclusion set out above) what was seen to be important is whether the goods (and not the transaction of importation) were used for the purposes of ABP’s business (see paragraphs [35], [39], [40], [43], [53] and [58]).

94. The second case is *Piramal* where, as I have already mentioned, I was a member of the Tribunal. That appeal was decided after *Weindel*. However, as Mr Sykes notes, the distinction between the costs of importation and the cost or value of the goods imported was not considered by the Tribunal in *Piramal*. It therefore provides limited assistance. The same could of course

be said for the decision of the Tribunal in *ABP* given that *Weindel* had not been decided when that decision was made.

95. Whilst Mr Holt, on behalf of HMRC, placed reliance on *Piramal* in support of HMRC's position that goods are not used in the relevant sense for the purposes of a taxable person's business in circumstances where that person is not the owner of the goods and has not used them as a cost component in an onward taxable supply, I accept that given the additional points raised by Mr Sykes, the reasoning in *Piramal* cannot simply be adopted in this case.

96. However, for the reasons which I have explained, my conclusion is that, as far as EU law is concerned, import VAT can only be credited as input tax where the taxable person is the owner of the goods (or has the right to dispose of the goods as their owner) or where the cost or value of the goods is reflected in the price of specific output transactions or in the price of goods and services supplied in the course of their economic activities.

FISCAL NEUTRALITY

97. Mr Sykes submits that this conclusion is in breach of the principle of fiscal neutrality. In this context fiscal neutrality means that a trader should be relieved "entirely of the burden of VAT paid or payable in the course of all his economic activities ... provided that those activities are themselves subject in principle to VAT" (see *Finanzamt Steglitz v Zimmermann* (Case C-174/11) [2016] STC 2104 at [47]).

98. In *Finanzamt Offenbach am Main-Land v Faxworld Vorgründungsgesellschaft Peter Hünninghausen und Wolfgang Klein GbR* (Case C-137/02); [2005] STC 1192, the advocate general said at [37-38] in relation to the principle of fiscal neutrality that:

"The normal operation of the VAT system requires that input tax on supplies acquired by a business at both preparatory and operational stages be deductible from its output tax ... any deviation from that normal operation, and therefore from the principle of neutrality, can in my view be accepted only where there is clear authorisation in the legislation, as interpreted where appropriate by the Court."

99. Mr Sykes argues that HMRC's approach represents a clear departure from the principle of fiscal neutrality as TSI, being a taxable person which only makes taxable supplies, is left in a position where it is bearing the burden of the import VAT.

100. It is not however the case that the principle of fiscal neutrality means that a taxable person cannot be left bearing the burden of VAT. This is clear from the decisions of the CJEU in *DSV* and *Weindel*. In both cases, traders who appear to have only been making taxable supplies were left bearing the burden of import VAT.

101. The reason for this is that the conditions for the deduction of the import VAT set out in article 168 PVD were not satisfied as there was no direct and immediate link (in the sense explained above) between the import of the goods and the relevant output transactions.

102. The connection between these two principles is apparent from many of the cases decided by the CJEU, including some of those I have already mentioned (see for example *AB SKF* at [56-57] and *Sveda* at [17-18]). This was recognised by the Tribunal in *ABP* at [49]. The principle of fiscal neutrality and the right to deduct under s 68 PVD go hand in hand. The effect of this in my view is that, if no deduction is permitted by Article 168 PVD, this is not a breach of the principle of fiscal neutrality.

103. Mr Sykes considers it bizarre that the test for recovery of import VAT is whether the cost of the goods is reflected in the price of supplies made by the taxable person when the cost of the goods may have nothing to do with the transaction of importation or the value of the goods charged to import VAT (for example, the goods may have been purchased many years

previously). However, his suggestion that what is relevant is, instead, the costs of importation is, in my view, no less arbitrary.

104. In the present case, TSI did not pay the costs of shipping the goods to the UK but did pay the costs invoiced by the shipping companies in dealing with the customs formalities. If TSI's position is correct, would this be sufficient to enable it to deduct the import VAT? Presumably if TSI in Germany had paid all of the costs of the services involved in importing the goods to the UK (with TSI just paying the import VAT itself) no deduction for the import VAT would be available as there are no import costs which have been borne by TSI. It is not apparent why the fact that the importer has (or has not) incurred relatively small costs of import should determine whether import VAT is recoverable.

105. Mr Sykes suggests that, even if there are no third party costs, there would always be internal costs related to an import of goods (for example, the costs of employees involved in making the necessary arrangements for import). However, this seems to me to be too tenuous a link between the import and the relevant output transactions to constitute the required direct and immediate economic link.

106. Mr Sykes also gives the example of a taxable person who leases a van or other equipment outside the UK for the purposes of their business and then imports the van into the UK. It makes no sense, he says, that no deduction is available for the import VAT whereas, if the taxable person owned the van and imported it into the UK, a deduction would be available. Whilst I accept that this may be the result, (although I do not express any concluded view on this), the fact that there may be anomalies cannot override the fact that, if Article 168 PVD does not permit a deduction, this is not a breach of the principle of fiscal neutrality.

107. In the context of fiscal neutrality, Mr Sykes also seeks to draw support from the decision of the CJEU in *Véleclair SA v Ministre du Budget, des Comptes publics et de la Réforme de l'État* (Case C-414/10). The Court notes at [28] the requirement for fiscal neutrality and emphasises at [27] that, in principle, the right to deduct input tax cannot be limited. However, the issue in that case was whether the claim for credit for import VAT as input tax could be made before the import VAT had in fact been paid. The issue was therefore only one of timing. There was no dispute as to whether the import VAT could be deducted as input tax in the first place. This decision does not therefore provide any support to TSI's case.

TSI'S POSITION UNDER EU LAW

108. Having reached conclusions on the principles to be applied, the application to the facts of this case is straightforward. As far as EU law is concerned, TSI is not entitled to an input tax credit for the import VAT it has suffered as it is not the owner of the goods and the value of the goods on which the import VAT is charged is not reflected in the price of the repairs carried out by TSI.

109. I appreciate that, in the circumstances, this makes it impossible for TSI to obtain credit for the import VAT but, as HMRC point out, they do have the option either of arranging for the owner of the goods to be the importer of the goods (so that the owner can then claim an input tax credit) or (which TSI has now done) to register for inward processing relief.

THE POSITION UNDER DOMESTIC LAW

110. Turning to the position under domestic law, given that, as I have said, the effect of ss 24-26 VATA is, in broad terms, to mirror the requirements of Article 168 PVD, there is, in principle, no conflict between EU law and domestic law. There is, however, still a question as to whether the domestic legislation can be interpreted in the same way as EU law.

111. The question under domestic law in accordance with s 24(1) VATA is whether the goods are used for the purposes of a business carried on by the taxable person. The effect of s 26 VATA is that the business must be a taxable business.

112. In accordance with the principles established by the CJEU in *DSV* and *Weindel*, the ability to deduct import VAT as input tax arises in two cases. The first is where the importer is the owner of the goods or has the goods at their disposal as owner. The second is where the cost or value of the goods imported is reflected in the price of relevant output transactions.

113. As the Tribunal mentioned in *Piramal* at [89] it is difficult to conceive of a situation where the cost or value of the goods imported is reflected in the price of the relevant output transactions in circumstances where the importer does not become the owner of the goods. It does however cover the situation (mentioned in HMRC's manual VIT13300) where the importer only takes ownership of the goods at some later date and is not the owner of the goods when they are actually imported.

114. I note that, in Mr Holt's skeleton argument, he gives two alternative reasons why the import VAT cannot be credited as input tax. The first is that TSI "did not use the goods in furtherance of a business". The second is that TSI "never owned the goods ... therefore cannot be regarded as having used them as a cost component in an onward taxable supply".

115. On the face of it, this does leave the door open to the possibility that a taxable person who is not the owner of the goods could obtain an input tax deduction for import VAT if the goods are used in the furtherance of a business. However, it was clear from Mr Holt's oral submissions that HMRC's case is essentially that, where goods are imported by somebody who is not the owner, the import VAT cannot be deducted as input tax.

116. Mr Sykes however submits that an interpretation of the domestic legislation which effectively requires the importer to be the owner of the goods is not permitted in accordance with the principles set out by the CJEU in *Marleasing SA v La Comercial Internacional da Alimentación SA* (Case C-106/89) (known as the *Marleasing* principle). In that case, the Court confirmed that, if there is a lacuna in domestic legislation which implements an EU directive or if there is a choice between different interpretations of the domestic legislation, it is appropriate for the domestic court to interpret the legislation in a way which is consistent with the relevant directive as long as the interpretation is not "contra legem".

117. The expression "contra legem" was explained at [68] by the advocate general in *Dansk Industry (DI) v Estate of Rasmussen* (Case C-441/114) as follows:

"The Latin expression 'contra legem' literally means 'against the law'. A contra legem interpretation must, to my mind, be understood as being an interpretation that contradicts the very wording of the national provision at issue. In other words, a national Court is confronted by the obstacle of contra legem interpretation when the clear, unequivocal wording of a provision of national law appears to be irreconcilable with the wording of a Directive."

118. The scope of the *Marleasing* principle was summarised by the Court of Appeal in *Ampleaward Limited v Revenue and Customs Commissioner* [2021] STC 2260 at [83]. I will not repeat the summary here as it is not controversial. For the purposes of the present appeal, the main point is that, whilst the ability to interpret domestic legislation consistently with EU law is "broad and far-reaching", the interpretation which is adopted should "go with the grain of the legislation" and "be compatible with the underlying thrust of the legislation being construed".

119. This means that "an interpretation should not be adopted which is inconsistent with a fundamental or cardinal feature of the legislation since this would cross the boundary between

interpretation and amendment” (see *Vodafone 2 v Revenue and Customs Commissioners (No. 2)* [2009] STC 1480 at [38(a)]). The Court should not therefore be interpreting the legislation in a way which requires it to make decisions which potentially have “important practical repercussions which the Court is not equipped to evaluate” (*Vodafone* at [38(b)]).

120. The implications of these restrictions were summarised by the Court of Appeal in *Revenue and Customs Commissioners v IDT Card Services Ireland Limited* [2006] EWCA Civ 29 at [90] as follows:

“In determining whether the solution is one of interpretation or impermissible law making, the relevant test remains whether the interpretation that would be required to make the statute in question convention compliant or in this case, EU law compliant, would involve a departure from a fundamental feature of the legislation. As I see it, the latter cannot be the case where the effect of the interpretation would be to bring the statute into conformity with the objectives of the Sixth Directive in the absence of clear statutory language to the effect that Parliament intended that there should not be such conformity.”

121. The submission made by Mr Sykes on behalf of TSI is that interpreting s 24 in a way which is consistent with the EU interpretation of article 168 PVD is impermissible because to do so would result in a clear conflict with the provisions of s 27 VATA.

122. The effect of s 27(1) is that, where goods are imported by a taxable person who is not the sole owner of the goods and the goods are to be used (wholly or partly) for private purposes, the import VAT is not input tax which can be deducted or credited under s 25 VATA. As Mr Sykes points out, this provision would be unnecessary if it is the case that import VAT incurred by a taxable person who is not the owner of the goods in question can never qualify as input tax.

123. Section 27(1) then goes on to provide for the possibility of the importer making a claim for the import VAT to be repaid. Section 27(2) requires HMRC to allow the claim if the effect of disallowing the claim would result in a double charge to VAT.

124. Mr Sykes makes the point that, if HMRC are right, this puts an importer of goods belonging to somebody else which are to be used for private purposes in a better position than somebody who imports goods which they do not own to be used for business purposes as, in the latter case, there is no possibility of any repayment of the import VAT.

125. There was some speculation at the hearing as to the meaning and effect of s 27 VATA. Mr Holt declined to provide any examples of the circumstances in which it might apply.

126. In VAT Notice 702 (which was withdrawn with effect from 1 January 2021) an example is given of a marine repair trader which imports a privately owned yacht for repair. However, the guidance only states that “if such treatment results in VAT being charged twice, you should apply to your local VAT office for a repayment.” The trader is advised to enclose a copy of the import VAT certificate and a copy of any sales invoice for the goods.

127. This might suggest HMRC had in mind a situation where VAT has been paid on the purchase of the yacht as well as import VAT being paid by the repairer. This example is repeated in *De Voil* (Issue 354 at V5-153). Again, however, the authors do not elaborate on the nature of the double charge to VAT which would justify a repayment.

128. Mr Sykes suggests that the double charge must be looked at from the point of view of the taxable person. So, if that person pays import VAT and then charges VAT on the repair services, he submits this would be a double charge to VAT which would justify a repayment claim. It is however difficult to see why this would be a double charge to VAT justifying a repayment given that the two VAT charges relate to separate goods/services. The import VAT

is on the value of the yacht (in HMRC's example), whereas the VAT on the invoice issued by the repairer relates to the repair services.

129. Mr Holt, on behalf of HMRC, also makes a point that, where everything is for wholly business purposes (and there is no element of private use), there is unlikely to be a double charge to VAT as, in principle, any VAT paid (other than the import VAT paid by the yacht repairer) is likely to be available as an input tax credit. This may well be right although no doubt it is possible to conceive of situations where this might not be the case.

130. Without more detailed argument on the point, I cannot reach a conclusion as to the precise scope of s 27 VATA. What the debate does however illustrate in my view is that there is no clear language in s 27 VATA which prevents s 24 VATA being interpreted in accordance with EU law principles.

131. The main purpose of s 27 VATA is to permit an input tax credit in certain circumstances where goods are to be used for private purposes. It is not surprising that the opening words confirm that, in the absence of the relevant conditions being satisfied, no input tax credit is available, even if those words are not strictly necessary. This is not a case where "the clear, unequivocal wording of a provision of national law appears to be irreconcilable with the wording of a Directive" (see the extract from *Rasmussen* at paragraph [117] above).

132. In any event, whilst I accept that s 27(1) carries an implication that there are circumstances in which somebody who imports goods which are not owned by that person may be able to deduct import VAT as input tax, the proposed interpretation of s 24 VATA is not limited (in accordance with EU law) to taxable persons who own the goods in question. One example I have already mentioned is a situation where the goods are not owned by the importer at the date the import takes place but where the importer subsequently becomes the owner of the goods and the value of the goods imported is therefore reflected in later output transactions of that person.

133. For completeness, I should mention Regulation 29 VATR which, as I have said, envisages the possibility of an input tax deduction for import VAT by a taxable person who is the importer, consignee or owner. Again, this suggests that there are circumstances in which somebody who is not the owner of goods which are imported is able to claim an input tax credit for the import VAT. However, the answer to this, as with s 27 VATA, is that the proposed interpretation of s 24 VATA based on EU law principles does not limit an input tax credit to someone who is the owner of the goods at the time they are imported.

134. In the light of all this, I do not consider that interpreting the UK domestic legislation in line with the EU principles I have identified results in any breach of the restrictions on the ambit of the *Marleasing* principle.

135. The final point relating to the domestic legislation put forward by Mr Sykes relates to the discussions in Parliament when inward processing relief was introduced into the UK in 1985 and the subsequent guidance provided by Customs and Excise. This was discussed by the Tribunal in *Piramal* at [102-105].

136. In summary, there is no doubt that, in 1985, both the Government and Customs and Excise were of the view that, where goods belonging to somebody else were imported for repair and the import VAT was paid by the repairer, the import VAT would be available as an input tax credit and that the purpose of inward processing relief was purely to deal with the cash flow issue which arose as a result of the repairer having to pay the import VAT and then to reclaim this when the next VAT return was submitted.

137. In the EU context, Mr Sykes notes that, until 1993, import VAT was payable when goods were imported from other member states, and that it was only in 1993 that inward processing

relief was provided for in the relevant EU directive. He has demonstrated that throughout the whole of this period, the language of Article 168 PVD and ss 24-26 VATA (and their predecessors) has remained materially unchanged.

138. In the light of the clear understanding of the position in the UK in 1985, Mr Sykes submits that it would be fundamentally inconsistent with this understanding to interpret the domestic legislation in the way proposed by HMRC.

139. Whilst there is some force in this submission, it must be recognised that the interpretation of Article 168 PVD in this context has emerged more recently as a result of the guidance from the VAT Council in 2011, the decision in *DSV* in 2015 and the decision in *Weindel* in 2020. In circumstances where an interpretation of the domestic legislation in line with the EU interpretation is possible without infringing the restrictions on the *Marleasing* principle, this Tribunal is required to follow the EU approach irrespective of what it was thought the effect of the legislation may have been in 1985.

TSI'S POSITION UNDER DOMESTIC LAW

140. The conclusion under domestic law is therefore the same as the conclusion in relation to Article 168 PVD. TSI was not the owner of the goods and the cost or value of the goods in respect of which the import VAT was payable has not been reflected in any of the output transactions (being the repair services) undertaken by TSI. In these circumstances, no input tax credit is available in respect of the import VAT which TSI has paid.

DECISION

141. For the reasons set out above, the appeal is dismissed except to the extent necessary to reduce the assessments/adjustments to the agreed figure of £8,432,896.86.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

142. 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.

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