Neutral Citation: [2026] UKFTT 815 (TC)

Case Number: TC 09903

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London (with part heard remotely)

Appeal reference: TC/2021/02954

CUSTOMS DUTY and VALUE ADDED TAX – whether disaster relief under the provisions of Commission Decision EU 2020/491 was available for imports of PPE during the Covid-19 Pandemic where they were immediately exported to a non UK end user – no – appeal dismissed - whether goods imported and then exported immediately would be subject to import VAT if not intended for use in the UK – no – appeal upheld - whether the customs debt arose in the UK or in the territory to which the goods were exported – yes – appeal dismissed - whether remission relief available in respect of customs duties – yes – appeal upheld

Heard on: 25, 26 and 27 February 2026
Judgment date: 02 June 2026

Before

JUDGE VIMAL TILAKAPALA

TRIBUNAL MEMBER DR CAROLINE SMALL

Between

3V INTERNATIONAL LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Michael Firth, of counsel, instructed by Brian White Tax Resolution Ltd

For the Respondents: Ms Charlotte Brown of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This appeal relates to the importation during the COVID-19 pandemic (the "Pandemic") by the Appellant of personal protective equipment ("PPE").

2. The appeal is in respect of:

(1) An assessment for customs duty in the sum of £112,033.69 (the "Customs Decision") relating to four consignments of face masks (the "Goods") and

(2) an assessment for import VAT in the sum of £253,030.68 (the "VAT Decision") relating to the first two consignments of the Goods.

(3) A decision to refuse an application for equitable remission for the Customs Decision (the "Remission Decision").

3. For both the Customs Duty and VAT assessments the Appellant claimed customs duty and import VAT relief on the Goods in accordance with Articles 74-80 of Council Regulation No 1186/2009 and Articles 51-57 of the Council Directive 2009/132/EC ("Disaster Relief"),

4. HMRC claim that the conditions for Disaster Relief have not been satisfied and consequently customs duty (at 6.3%) applies to all consignments of the Goods and 20% import VAT applies to the first two consignments of the Goods.

5. In relation to the Remission Decision, the Appellant claims that there were exceptional circumstances as a result of the Pandemic. HMRC disagrees.

Background and relevant facts found

6. The Appellant carries on a general trading, management and consultancy business.

7. On 30 January 2020 the World Health Organisation (the "WHO") declared an outbreak of Covid-19 a "Public Health Emergency of International Concern". On 11 March 2020 the WHO upgraded its classification of COVID-19 to a pandemic (the "Pandemic").

8. During the Pandemic, the Appellant sourced PPE from China intending to supply it to the NHS.

9. On 15 April 2020 the Appellant contacted the 'National Import Relief Unit ("NIRU") seeking to claim Disaster Relief for the proposed imports and on 16 April 2020, NIRU responded enclosing a copy of the relevant guidance and an application form for approval. On the same day, the Appellant submitted an application for approval and, based on that application, NIRU issued the Appellant a certificate authorising the import of 1.5 million face masks for supply to the 'NHS/UK Government'.

10. The Appellant subsequently imported four consignments of PPE (the "Goods") by air freight on the following dates (i) 28 April 2020, (ii) 30 April 2020, (iii) 5 May 2020 and (iv) 6 May 2020.

11. Disaster Relief was claimed in respect of the imports and the Goods processed accordingly under Customs Procedure Code 40 00 C26, on the basis that they were eligible for Disaster Relief. The use of this code allowed the Goods to be imported without the payment of customs duty and import VAT.

12. The Goods were not supplied to the NHS and between 29 April 2020 and 6 May 2020 most of the Goods were exported to Germany for indirect supply to the German federal ministry of health (the "BGM"). The bulk of the remaining goods were donated to the Virdee Foundation, a registered UK charity.

13. On 17 July 2020, HMRC contacted the Appellant with a view to commencing an audit and on 11 August 2020 documentation was requested and a questionnaire regarding the Goods sent to the Appellant. Correspondence between the parties followed and information was provided in early September 2020.

14. On 13 November 2020, Officer Leach sent a letter to the Appellant confirming his intention to issue an assessment for customs duty in the sum of £490,182.91 and inviting it to provide any further information or documentation for consideration within 30 days.

15. On 23 November 2020, the Respondents replied outlining their position and providing links to multiple forms of guidance which they regarded as supportive of that position.

16. On 24 November 2020, Officer Leach wrote to the Appellant requesting further documentary evidence in support of their position. The Appellant responded providing numerous documents, primarily correspondence between it and various bodies regarding the supply of PPE.

17. On 15 March 2021, having considered the further documentation, Officer Leach sent the customs decision letter to the Appellant confirming his decision to issue the Customs Assessment. That letter also confirmed that HMRC were no longer claiming VAT.

18. On 18 March 2021, the Appellant requested an independent review of the Customs Decision.

19. On 19 March 2021, Officer Leach also responded clarifying the position and providing the Appellant with links to HMRC's published guidance on Disaster Relief and details of the relevant legislation.

20. On the same day, 19 March 2021, the Appellant provided further documentation and sought to evidence the supply chain from the Appellant to BGM.

21. On 30 July 2021 following the independent review HMRC issued a review conclusion letter upholding the decision to issue the Customs Assessment.

22. On 2 August 2021, the Appellant issued their Notice of Appeal against the Customs Decision.

23. In considering the Appellant's Appeal against the Customs Assessment, HMRC identified that Officer Leach's decision to withdraw the Import VAT from the Customs Assessment had been made in error, as only the final two consignments of Goods occurred after the implementation of the VAT Order.

24. On 27 April 2023, Officer Ramsden wrote to the Appellant confirming his intention to issue an assessment for VAT in the sum of £253,030.68 and inviting the Appellant to provide any further information or documentation for consideration within 30 days (the "VAT RTBH").

25. On 9 May 2023, the Appellant responded confirming its position that no VAT was due and on 18 May 2023 HMRC replied to further explain HMRC's Position.

26. On 27 May 2023, following the expiry of the 30 days within the VAT RTBH, Officer Oakley issued the VAT Decision Letter confirming HMRC's intention to issue the VAT Assessment.

27. On 23 June 2023 the Appellant requested an independent review of the VAT Decision.

28. On 3 August 2023, following the independent review, HMRC issued a review conclusion letter upholding the decision to issue the VAT Assessment.

29. On 23 August 2023, the Appellant issued their Notice of Appeal against the VAT Decision.

30. On 11 October 2023, the Appellant submitted four claims seeking remission in respect of the customs duty for each of the Imports.

31. On 29 November 2023, HMRC wrote to the Appellant confirming its intention to refuse the Appellant's claims for remission and inviting the Appellant to provide any further information or documentation for consideration within 30 days.

32. On 26 December 2023, the Appellant provided a response to this letter broadly repeating their position.

33. On 2 January 2024, Officer Mosely issued the Remission Decision Letter.

34. On 9 January 2024 the Appellant requested an independent review of the Remission Decision.

35. On 21 February 2024, following the independent review, HMRC issued a review conclusion letter upholding the Remission Decision.

36. On 6 March 2024, the Appellant issued their Notice of Appeal against the Remission Decision.

37. On 22 March 2024, directions agreed between the parties to consolidate the Appeals were endorsed and on 5 April 2024 the Appellant filed its Consolidated Grounds of Appeal.

The NIRU application

38. In its NIRU application the Appellant stated that the "End User" was "the NHS/UK Government".

39. Neither NIRU nor HMRC were notified by the Appellant of the fact that the NHS was not the eventual end user nor did the Appellant notify NIRU or HMRC that the Goods were to be exported to Germany or donated to the Virdee Foundation .

40.

The NIRU certificate

41. The NIRU Certificate:

(1) specified as the "End User" - "NHS/UK government".

(2) had the following notes printed on its reverse:

> "1. This certificate is valid until 31st July 2020. It authorises the import of the above goods free of customs duty and import VAT.
>
> 2. This certificate must be presented to Customs at time of import
>
> 3. The goods may be checked by Customs either at the time of import or a later date to ensure the conditions for relief have been met. Please note, for a valid claim to duty and VAT relief to be made, the end user of the goods must be one of the following:
>
> • State organisations including State bodies, public bodies and other bodies governed by public law;
>
> • other charitable or philanthropic organisations approved by the competent authorities.
>
> 4. Further Information on the relevant relief conditions can be found on GOV.UK via the following link - https://www.gov.uk/guidance/pay-noimport-duty-and-vat-on-medical-supplies-equipment-and-

protectivegarments-covid-19. False information can lead to payment of duty and import VAT and even forfeiture of the goods

5. The goods may not be lent, hired, sold or transferred without prior consent from NIRU. Further details are available via the link above."

Additional Facts found

42. The Goods were of a kind that fell within the scope of entitlement to the Disaster Relief.

43. The Goods exported to Germany were sold to Meeco AG ("Meeco"). a German company.

44. Meeco had concluded a contract with Peter Lenkel BGMH ("PK") under which it undertook to supply PPE to PK and PK was in turn party to an open contract with BGM for the supply of PPE,

45. The Goods sold to Meeco were exported to Germany on the same day as the day of their arrival into the UK and did not otherwise leave the premises of the importation agent Unicorn Shipping Limited.

46. Following delivery of the Goods to BGM a dispute arose as to the quality of some of it, with BGM claiming that of the 1.32m masks supplied 876k failed the relevant quality tests, with only 444k passing them. Consequently BGM withdrew from the contract with PK. PK took legal action against BGM and was ultimately successful.

Facts found from Kirenpreet Kaur's evidence

47. Ms Kaur is currently and was at the time of importation of the Goods a director of 3V. We found the following facts from her evidence:

48. The Appellant had decided to source PPE for the NHS as it wanted to help address the critical shortage of PPE for the UK's health workers and charity workers.

49. The Appellant had contacted the NHS by phone to supply them with PPE. The phone call was followed up by an email to Mohamed Farid on 13 April 2020 which included a stock list of the PPE available.

50. On 13 April 2020 an email was received from the NHS (Matthew Holliday – NHS England NHS Improvement) which directed the Appellant to register on a centralised database (www.coronavirus/support-from-business).

51. On 14 April 2020 the Appellant received an email from the centralised NHS portal (multi-quote) asking for a quotation for PPE for the Northeast London NHS Foundation Trust under the category "Protective & Safety-Uniforms-Clothing).

52. On 17 April the Appellant received an email from the centralised NHS portal asking for a quotation for PPE for under the category "Gowns-theatre-medical-uniforms-clothing".

53. The Appellant provided the quotes as requested.

54. The categories of PPE specified in the quotes were misleading. Ms Kaur believed that the reference to the category of "theatre" was to a general category which covered all forms of PPE. She considered that emails were not asking for specific types of PPE notwithstanding the categories specified in them.

55. The Appellant also attempted to contact local authorities in order to offer them the PPE but was unable to locate people to speak to.

56. At the time the Goods were imported the Appellant had not received a response from the NHS or any local authority. As a result of the COVID lockdown it was very difficult to get through to anyone in the NHS or the local authorities.

57. The situation was unclear and rapidly evolving.

58. The Appellant sought information from several websites as to the import rules.

59. As no order had been received from HMRC the Appellant sourced a contact in Europe (Meeco) who had contact with PK BGMH a supplier to BGM and the Appellant entered into contracts with Meeco for the sale of the PPE.

60. 1342 items of PPE were sold to Meeco. Of the remainder most were donated by the Appellant to the Virdee Foundation – a charity that she and Hardip Virdee had contact with (Ms Kaur being a trustee albeit not one involved in charity reporting).

61. Some items were collected personally by associates of the Appellant from the import agent and distributed to friends and family members.

62. There is no full audit trail of when Goods were donated to the Virdee Foundation.

63. Around 70% of the Goods donated to the Virdee Foundation remain in storage with the Foundation. The Virdee Foundation donated some of the Goods to the following organisations: Khalsa Jatha (10,000 masks), the Binti Foundation (5,000 masks) and the Guru Nanak Gurudwara Cultural & recreational Centre (8,000 masks). The Appellant had no control over what the Virdee Foundation did with the Goods that were donated to it.

64. It was only on 18 June 2020 that the Appellant received an email from the NHS confirming that they would not be purchasing PPE from it.

65. At the time the Appellant had decided to procure PPE for the NHS, the UK Government were actively encouraging procurement from private businesses. Despite that active encouragement the NHS were not very responsive.

66. The Appellant did not believe that a specific purchase order from the NHS was needed. This was because at the time the NHS were not giving purchase orders to anyone. She was aware that the NHS were overwhelmed and were simply telling suppliers to contact them when they had sourced PPE and it was in transit. It was an emergency situation.

67. Although Ms Kaur had authority for imports she did not complete the NIRU application. This was completed by another director no longer with the Appellant.

NIRU

68. At the time of completing the NIRU application the Appellant had intended and expected to supply PPE to the NHS.

69. She accepted that the NIRU form showed that if goods did not go to the stated end user that HMRC were to be notified and also accepted that when they became aware that the Goods were not going to be delivered to the NHS, no notification was made

70. She accepted that the Goods were sourced prior to the Appellant's application for the NIRU certificate.

THE LAW

71. The law relevant to this appeal is set out in the Appendix to the Decision. Relevant extracts from the legislation are also included in the body of the Decision.

THE ISSUES FOR DETERMINATION

72. The issues for determination are as follows:

(1) Whether Disaster Relief applies.

(2) If Disaster Relief does not apply whether;

(a) import VAT, and

(b) customs duty

are payable.

(3) If customs duty is payable whether remission is available.

(4) If import VAT is payable whether HMRC is estopped from charging it.

DISASTER RELIEF

73. Entitlement to Disaster Relief is conditional on meeting criteria contained in the CSDR Regulation, the VAT Directive and the three conditions set out in Commission Decision (EU) 2020/491 (the "Commission Decision").

74. The relevant articles from the CSDR Regulations and the VAT Directive are set out in the Appendix together with the Commission Decision. For ease of reference we have also set out the text of Article 1 of the Commission Decision below.

75. The provisions of the CSDR applicable to customs duties are so far as relevant the same as the provisions of the VAT Directive applicable to VAT. Our references in this part of our decision are to the CSDR provisions relating to customs duties but those references should be taken as applying equally to import VAT unless stated otherwise.

76. For the Goods to benefit from Disaster Relief, the three conditions set out in Article 1 of the Commission Decision (EU) 2020/491 (the "Commission Decision") must be satisfied. These are as follows:

> Article 1
>
> 1(a) The goods are intended for the following uses:
>
> (i) Distribution free of charge by the bodies and organisations referred to in point (c) to the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak;
>
> (ii) being made available free of charge to the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak while remaining the property of the bodies and organisations referred to in point (c) ("Condition B")
>
> (b) The goods satisfy the requirements laid down in Articles 75, 78, 79 and 80 of Regulation (EC) No 1186/2009 and Articles 52, 55, 56 and 57 of Directive 2009/132/EC ("Condition B")
>
> (c) The goods are imported for release for free circulation by or on behalf of State organisations including State bodies public bodies and other bodies governed by public law or by or on behalf of organisations approved by the competent authorities in the Member States ("Condition C").

77. We deal with each of these in turn.

Condition A

The submissions

78. Mr Firth submitted that Condition A was satisfied as the Appellant had, at the time of importation, fully intended for the Goods to be used by a body within Article 1(c) (an "eligible body") for the purpose set out in Article 1(a)(i).

79. In his view the "intention" referred to in Condition A was the intention of the importer and it was to be assessed at the time of importation.

80. In his skeleton argument Mr Firth had focused on the Appellant's intention being that the Goods would be provided to and distributed by the NHS (as set out in its NIRU form). In his oral submission he referred to its intention being that the goods would be so distributed by BGM and the Virdee Foundation each of which he submitted were eligible bodies within 1(c).

81. Ms Brown submitted that Condition A was not satisfied as the "intention" requirement had not been met. She contended that the relevant "intention" is that of the eligible body referred to in Article 1(c) being the end user. As "intention" related to the use to which those goods would be put she argued that it was a matter that could only be determined by the user. She further submitted that as no contract had been entered into with the NHS and as the BGM was not in her view an eligible body (as to which see Condition C below) Condition C could not be satisfied.

82. Mr Firth supported his submission by referring to the wording of Article 1(a) which he contended made clear that the importer and end user were not necessarily the same person.

83. He referred also to the practical difficulties in proving intention if Ms Brown's submission was correct. He gave various examples in which demonstrating intention on the part of the NHS at the time of importation would not be possible. For instance there might be no particular person within the NHS with knowledge of when a particular consignment arrived. Alternatively where an importer had arrangements with multiple NHS trusts it might not be possible at the time of importation to identify which trust would receive a specific item of PPE.

Discussion and Conclusion on Condition A

84. We agree with Mr Firth that for the purpose of the Commission Decision the importer and the end user are not necessarily the same person.

85. As a matter of statutory construction, we consider that the requirement as to intention in Article 1(a) is distinct from the requirement set out in Article 1(a)(i) for the imported goods to "distributed" free of charge by an eligible body.

86. This interpretation is consistent with Article 1(c) which refers to goods imported for release "by or on behalf of" the relevant eligible bodies. If goods are imported *on behalf* of a person, they are not imported *by* that person.

87. We also agree that Condition A is to be satisfied at the time of importation, That is because Disaster Relief operates to exempt goods from customs duty and import VAT that would otherwise be payable on importation.

88. We therefore agree with Mr Firth that the requirement for intention in Condition A is a reference to the intention of the importer rather than the distributor (if they are not the same person) and that intention is to be judged at the time of importation.

89. It is then necessary to consider what the Appellant's intention was at the time of importation.

90. We have been unable on the facts presented to us to ascertain whether the Appellant's intention changed before or after importation from an intention to supply the NHS to an intention to supply BGM. If the intention was to supply the NHS at the time of importation then we agree that Condition A is satisfied. If it was not then we do not consider that the

Condition would be satisfied in respect of the intention to supply goods to be distributed by BGM. This is because we do not agree with Mr Firth that BGM is an eligible body for the purpose of Condition C.

91. In any event we do not need to make a final determination on satisfaction of Condition A given our conclusions on Condition C – as to which see below.

Condition B

The submissions

92. Ms Brown did not make specific submissions on Condition B, her submissions related to the Commission Decision generally. She pointed out however that Article 78 and Article 80 reflected the principle that should the end-user of goods benefitting from Disaster Relief be other than the one notified to the relevant authority, the authority would need to be informed of the change in order for the relief to continue be available (where the new user was an eligible body) otherwise duty would become payable. This reinforced her submission (which we go on to consider in the context of Condition C) that the NIRU certificate issued to the Appellant had no effect as the details provided to HMRC were incorrect as at the time of importation.

93. Mr Firth's primary point on Condition B was that he was unclear about HMRC's position in respect of it. He further submitted that Article 78 did not operate to retrospectively deny importation relief that had been granted. It instead imposed a charge when the end user changed and the requirements of the Article were not satisfied.

94. We consider Condition B in more detail in our discussion below on Condition C.

Condition C

The submissions

95. Mr Firth made several submissions on Condition C. His primary submission was that intention on the part of the Appellant that the Goods would end up with an eligible body was sufficient for the Condition C to be satisfied.

96. He also submitted that BGM eligible body for the purpose of Condition C.

97. He further submitted that the Condition was satisfied in respect of Goods imported by the Appellant and subsequently transferred to the Virdee Foundation as the Appellant was, given its NIRU authorisation, an organisation approved by the UK tax authorities.

98. Ms Brown submitted that Condition C could not be satisfied by intention alone as it requires goods to actually be imported by or on behalf of an eligible body which was not the case.

99. This was she contended because BGM was outside the UK and so, in accordance with Article 123 of the UCC, ineligible for relief. She further contended that the Appellant itself could not be an eligible body as Disaster Relief was restricted to state bodies, charities, philanthropic organisations - as indicated by Article 74, and did not extend to private companies such as the Appellant. She added that the NIRU certificate did not change this and in any event had no validity as it was incorrect as the Appellant had not as it was required to do, notified HMRC of its incorrectness.

100. She further contended, although not specifically in relation to Condition C, that there was no chain of evidence showing that the masks supplied to the Virdee Foundation were used for the purposes required for Disaster Relief. On the evidence provided by the Appellant it had

shown that of the 158,000 masks donated to the Virdee Foundation a small proportion were donated to other charities with a large proportion being kept in storage.

Discussion and conclusion on Condition C

101. The three key issues arising from the submissions were (a) whether Condition C can be satisfied by intention alone, (b) whether BGM was an eligible body for the purpose of the Condition, and (c) whether the Appellant itself could be an eligible body for the purpose of Condition C.

Intention

102. We disagree with Mr Firth's submission that Condition C can be satisfied by reference to intention. In our view the requirement for goods to be imported by or on behalf of an eligible body requires those goods to actually end up with an eligible body.

103. We note in this regard the decision of this Tribunal in *Juno Sourcing Limited v HMRC* [2025] UKFTT 1447 (TC) in which a similar argument was put before the Tribunal and dismissed for the same reason that we have given.

Is BGM an Eligible Body for the purpose of Condition C

104. Article 123 of the UCC provides that:

> "where relief from import duties is granted conditional upon goods being put to a particular use by the recipient, only the competent authorities of the Member State in whose territory the said goods are to be put to such a use may grant this relief"

105. Mr Firth submitted that the Article did not apply as relief pursuant to the Commission Decision is not conditional upon use and, even if conditional, is not conditional on use "by the recipient".

106. His submission on this point followed his earlier submission that relief was based upon intention rather than their actual use. He added that it was clear that relief would still be available even if the goods in question were used by other persons – as set out in Article 78 which showed in his view that use was not conditional on use "by the recipient".

107. We agree that Article 1(a) is based on intention and so satisfaction of Condition A is not determined by reference to actual usage of the goods. However, Article 1(c) *is* focused on the end user and requires more than intention – it requires the actual end user (whether that is the importer or the body on whose behalf the goods are imported) to be an eligible body and for that person to "release the goods for free circulation".

108. His submission also disregards Condition B which requires the goods to satisfy the conditions laid down in Articles 75,78, 79 and 80 of the CSDR. Here it is clear (as per Article 80) that should goods cease to be used for the purposes specified in Article 74 which gave entitlement to relief, customs duty becomes payable on the date on which the goods are put to that other use (Article 80(3)).

109. We consider it incorrect to say, therefore, that the relief is not subject to a usage requirement.

110. There might be a technical argument that as relief is granted at the time of importation and so before actual usage of the imported goods, the relief is not conditional upon usage. However, this fails to take into account the mechanism is in Article 80 under which relief can cease to be available. The purpose of the relief, which is to disapply import duties for goods used for particular purposes and imported by specific classes of person, is clear. To construe

the relief as not being conditional upon usage would in our view be to apply a literal approach to the legislation which does not reflect that purpose.

111. Mr Firth also argued that denial of relief in these circumstances would be contrary to the EU principles of equal treatment, non-discrimination and the free movement of goods. We disagree. As Ms Brown submitted, HMRC were not taking the position that Disaster Relief was not available where goods crossed border, but simply that the granting of such relief was an administrative matter for the tax authorities of the member state in which the goods had been imported to. We agree with Ms Brown. Article 123 in this context simply designates the authority that is able to grant relief, it does not determine whether the relief applies or not.

112. We also note here that the FTT has considered previously similar arguments as to the effect of Article 123. In *Hayat Estates v HMRC* [2024] UKFTT 497 (TC) the goods in question were imported into the UK and subsequently shipped to Romania. In relation to the Appellant's argument as to the availability of Disaster Relief the FTT concluded (at [135]) that;

> "It is difficult to see how HMRC would have any power to grant relief for goods which are distributed outside of the United Kingdom. We hold that art. 123 of the CSDR Regulations is applicable in these circumstances and the Disaster Relief cannot apply").

113. Although not binding on us it is of persuasive authority and we agree with its conclusion.

114. Mr Firth also contended that Article 123 was irrelevant as HMRC had in fact granted relief by accepting the Appellant's Customs declaration and were now trying to "claw back" the relief via a post clearance demand. He argued that the issue was therefore not about application of a relief, but was instead about a customs debt that had arisen as a result of non-compliance with a condition of relief. We disagree with that argument. The fact that relief was given at the time of importation based on what was then incorrect information provided by the Appellant to NIRU should not preclude examination of whether the relief should have been available in the first place.

115. We find therefore that BGM was not an eligible body for the purpose of Condition C .

Was the Appellant an eligible body?

116. Mr Firth's contention was that the words in Condition C which we have italicised:

> "or *by* or on behalf of *organisations approved by the competent authorities in the Member States*"

were sufficiently broad to include within the scope of the relief, the Appellant's importation of Goods on its own behalf. This was because the Appellant had been approved specifically by NURI to import the Goods and so was an organisation "approved" by the UK for the purpose of Disaster Relief.

117. His supporting arguments included the following:

(1) That Condition C is clearly broader than Article 74 and there is nothing in Condition C which limits relief to charitable or philanthropic organisations. HMRC were therefore reading requirements into the legislation that did not exist and which were not supportable as a matter of interpretation.

(2) That NIRU was a body established by HRC solely to approve persons as importers for the purpose of Disaster Relief. It had given the Appellant specific approval to import the Goods and that approval was based on the information that the Appellant had provided correctly and honestly at the time. Its intention – to supply goods to a state organisation had remained the same.

118. We do not agree with Mr Firth. Leaving aside his argument as to the Commission Decision extending the category of bodies able to benefit from Disaster Relief to non-state and non-charitable or philanthropic organisations, his submission relies on the Appellant being "approved" by HMRC.

119. That approval is based on the NIRU certificate which as Mr Firth emphasised stated that:

> "This certificate is valid until 31st July 2020. It authorises the import of the above goods free of customs duty and import VAT".

120. However, as Ms Brown pointed out, the NIRU certificate was issued on the basis of the information provided by the Appellant to HMRC on the NIRU application form. This included confirmation that the end user of the Goods was the "NHS/UK Government" and the certificate accordingly specified the end user as "NHS/UK government". The certificate was not, as Ms Brown submitted, a blanket authorisation stating that the Appellant was an eligible body for the purpose of Disaster Relief,

121. We agree with Ms Brown and do not consider that the Appellant was an eligible body for the purpose of Disaster Relief by virtue simply of the NIRU certificate which was granted on the basis of information that subsequently changed and which was limited to Goods to be supplied to a specific end user.

122. Accordingly we find that Disaster Relief did not apply to the import of Goods made by the Appellant on its own behalf.

Conclusion on Disaster Relief

123. For the reasons given we find that the conditions for Disaster Relief were not satisfied by the Appellant.

124. We then turn to the question of whether Import VAT and Customs Duty are payable irrespective of Disaster Relief.

Import VAT

125. We note here that it only the first two consignments of Goods which are potentially subject to import VAT as the VAT Order 2020/458 temporarily reducing the rate of import VAT on PPE to zero came into effect on 1 May 2020 so applying to the last two consignments.

The submissions

126. Mr Firth submitted that no import VAT was due on the consignments. This was because for import VAT purposes, importation occurs only at the point at which the goods are integrated into the economic network of the EU. The place where that integration occurs is where the goods in question are intended for use, which is not necessarily where they physically enter a territory, nor the place where a customs debt arises.

127. As the relevant Goods had entered the UK and been exported to Germany on the same day they had not, he submitted, entered into the economic network of the UK but had instead entered into the economic network of Germany – as that is where they were intended for consumption.

128. In this regard he cited several EU cases.

129. The cases cited included C26/18 *Federal Express Corporation Deutsche Niederlassung* ("Fed-Ex").

130. Here Fed-Ex had arranged to send goods from various countries to recipients located in Greece. The goods were transported from those various countries to Germany where they were loaded onto another aircraft for onward transport to Greece.

131. It was found that some of the goods had not under undergone presentation to customs in in Germany as required under the Customs Code and a breach of the code had therefore occurred. It was also found that some of the goods had been transported on to Greece without having been placed under the Community external transit arrangements which was another breach of the Customs Code. The German tax authority considered that the breaches gave rise to a customs debt on importation and that import VAT was also due as the rules applicable to customs duties applied by analogy to import VAT.

132. The court found, however, that irrespective of the breach of the Customs Code and the incurring of a customs debt, import VAT was due in Greece and not Germany. The critical issue for import VAT purposes was identification of the member state in which the goods had been introduced into the economic network of the EU. This was the place where they were intended for consumption. The court found that whilst breach of the Customs Code created a presumption that the relevant goods were introduced into the economic network of the state in which the breach occurred, that presumption was rebuttable and it was necessary to have regard to the actual facts:

> "[48] … such a presumption may be rebutted if it is established that, despite the infringements of customs legislation and the incurrence, as a result, of a customs debt on importation in the Member State in which those infringements were committed, the goods were introduced into the economic network of the European Union in the territory of another Member State, where they were intended for consumption. In such cases, VAT on importation is payable in the latter Member State.
>
> [49] It is apparent from the order for reference that, although the goods at issue were the subject of infringements of customs legislation in German territory, they were simply transferred from one aircraft to another in that territory.
>
> [50] It is true that, on account of those infringements of customs legislation, the goods at issue, which were physically on the territory of the European Union, were no longer under the supervision of the German customs authorities, which were unable to monitor the movement of those goods.
>
> [51] However, in the present case, it is clear from the order for reference that it is established that the goods at issue were transported to Greece, their final destination, where they were consumed."

133. Mr Firth also cited C-7/20 *VS v Hauptzollamt Munster* ("VS"). In that case a German resident brought a car from Turkey into Germany, passing through several member and non-member states before reaching Germany (the first member state being Bulgaria). The CJEU held that although failure to comply with customs legislation led to the incurrence of a customs debt on importation in the member state where the failure occurred, goods were introduced into the EU economic network only in the member state in which they were intended for consumption – which might not be the state in which the customs debt was incurred.

134. As with *Fed-Ex*, the court found that a presumption arose that the car had entered into the economic network of the EU in the first member state in which the Customs Code was breached but that was a rebuttable presumption only:

> "[34] In the present case, it is apparent from the information before the Court that, similar to the circumstances giving rise to the judgment of 10 July 2019 (Federal Express Corporation Deutsche Niederlassung, C-26/18, EU:C:2019:579), the vehicle at issue in the main proceedings physically

> entered the territory of the Union through Bulgaria, so that it was in that Member State that there was a failure to comply with the customs obligations.
>
> [35] Nevertheless, it is apparent from that information, which it is for the referring court to determine, that, even if, on its way from Turkey to Germany, the vehicle at issue first entered the customs territory of the Union in Bulgaria and, after transiting through the territory of a non-member country, namely Serbia, then re-entered the customs territory of the Union in Hungary, that vehicle was actually used in Germany, VS' Member State of residence. Accordingly, inasmuch as the vehicle entered the economic network of the Union in Germany, it is in that Member State that the import VAT was incurred."

135. Ms Brown's submissions focused on the import documentation completed by the Appellant and the customs procedure it had chosen to follow.

136. Here she pointed out that the Appellant had declared the Goods under customs procedural code 40 00 C26 which was a declaration for free circulation upon entry into the UK. This was consistent with the Disaster Relief provisions which specifically required goods to be imported for free circulation in the UK in order to be eligible for relief (as per Condition C of the Decision).

137. She noted that a customs code existed for goods that were being warehoused in the UK – which was a declaration that they were being stored in a bonded warehouse and so under tax authority supervision whilst in the UK.

138. She submitted that when the Appellant knew that the Goods were to be exported to Germany it could within 90 days of the date on which its original declaration was accepted have claimed (under Article 174 UCC) for the invalidation of its original customs declaration and for the goods to be placed under a different customs procedure. If this had been done and the appropriate customs declaration given, no duty would have been payable in respect of the exported Goods.

139. Mr Firth's submissions were, therefore, contrary to the express declarations given by the Appellant at the time of import and the Appellant had not corrected the position while it had the opportunity to do so.

Discussion and conclusion on import VAT

140. We agree with Ms Brown that the customs procedure adopted by the Appellant (and indeed its application for Disaster Relief) involved a clear declaration by it that the Goods were imported for free circulation in the UK. We agree, therefore, that Mr Firth's submissions contradict that declaration.

141. However our finding on the facts available to us is that the relevant consignments (imported on 28 and 30 April 2020) were exported to Germany on the same day that they arrived in the UK and were likely to have not left the custody of the import agent.

142. We consider therefore, adopting the approach taken in *Fed Ex*, that although there was a breach of the Customs Code and so a presumption that the goods entered into the UK's economic system, that presumption is rebutted in this case by the facts.

143. It seems clear to us that those consignments simply transited through the UK and the place of intended consumption was Germany. Our conclusion here is not affected by the fact that following delivery to BGM a dispute arose as to the quality of the Goods. That does not alter the fact that they were delivered to Germany and to BGM.

144. Accordingly we agree with Mr Firth that Germany rather than the UK is where import VAT is payable in respect of those consignments exported to Germany.

145. Given this conclusion we do not go on to consider the estoppel argument raised by Mr Firth

Customs Duty

146. Article 79 UCC ("Customs debt incurred through non-compliance") provides that for goods subject to import duty:

> " … a customs debt is incurred through non-compliance … with one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the union" (Article 79(1)(b)).

147. Article 79(2) provides that the time at which the customs debt is incurred is either:

> "the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met" (Article 79(2)(a)) or the moment when a customs declaration is accepted for placing the goods under a procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption by virtue of the end use of the goods was not in fact fulfilled" (Article 79(2)(b)).

148. Article 87(1) provides, so far as relevant, that the place where the debt is incurred:

> "shall be the place where the events from which it arises occur".

149. Ms Brown submitted that the time at which the debt arose was when the requirements for Disaster Relief were breached, which was either on import into the UK without any arrangements being in place with an eligible body or, at the latest, when the Goods were sent to an end user that was not an eligible body. In either case, the events from which the debt was incurred were in the UK and not Germany.

150. Mr Firth submitted that for the Goods exported to Germany the place where the events from which the debt was incurred arose in Germany.

151. We cannot see the basis for Mr Firth's submission. We agree with Ms Brown's submission that the relevant trigger for liability is breach of the conditions for Disaster Relief. In our view this was at the time of importation and the place where the breach occurred was the UK

152. Accordingly we find that that customs duty is payable in the UK in respect of the Goods including those exported to Germany.

Remission

153. Having concluded that customs duty is payable we go on to consider remission.

154. The Appellant's claim for remission is based on Article 120 UCC which is headed "Equity" and provides, so far as relevant that:

> 120(1) "… an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor."
>
> 120(2) "The special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would

> not have suffered disadvantage by the collection of the amount of import or export duty."

155. Ms Brown submitted that remission is the exception rather than the rule and the provisions should be interpreted strictly, citing Judge Brannan at [149] in *Canadian Solar EMEA BGMH v HMRC* [2024] UK FTT 85 (TC) ("*Canadian Solar FT*") who cited with approval the CJEU in *Heuschen Schrouff Oriental Foods Trading BV* (Case C-38/007) at [60].

156. She also submitted that as the Covid 19 pandemic had affected all traders in a similar way, the Appellant was not in an "exceptional situation as compared with other operators engaged in the same business" as set out in Article 120(2). Consequently the duty had not been incurred under "special circumstances" as required in Article 120(1).

157. Mr Firth submitted that this was an incorrect interpretation of Article 120 and that 120(2) simply set out *a* situation where special circumstances were deemed to exist rather than setting out the only situation that could be regarded as a special circumstance.

158. In support of his submission he cited the following passages from the Upper Tribunal decision in *Canadian Solar* ([2025] UKUT 142 (TCC) ("*Canadian Solar UT*"):

> "[55(2)]…(b) Secondly, special circumstances are deemed to exist "where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty": Article 120(2) UCC. Where it is clear that such circumstances pertain, the FTT is obliged to find special circumstances, but the wording of Article 120 UCC is unequivocal this is not the only case where special circumstances may be found to exist. Special circumstances are not exclusively defined in Article 120 UCC: all Article 120(2) UCC does is identify one case where "special circumstances" will be deemed to exist."
>
> [55(3)]…(d) If and to the extent that HMRC were contending that the only "special circumstances" that could engage Article 120 UCC were the "deemed" special circumstances set out in Article 120(2) UCC, then we reject that contention. For the reasons given, "special circumstances" can exist even where "deemed special circumstances" do not exist: it is simply that the FTT's judicial discretion is wider in such cases to the extent that the FTT is not obliged to find that special circumstances exist."

159. The correct approach was he submitted outlined in the following paragraph of the judgment in which the UT endorsed the approach of the FTT:

> "[66] At [151], the FTT reminded itself that it had to consider "all the relevant facts when considering the application of the general equity clause - Article 120 UCC - balancing, on the one hand, the interest in ensuring that the customs provisions are respected and, on the other, the interest of the importer acting in good faith not to suffer harm beyond normal commercial risk". This was a correct direction of the law, and the Tribunal rightly found that in this case the balance was in favour of the trader, Canadian Solar…"

160. Mr Firth also cited the UT decision in *Uflex Europe Limited v HMRC* [2025] UKUT 57 (TCC) ("Uflex"). Here the UT had considered the application of Article 97n(2) of the UCC in the context of an importer's failure to provide documentation within a statutory time limit. Article 97n(2) required a determination of whether that failure was "due to exceptional circumstances" in which case a late submission would be accepted. In considering application of the provision the UT drew a distinction between those provisions of the UCC which provided for general equitable reliefs tied to the concept of negligence and description in the context of

remission of duty and narrower more limited provisions such as Article 97n(2). Here it recognised that broad concepts such as fairness or equity and the need for a balancing exercise would arise in relation to the general equitable reliefs in contrast to the narrower provisions.

Discussion and conclusion on remission

161. We agree with Mr Firth. It is clear to us that in considering the Applicant's claim for remission, it does not need to show that its position is different from that of other operators engaged in the same business. It is instead necessary to weigh up the circumstances, balancing as outlined in *Canadian Solar UT*, the public interest in ensuring that the customs provisions are respected and the interests of the importer acting in good faith to not suffer harm beyond normal commercial risk.

162. In adopting that approach we have taken into account all of the circumstances including the following factors as found from the evidence before us:

(1) The Appellant imported the Goods in order to supply them to the NHS at a time when the NHS were urgently seeking PPE and there was a publicised acute shortage of PPE in the UK.

(2) The WHO had declared a health emergency three months earlier (in January 2020) and upgraded that to pandemic status in March 2020.

(3) The government was encouraging private enterprise to assist with procurement of PPE.

(4) The NHS was not engaging directly with suppliers at the time and were dealing with them via a centralised system.

(5) The NHS had directed people not to contact them until goods were in transit or had arrived.

(6) It was not feasible for the Appellant to secure a contract with the NHS before importation.

(7) The Appellant supplied the Goods to BGM and the Virdee Foundation because it had not managed to secure a contract with the NHS by the time the Goods had been imported.

163. Having weighed up the facts and having taken into account the public interest in ensuring that the customs rules are respected, we find that a special circumstance did exist which was one in which the Appellant was exposed to considerably more than normal commercial risk. This is notwithstanding that no deemed special circumstances as per Article 120(2) would have existed as other importers would have been in a similar situation at the time.

164. Having identified the existence of a special circumstance we then need to consider whether there was deception or obvious negligence and if not, to determine that in the absence of the special circumstance the Appellant would not have suffered disadvantage by the collection of the amount of import duty.

Deception

165. It is common ground that there was no deception.

Obvious negligence

166. In respect of obvious negligence we note the following:

(1) There was a procedure that the Appellant should have followed once it decided not to sell the goods to the NHS. As Ms Brown pointed out in her submissions on the

Commission Decision, Articles 74 and 80 of the CSDR Regulation make it clear that should the end user (or use of the goods) change from that notified originally to the tax authority, further notification is necessary.

(2) The NIRU form (and Certificate) specified a particular end user and the notes to the Certificate indicated that changes in details had to be notified to HMRC.

(3) There was a customs procedure that the Appellant could have been followed which would have given relief for the Goods exported to Germany. Specifically, it could, within ninety days of importation, have changed its customs declaration and declared instead that the relevant items were being warehoused in the UK pending export. It did not do so.

167. It is arguable therefore, as HMRC concluded in their review conclusion letter of 21 February 2024 upholding the decision to refuse remission, that failure to follow the correct procedures amounts to negligence on the Appellant's part.

168. However, Article 120 requires us to find "obvious negligence" which, noting the discussion of the concept in *Canadian Solar FTT* (see [149] – [151]), requires more serious failure on the part of the Appellant than that required for mere negligence.

169. Here it is necessary to take into account the circumstances in their entirety including the clarity of the rules in question and the experience of the Appellant in this area.

170. We consider it reasonable to take the view that the rules were not entirely clear. We note for example that the HMRC guidance included in the Hearing Bundle (headed "Request procedure 4; Release to free circulation) does not address the pandemic situation. We note also that the materials included by MS Kaur as examples of the guidance checked by the Appellant (including a KPMG "Global Overview" and a Customs newsletter of 01/2020 headed "Customs Duty and import VAT exemptions and other measures in the movement of goods resulting from the Covid-19 Pandemic) do not in our view make the position entirely clear, particularly to someone unfamiliar with the rules. The HMRC COVID guidance rules were not placed before us and so we do not comment on them.

171. Given that lack of clarity we also consider that taking the view that supply to BGM and to the Virdee Foundation was within the scope of Disaster Relief was not entirely unreasonable in the circumstances given that the Appellant is not a customs specialist (it carries on a general trading, management and consultancy business) and (a) BGM is in broad terms the German equivalent of the NHS, (b) the Virdee Foundation is a registered charity.

172. We also bear in mind that the decisions taken by the Appellant on what to do with the Goods were taken rapidly as it faced the commercial risk of having a significant quantity of financed PPE with no arrangement in place to sell it to the NHS as originally planned. As Mr Firth reminded us this was not a time to take careful planned decisions nor was it an environment where the usual opportunity to take advice from experienced advisers was easily available given lockdown and the newness of the relief and the situation.

173. Most importantly we consider it necessary to have regard to the fact that these events occurred at the early stages of an unprecedented and urgent public health crisis. The Government were encouraging businesses to procure PPE and the unchallenged evidence is that the Appellant responded to that. This was not therefore routine commercial importation and it is unfortunate that the administrative processes in place for supply to the NHS were not suited to the procedural requirements for relief.

174. Taking into account all of the circumstances, we find that although the Appellant might be regarded as negligent, there was no "obvious negligence".

Prejudice in the absence of the special circumstances

175. We consider that this requirement is satisfied as had the Pandemic and the consequent urgent need for PPE not arisen, the Appellant would not have imported the Goods and been subject to customs duty.

Conclusion on remission

176. Article 120 is an equitable provision and we agree with Ms Brown that it must be applied restrictively.

177. However, it is designed for precisely those cases where strict application of customs rules would produce an unjust result in light of exceptional circumstances.

178. We are satisfied that in this case the Appellant satisfies the requirements for remission in full in respect of the customs duties payable.

CONCLUSION AND DISPOSITION

179. The consequence of the conclusions that we have reached above are as follows:

(1) The Appellant's appeal against the Customs Decision fails

(2) The Appellants appeal against the VAT Decision is upheld

(3) The Appellant's appeal against the Remission Decision is upheld and as a consequence the customs duties assessed under the Customs Decision are not payable.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

180. 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.

Release date:
02 June 2026

Appendix

The Law Relevant to the Appeal

The Value Added Tax Act 1994

The Value Added Tax Act 1994 ("VATA") outlines the relevant provisions regarding liability for VAT in the UK.

At the time of import, s.15 VATA confirmed when goods were to be considered imported for the purpose of Import VAT:

(1) For the purposes of this Act goods are imported from a place outside the member States where—

   (a) having been removed from a place outside the member States, they enter the territory of the European Union;

   (b) they enter that territory by being removed to the United Kingdom or are removed to the United Kingdom after entering that territory; and

   (c) the circumstances are such that it is on their removal to the United Kingdom or subsequently while they are in the United Kingdom that any Community customs debt in respect of duty on their entry into the territory of the European Union would be incurred.

s.16 VATA confirmed that customs legislation, including EU legislation, applies directly in relation to Import VAT.

(1) Subject to such exceptions and adaptations as the Commissioners may by regulations prescribe and except where the contrary intention appears—

   (a) the provision made by or under the Customs and Excise Acts 1979 and the other enactments and subordinate legislation for the time being having effect generally in relation to duties of customs and excise charged on the importation of goods into the United Kingdom; and

   (b) the EU legislation for the time being having effect in relation to EU customs duties charged on goods entering the territory of the European Union, shall apply (so far as relevant) in relation to any VAT chargeable on the importation of goods from places outside the member States as they apply in relation to any such duty of customs or excise or, as the case may be, EU customs duties.

Liability for Customs Duty and Import VAT

Liability for customs duty, and so import VAT as per s.16 VATA, is outlined within Council Regulation (EU) No. 952/2013 ("Union Customs Code" or "UCC").

The UCC still had effect in the UK at the time of the Imports, which occurred during the "transition period" of the UK's withdrawal from the EU, in accordance with s.1A(3)(e) of the European Union (Withdrawal) Act 2018 ("EUWA").

The following provisions of the UCC outline the liability for duty on imports:

TITLE III

CUSTOMS DEBT AND GUARANTEES

CHAPTER 1

Incurrence of a customs debt

Section 1

Customs debt on import

Article 77

Release for free circulation and temporary admissions

1. A customs debt on imports shall be incurred through the placing of non-Union goods liable to import duty under either of the following customs procedures:

   (a) Release for free circulation, including under the end-use provisions

   (b) Temporary admission with partial relief from import duty

2. A customs debt shall be incurred at the time of acceptance of the customs declarations

3. The declarant shall be the debtor. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Article 79

Customs debt incurred through non-compliance

1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

   (a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory.

   […]

   (c) A condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of duty

2. The time at which the customs debt is incurred shall be either of the following:

   (a) The moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met

(b) The moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

[…]

4. In cases referred to under point (c) of paragraph 1, the debtor shall be the person who is required to comply with the conditions governing the placing of goods under a customs procedure or the customs declaration of the goods placed under that customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods.

Where a customs declaration in respect of one of the customs procedures referred to in point (c) of paragraph 1 is drawn up, and any information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is given to the customs authorities, which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the customs declaration and who knew, or ought reasonably to have known, that such information was false shall also be a debtor.

The Rate of Duty

Pursuant to Article 56 of the UCC, import duty was based on the Common Customs Tariff including the Combined Nomenclature ("CN") and the conventional rates of duty of the Common Customs Tariff which are laid down in Council Regulation (EEC) 2658/87. Annex I of Council Regulation (EEC) 2658/87, which includes the conventional rates of duty of the Common Customs Tariff, is amended on an annual basis.

The Goods were imported under Commodity Code 63079098. The rate of duty for that code at the time of import was 6.3%.

In accordance with s.2 of VATA, the rate of VAT on the Goods at the time of import was 20%.

The Disaster Relief provisions

The CSDR Regulation implemented a system of reliefs from customs duty for goods entering the EU in certain prescribed situations. The following provisions of the CSDR Regulation which apply to Customs Duties are relevant to the Appeal.
n.b. the VAT Directive provides for Disaster Relief to also apply to Import VAT on terms which are almost identical to the provisions for customs duty. These provisions are set out in Articles 51-57 of the VAT directive. Give the similarity between those provisions and the provisions for customs duty we have not set out the VAT provisions in this appendix.

TITLE I

SCOPE AND DEFINITIONS

Article 1

This Regulation sets out those cases in which, owing to special circumstances, relief from import duties […] shall be granted when goods are released for free circulation […]

Article 2

1. For the purposes of this Regulation:

(a) 'import duties' means customs duties and charges having equivalent effect
[…]

TITLE II

RELIEF FROM IMPORT DUTY

[…]

CHAPTER XVII

Goods for charitable or philanthropic organisations: articles intended for the blind and other handicapped persons

[…]

C. For the benefit of disaster victims

Article 74

1. Subject to Articles 75 to 80, goods imported by State organisations or other charitable or philanthropic organisations approved by the competent authorities shall be admitted free of import duties where they are intended:

   (a) for distribution free of charge to victims of disasters affecting the territory of one or more Member States; or

   (b) to be made available free of charge to the victims of such disasters, while remaining the property of the organisations in question.

2. Goods imported for free circulation by disaster-relief agencies in order to meet their needs during the period of their activity shall also be granted the relief referred to in paragraph 1, under the same conditions.

Article 75

No relief shall be granted for materials and equipment intended for rebuilding disaster areas.

Article 76

Granting of the relief shall be subject to a decision by the Commission, acting at the request of the Member State or States concerned in accordance with an emergency procedure entailing the consultation of the other Member States. This decision shall, where necessary, lay down the scope and the conditions of the relief.

[…]

Article 77

Relief shall be granted only to organisations the accounting procedures of which enable the competent authorities to supervise their operations, and which offer all the guarantees considered necessary.

Article 78

1. The organisations benefiting from the relief may not lend, hire out or transfer, whether for consideration or free of charge, the goods referred to in Article 74(1) under conditions other than those laid down in that Article without prior notification thereof to the competent authorities.

2. Should goods be lent, hired out or transferred to an organisation itself entitled to benefit from relief pursuant to Article 74, the relief shall continue to be granted, provided the latter uses the goods for purposes which confer the right to such relief.

   In other cases, loan, hiring out or transfer shall be subject to prior payment of import duties at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

Article 79

1. The goods referred to in Article 74(1)(b), after they cease to be used by disaster victims, may not be lent, hired out or transferred, whether for a consideration or free of charge, unless the competent authorities are notified in advance.

2. Should goods be lent, hired out or transferred to an organisation itself entitled to benefit from relief pursuant to Article 74 or, if appropriate, to an organisation entitled to benefit from relief pursuant to Article 61(1)(a), the relief shall continue to be granted, provided such organisations use them for purposes which confer the right to such relief.

   In other cases, loan, hiring out or transfer shall be subject to prior payment of import duties at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

Article 80

1. Organisations referred to in Article 74 which cease to fulfil the conditions giving entitlement to relief, or which are proposing to use the goods admitted duty-free for purposes other than those provided for by that Article, shall so inform the competent authorities.

2. In the case of goods remaining in the possession of organisations which cease to fulfil the conditions giving entitlement to relief, when these are transferred to an organisation itself entitled to benefit from relief pursuant to Article 74 or, if appropriate, to an organisation entitled to benefit from relief pursuant to Article 61(1)(a), relief shall

continue to be granted, provided the organisation uses the goods in question for purposes which confer the right to such relief. In other cases, the goods shall be liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

3. Goods used by the organisation benefiting from the relief for purposes other than those provided for in Article 74 shall be liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

[…]

Article 123

Where relief from import duties is granted conditional upon goods being put to a particular use by the recipient, only the competent authorities of the Member State in whose territory the said goods are to be put to such a use may grant this relief.

The Commission Decision

As per Article 76 of the CSDR Regulation, and Article 53 of the VAT Directive, implementation of Disaster Relief is 'subject to a decision by the Commission'. This is the Commission Decision (EU) 2020/491, issued on 3 April 2020 ("the Decision").

The relevant provisions of the Decision are as follows:

Article 1

1. Goods shall be admitted free of import duties within the meaning of Article 2(1)(a) of Regulation (EC) No 1186/2009 and exempted of value added tax (VAT) on the imports within the meaning of Article 2(1)(a) of Directive 2009/132/EC, where the following conditions are fulfilled:

   (a) The goods are intended for the following uses:

      i. distribution free of charge by the bodies and organisations referred to in point (c) to the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak;

      ii. being made available free of charge to the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak while remaining the property of the bodies and organisations referred to in point (c);

   (b) The goods satisfy the requirements laid down in Articles 75, 78, 79 and 80 of Regulation (EC) No 1186/2009 and Articles 52, 55, 56 and 57 of Directive 2009/132/EC

   (c) The goods are imported for release for free circulation by or on behalf of State organisations including State bodies, public bodies and other bodies governed by public law or by or on behalf of organisations approved by the competent authorities in the Member States.

Specific Import VAT provisions - Temporary zero-rating for VAT

The VAT Order implemented a temporary zero-rating for VAT of all PPE between 1 May 2020 and 31 July 2020 by amending Schedule 8 VATA. The relevant amendment, for the purpose of this appeal, is contained in Article 4:

4. In Part 2 (the Groups), after Group 19 insert—

> "GROUP 20—PERSONAL PROTECTIVE EQUIPMENT (CORONAVIRUS) Item No 1. The supply of equipment to provide protection from infection where the supply is made in the period beginning with 1st May 2020 and ending with 31st July 2020.
> […]

Remission

Article 116 of the UCC confirms that customs duties can be repaid or remitted in specified circumstances:

Section 3 Repayment and Remission

Article 116

General provisions

1. Subject to the conditions laid down in this Section, amounts of import or export duty shall be repaid or remitted on any of the following grounds:

   […]

   (d) equity.

Article 120 specifies the conditions on which equitable remission should be granted:

Article 120

Equity

1. In cases other than those referred to in the second subparagraph of Article 116(1) and in Article 117, 118 and 119 an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor.

2. The special circumstances in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty

The Jurisdiction of the Tribunal

The Appellant's right to appeal against the decision to issue the Assessment is set out in Finance Act 1994 ("FA94").

Section 13A FA94 confirms the jurisdiction of the Tribunal to consider appeals against relevant customs decisions.

Section 13A(2)(a) confirms this includes:

"any decision by HMRC, in relation to any customs duty … of the European Union, as to –

(i) whether or not, and at what time, anything is charged in any case with any such duty or levy;
(ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
(iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
(iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled"

The Burden of proof

The burden of proof is on the Appellant to evidence the grounds of their appeal (s 16(6) FA94). The standard of proof is the balance of probabilities.