



TC02515

Appeal number: TC/2011/03817

VALUE ADDED TAX – Import of motor cruiser – Value Added Tax Act 1994 Schedule 8 Group 12 item 2 (i) – whether import zero rated under relief provisions relating to use by persons with disabilities – No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WILLIAM CADBURY

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE TIMOTHY HERRINGTON
MICHAEL SHARP**

Sitting in public at 45 Bedford Square, London WC1 on 14 September 2012

The Appellant in person

**Mark Fell, Counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

Introduction

5 1. This is an appeal by Mr William Cadbury (“Mr Cadbury”) against the review
decision of the Respondents (“HMRC”) dated 19 April 2011 upholding a decision to
issue an import VAT assessment dated 19 April 2011 (“the Assessment”) for £20,260
in relation to the import of a 40 foot Swordsman motor cruiser (“the Boat”). Mr
Cadbury maintains that the import of the Boat is zero rated under relief provisions
10 relating to the use by persons with disabilities which is denied by HMRC.

2. We heard oral evidence from Mr Cadbury and a bundle of documents and
relevant correspondence was submitted. We should say at the outset that Mr Cadbury
was an impressive and honest witness who was prepared to assist the Tribunal in
giving a full account of the relevant events even where the matters concerned did not
15 always assist his case. He also presented his case and made his submissions ably. We
have no hesitation in accepting his evidence without reservation. Mr Fell was also of
considerable assistance in ensuring that all the relevant arguments were considered in
the light of the fact that Mr Cadbury was not legally represented.

The Facts

20 3. Based on the evidence that we heard and the documents before us we set out our
findings of fact.

4. Mr Cadbury has a severely disabled son, Richard, who has cerebral palsy, as a
result of which he cannot walk, stand or talk or even sit up. He is confined to a
wheelchair most of the time. The Cadbury family, to their credit, are keen to ensure
25 that Richard is able to indulge his passion for boats and in that regard Mr Cadbury
decided during 2009 to purchase a boat of a particular design, known as a
“Swordsman 40” which has side racks which make it easier to get Richard on board
than is the case with the boat he then owned. In addition the Swordsman 40 is easier
to adapt for Richard than the boat that Mr Cadbury then owned. The Swordsman 40
30 was also big enough to sleep the whole of the Cadbury family (comprising six
members), and to give enough room for Richard’s wheelchair. Mr Cadbury
confirmed in cross examination that the Boat was used by the whole of his family and
other friends and when Richard was on board it would always be in the company of
family or friends.

35 5. By June 2009 Mr Cadbury had identified the Boat, a Swordsman 40. The Boat
was registered and kept in Jersey. Consequently, on 18 June 2009, before Mr
Cadbury purchased the Boat he contacted HMRC’s Contact Enquiry Centre to
ascertain the correct tax treatment for importing a boat from Jersey into the UK and
was advised that he will have need to pay VAT at the standard rate of 15% of the
40 value of the Boat. Mr Cadbury was told that he will need to complete a form C384V
on the basis of which HMRC would issue an assessment for the correct amount of
VAT.

6. On 27th July 2009 Mr Cadbury completed the purchase of the Boat and paid the agreed purchase price of £135,000. He registered it in his own name at the Registrar of British Ships in Jersey the next day.

5 7. On 30th July 2009, Mr Cadbury departed from Jersey on the Boat to bring it back to the UK. Unfortunately, it suffered a breakdown and he had to put into port at Cherbourg on 31st July in order that it could be repaired. As this process would take some time Mr Cadbury returned to the UK by ferry.

10 8. On 6 August 2009, whilst Mr Cadbury was still in the UK waiting for the repair to be completed, he looked at HMRC's website to check on how to pay the VAT due on importation of the Boat. He came across information relating to the importation of vehicles and vessels by disabled persons and contacted HMRC's Contact Enquiry Centre by telephone to see if relief from VAT would therefore be available, bearing in mind that the Boat was intended to be used by Richard. Mr Cadbury says, and we accept his evidence, that having described the fact that the Boat would be used by his family, including Richard, he was told that relief from VAT would be available in respect of the purchase. Under cover of its letter of 7 August 2009 HMRC sent Mr Cadbury Public Notice 371 ("PN 371"), an explanatory notice covering the ability to import goods for disabled people free of duty and VAT, and Public Notice 710/7 ("PN701/7") a more general notice explaining which goods and services for disabled people are zero rated for VAT purposes. The letter also enclosed two copies of Form C384V, which Mr Cadbury was advised to complete and attach to it a certificate claiming relief from VAT.

25 9. We observe at this point that PN371 does not specifically deal with the position of boats imported for the use of disabled persons. Paragraph 2-2 of PN371 describes in broad terms the categories of goods that can get relief from VAT on importation and in particular refers to "any goods specially designed to give educational, employment or social help to people with physical or mental disabilities". This paragraph also makes it clear that relief is not allowed on "any non-specialised goods imported for subsequent adaption to make them suitable for use by disabled people". 30 PN 701/7 is more detailed but it is focused exclusively on supplies of goods rather than imports. PN 371 specifically refers readers to PN701/7 for further information about VAT reliefs for disabled people. Paragraph 4.4 of PN 701/7 sets out in detail the conditions for relief relating to the supply of boats to disabled persons. It provides:

35 "You can zero rate the supply to an eligible customer as detailed in paragraph 3.1 of a boat which is designed, or prior to supply is substantially and permanently adapted, for use by disabled persons or to carry disabled persons. To qualify for relief, a boat should include all or most of the following features:

- a ramp for wheelchairs;
- 40 • lifts and level non cambered surfaces to accommodate wheelchair movements;
- specialised washing and lavatory facilities accessible to disabled people;

- specially equipped galley and sleeping areas and steering facilities for use by disabled people;
- handrails; and
- wheelchair clamps.”

5 An “eligible customer as detailed in paragraph 3.1” includes, as explained in paragraph 3.2.1 of PN701/7, a person “with a physical or mental impairment which has a long-term and substantial adverse effect upon his/her ability to carry out everyday activities”. This paragraph also explain that if a parent, spouse or guardian acts on behalf of such a disabled person the supply is treated as being made to that disabled person and that the goods must be acquired for their personal use, which is further explained in paragraph 3.5 of the Notice as being made available specifically for the use of an eligible individual.

10 10. By the time these documents arrived at Mr Cadbury’s home he had already left for France to pick up the Boat. He saw HMRC’s letter of 7 August on his return to the UK with the Boat on 11th August 2009.

11. On 20th August 2009 Mr Cadbury completed Form C384V and attached to it a claim for relief incorporating a declaration, signed by him on Richard’s behalf, declaring that Richard was disabled by reason of his cerebral palsy and was importing the Boat for domestic or his personal use.

20 12. On 27 August 2009 Mr Pitcher of HMRC wrote to Mr Cadbury asking him to supply further information with regard to the claim for VAT relief, namely a final purchase invoice identifying the vessel and photo evidence showing any and all adaptations made to the Boat “before purchase”.

25 13. Mr Cadbury received Mr Pitcher’s letter on 29 August 2009. On or about 10 September 2009 he telephoned Mr Pitcher. Mr Cadbury’s evidence of this conversation, which we accept, is that he asked Mr Pitcher what else he needed to send with the sales invoice. In reply Mr Pitcher asked whether Mr Cadbury had purchased the vessel to which Mr Cadbury answered yes. Mr Pitcher then asked whether Mr Cadbury had carried out all the adaptations listed in his letter of 27th August, which had quoted the guidance in paragraph 4.4 of PN 701/7 set out in paragraph 9 above. Mr Cadbury stated that he had not because all but the wheelchair clamps were not necessary in Richard’s case. Mr Cadbury explained to the Tribunal that Richard was so severely disabled that he had to be assisted with all of his movements so the other adaptations would have been superfluous. Mr Pitcher completed the conversation by stating that as Mr Cadbury had purchased the Boat without having the modifications effected in advance the vessel was not eligible for relief and put the phone down.

40 14. It would appear that the fitting of the wheelchair clamps was effected some time in September 2009; we were shown photographs of the Boat dated 15 October 2009 clearly showing the clamps in place. It was accepted by Mr Cadbury that the fittings took place after the Boat had been imported into the United Kingdom.

15. Mr Cadbury then pursued the matter down a different course having tried unsuccessfully to follow up with Mr Pitcher. In October 2009 he took informal advice from a local customs officer who patrols the river near Mr Cadbury's home who advised him to appoint a shipping agent to pursue the matter. Accordingly Mr
5 Cadbury instructed Peters & May who declared the Boat to HMRC using a form C88, entering the Boat as an article specifically designed for use by persons with disabilities and declaring that VAT relief had been applied for under the terms of PN701/7. On 21 October 2009 HMRC issued an Import Entry Acceptance Advice stating that the entry had been accepted and cleared and that the VAT due was zero.

10 16. It would appear that this parallel process was unknown to the HMRC unit that had dealt with Mr Cadbury's claim for relief that had been submitted on 20 August 2009, as described in paragraph 11 above. Accordingly on 26 October 2009 that unit wrote to Mr Cadbury chasing the information requested in Mr Pitcher's letter of 27
15 August 2009. The letter enclosed the Assessment and requested that either the information previously requested be supplied, or the Assessment paid within 21 days. Mr Cadbury ignored this letter as he believed it to have been superseded by the clearance he received on 21 October 2009 as referred to in paragraph 15 above. Peters & May did however send a fax to Mr Pitcher of HMRC on 6 November 2009 attaching a copy of the clearance they had obtained.

20 17. Mr Cadbury had assumed the matter had now been concluded. He was therefore surprised to receive a letter almost a year later on 3 November 2010 from Mr Pitcher's unit at HMRC. This was sent by a Mrs Angove. It appears that HMRC had investigated the circumstances of Peters & May's application and concluded that it was valid for relief from import duty only and not VAT relief. The letter stated that
25 for VAT relief a clearance based on a declaration of the type Mr Cadbury completed in August 2009 as described in paragraph 11 above was required; in respect of that declaration HMRC had been seeking further information from Mr Cadbury. Mrs Angove apologised for the delay in pursuing the matter.

30 18. After a review of the position following further representations from Mr Cadbury HMRC made a final decision concerning the application for relief and concluded that as Mr Cadbury had been unable to provide the further information requested, the Assessment would stand and payment of the sum due under it was requested. This was set out in a letter from Mrs Angrove to Mr Cadbury dated 30
35 November 2010. During the course of conversations that Mr Cadbury had with Mrs Angove before the issue of the final decision, Mrs Angove conceded that Mr Pitcher had originally given Mr Cadbury wrong information concerning the conditions needed for relief from VAT on importation. Mr Pitcher in his letter of 27 August 2009 and his subsequent telephone conversation with Mr Cadbury in September 2009 had told Mr Cadbury that the necessary adaptations had to be completed before the
40 Boat had been purchased, whereas, as is apparent from the legislation as discussed below, the adaptations must be completed before the Boat is *imported*. Mr Cadbury's response to this was that he could have coped with such a condition as it would not have been reasonable to have asked the vendor to make the adaptations before the purchase was completed, but in any event it is common ground that the adaptations
45 were not completed until after the Boat had been imported.

19. Mrs Angove's decision was reviewed at Mr Cadbury's request by Mr Perry Young of HMRC and the decision in that regard was set out in Mr Young's letter of 19 April 2011("the Review Decision"). The relief was declined on the basis that the necessary modifications to the Boat had not been carried out before importation. Mr Young also confirmed that the clearance obtained by Peters & May was not effective for VAT purposes as it was clear that the relief was subject to satisfaction of the conditions set out in PN 701/7 and these had not been complied with.

Legislation

20. Section 1 of the Value Added Tax Act 1994 ("VATA") imposes a charge to VAT on the importation of goods from outside the Member States, and states that Import Tax is payable as though it is duty of customs:

"1. Value added tax

(1) Value added tax shall be charged, in accordance with the provisions of this Act - ...

(c) on the importation of goods from places outside the member States

(4) VAT on the importation of goods from places outside the Member States shall be charged and payable as if it were a duty of customs."

21. Regulation 136 of the VAT Regulations 1995 ("the VAT Regulations") states that goods imported from the Channel Islands are to be treated as goods imported from outside Member States:

"136 For the purposes of the Act the following territories shall be treated as excluded from the territory of the Community-

(a) the Channel Islands..."

22. Section 5 of the Customs and Excise Management Act 1979 ("CEMA") states that the point at which a duty of customs is incurred, and accordingly a liability to import VAT under s.1 VATA, as being the time of arrival at the port of entry:

"5. Time of importation, exportation, etc

(2) Subject to subsections (3) and (6) below, the time of importation of any goods shall be deemed to be-

(a) where the goods were brought by sea, the time when the ship carrying them comes within the limits of a port;

...

(8) A ship shall be deemed to have arrived at or departed from a port at the time when the ship comes within or, as the case may be, leaves the limits of that port."

23. Section 30(2) VATA provides for the zero rating of certain supplies as set out in Schedule 8:

“30 Zero-rating

5 (1) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not VAT would be chargeable on the supply apart from this section-

(a) no VAT shall be charged on the supply; but

(b) it shall in all other respects be treated as a taxable supply;

and accordingly the rate at which VAT is treated as charged on the supply shall be nil.

10 (2) A supply of goods or services is zero-rated by virtue of this subsection if the goods or services are of a description of the time being specified in Schedule 8 or the supply is of a description for the time being so specified.”

24. According to Schedule 8 VATA, handicapped persons are entitled to relief from VAT on boats designed or adapted for their personal use as follows:

“Schedule 8

15 Group 12 – Drugs, medicines, aids for the handicapped

2 The supply to a handicapped person for domestic or his personal use, or to a charity for making available to handicapped persons by sale or otherwise, for domestic or their personal use, of-

.....

20 (i) boats designed or substantially and permanently adapted for use by handicapped persons.

(3) “Handicapped” means chronically sick or disabled.”

25. As explained in paragraphs 8 and 9 above, HMRC have issued guidance on the legislative provisions detailed above regarding the import and supply of goods for disabled persons in PN 371 and PN 701/7.

26. Customs Procedure Code CPC4000C24 is defined in the UK Customs Tariff (Volume 3, Part 3, Appendix E4) as being the appropriate code for articles specially designed for disabled people as follows:

“1. Goods covered

30 Articles specially designed for use by disabled people (other than blind or partially sighted) and imported by those individuals for their own use, on which relief from customs duty is claimed under a certificate issued by the National Import Reliefs Unit (NIRU) of Revenue and Customs, and on which VAT zero rating may also be claimed.

2. Notices

371, 701/7

3. Specific Fields in the declaration/notes on completion

5 If the NIRU certificate and/or VAT declaration is available, make a GEN A1 statement.

4. Additional documents required

The NIRU certificate. The declaration from Notice 701/7 if VAT zero rating is claimed.

...

10 7. VAT

If VAT zero rating is claimed under the terms of Notice 701/7, enter "VAX" in the Rate column of box 47 for the tax line. Otherwise VAT must be paid at importation."

15 27. Under Council Regulation (EEC) No 2913/92 ("the Customs Code"), the customs authorities may request information required to verify the particulars contained in the declaration after it has been accepted:

"Article 68

For the verification of declarations which they have accepted, the customs authorities may:

20 (a) examine the documents covering the declaration and the documents accompanying it. The customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration...."

25 28. Article 78 of the Customs Code allows HMRC to inspect documents after goods have been released, and requires HMRC to take certain steps where customs procedures have been incorrectly applied due to incorrect or incomplete information having been provided on a declaration as follows:

"Article 78

30 1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

35 2. The customs authorities may, after releasing the good and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, or any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of

the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularize the situation, taking account of the new information available to them.”

Authorities

29. We were referred by Mr Fell to two authorities which deal with the interpretation of “domestic or.... personal use” as that expression is used in Schedule 8 Group 12 Item 2 (i) as set out in paragraph 24 above (“Item 2(i)”). First, in *Aquakraft Limited v The Commissioners of Customs and Excise* (1986), Decision Number 2215, in considering the meaning of the same phrase in relation to the supply of equipment or appliances the VAT and Duties Tribunal expressed the view that “personal” in this context means “private” or “exclusive”: see paragraph 1 on page 6 of the decision. Secondly in *Portland College v The Commissioners of Customs & Excise* (1993), Decision Number 9815 the VAT and Duties Tribunal held that a walkway supplied to assist disabled persons to move more easily around an educational facility for disabled persons did not amount to a supply for “domestic or.... personal use” by handicapped persons on the grounds that to come within this provision:

“the user must be a specific person or persons to have the use of what was supplied but I could not extend that user to all persons who came to use the equipment even if all such users were handicapped”.

Issues for determination

30. It was common ground that Richard Cadbury was a “handicapped person” as defined in Item 2(i). It was also common ground that the Boat was not designed for use by disabled persons and that it was imported before any adaptations were made to enable it to be used by Richard. The issues in dispute in the appeal were therefore as follows:

- (1) Was the fact that adaptations that Mr Cadbury made to accommodate use of the Boat by Richard were made after the Boat was imported mean that relief from VAT cannot be available?;
- (2) Did the adaptations that Mr Cadbury made after importation mean that the Boat had been “substantially and permanently adapted for use by handicapped persons” as provided in Item 2(i) ?;
- (3) Was the Boat supplied to Richard Cadbury bearing in mind that Item 2 (i) refers to the supply to a handicapped person of.... boats...?”;

(4) Was the Boat imported for the “personal use” of Richard as required by Item 2(i)?; and

5 (5) Does the fact that Mr Cadbury received clearance of the importation of the Boat free of VAT following the application made on his behalf by Peters & May affect the position?

We now turn to consider these issues in the light of the submissions of the parties.

Discussion

10 31. Mr Cadbury submitted that he should be entitled to the relief because he felt that the explanatory leaflets, namely PN 371 and PN 701/7 were not sufficiently clear. In particular it was not made clear whether the adaptations to enable the Boat to be used by disabled persons had to be made before the vessel in question was purchased or whether the condition applied at the point when the vessel was imported. On this basis Mr Cadbury submitted that the fair course was to allow the relief to apply notwithstanding the fact that the adaptations were made after importation.

15 32. It is clear from Section 1(4) of VATA that VAT on the importation of goods from places outside the Member States shall be charged and payable as if it were customs duty. It is also clear that Jersey, one of the Channel Islands, was outside the Member States: see Regulation 136 of the VAT Regulations. By virtue of Section 5 of CEMA the point at which customs duty is incurred is when the ship carrying the goods comes within the limit of a port. In this case the goods themselves, the Boat, was the ship in question so it is clear that the liability, if any, to customs duty and accordingly the liability, if any, to VAT under Section 1(4) of VATA applied when the Boat came within the limits of the port where it landed.

25 33. It follows that the test as to whether the goods in question qualify for any relief from VAT must likewise be established at the time of importation. Customs duties, and therefore import VAT which is treated as a duty of customs, could not properly be assessed other than at the point of entry otherwise it would not be possible to apply the correct classification which is dependent on the state and condition of the goods at the time they were imported. Any alterations or adaptations to the goods made after 30 this time could not be relevant to that assessment.

34. Consequently, the question as to whether the Boat qualified for relief under Item 2(i) must be tested at the time of importation. As it was common ground that no adaptations had been made to the Boat to make it suitable for use by disabled persons at the time of its import the relief cannot be available on that ground alone..

35 35. Mr Cadbury is justifiably aggrieved that the explanatory leaflets are not as clear as they might be and that he was given misleading information by Mr Pitcher in Mr Pitcher’s letter of 27 August 2009 and the subsequent telephone conversation on or about 10 September 2009.

36. In our view the explanatory leaflets are not as clear as they might be in that to ascertain the position on how the relief might apply to the importation of boats adapted for use by disabled persons it would be necessary to read both PN371 and PN701/7 and then analyse whether the relief is available. Therefore the reader who starts with PN371, which deals specifically with importation, will ascertain that relief is not allowed on “any non specialised goods imported for subsequent adaptation to make the suitable for use by disabled people”: See paragraph 2.2 of PN371. However, the reader may not necessarily associate a boat as being goods for this purpose so if as suggested in paragraph 2.3 of PN371, he reads PN701/7 to obtain further details on the conditions for relief he will find that this Notice deals exclusively in language applicable to purchases rather than ... imports. So in paragraph 4.4 of PN701/7, which deals with boats, the guidance states that the supply of a boat to an eligible customer can be zero rated where the boat “is designed or prior to supply is substantially and permanently adapted for use by disabled persons or to carry disabled persons”. It is therefore easy to fall into a trap of thinking that the relief only applies where the adaptations concerned are made before the vessel is purchased rather than before it is imported. This appears to be the trap that Mr Pitcher fell into and if he failed to pick up on the difference it is easy to see how a member of the public could likewise so fail. In our view it would be highly desirable if the matters could be clarified, either by expanding the detail in PN 371 or by making it clear in PN 371 when dealing with the conditions for relief, that the relevant time for boats that are imported in the time of importation not the time of supply. We hope that the HMRC will carefully consider clarifying the position as suggested.

37. Unfortunately for Mr Cadbury this deficiency cannot help him because on his own admission he did not read PN 371 and PN701/7 until the Boat had already been imported, the Boat arriving in the UK on 11th August 2009 and Mr Cadbury not having sight of the two explanatory leaflets until after that time.

38. Nor do we believe that the position is changed by the fact that Mr Cadbury was told in his telephone conversation with HMRC’s Contact Enquiry Centre on 6 August 2009, after the Boat had been purchased but before it had arrived in the UK, that because the Boat would be used by Richard the relief would be available. There is no evidence that the specific conditions applicable to the relief being available beyond the fact of Richard being disabled were discussed; hence HMRC sending Mr Cadbury PN371 and PN701/7 which set out the detailed conditions. There is therefore no evidence that Mr Cadbury placed any reliance on this conversation in deciding to proceed with the importation of the Boat, a process that had already been initiated before the conversation took place and we so find

39. We should point out that in the light of our finding that Mr Cadbury placed no reliance on PN371 and PN701/7 or his conversation with HMRC before deciding to import the Boat we have not considered that the Assessment should be precluded based on an argument of legitimate expectation and we express no view on whether such an argument would have been available to Mr Cadbury had he so relied.

40. We therefore conclude on the first issue that the fact that the adaptations were made after the Boat was imported means that relief from VAT under Item 2(i) was not available in respect of the importation of the Boat.

41. Our conclusion in relation to the first issue effectively disposes of the appeal.
5 We shall however make some brief observations in the other issues.

42. In relation to the second issue, the question is whether the adaptations that were actually made, namely the addition of the wheelchair clamps, mean that the requirement of item 2(i) that the Boat had been “substantially and permanently updated for use by handicapped persons” had been met. We set out in paragraph 9
10 above an extract from paragraph 4.4 of PN 701/7 which shows that in HMRC’s view to qualify for relief a boat should include all of most of the features specified in that paragraph. As we have found, all but one of these features were superfluous in this case because they would not assist Richard. It might seem at first sight unfair that in effect the relief should not be available where the Boat is to be used by a severely
15 disabled person where most of the adaptations specified are unnecessary. However, as Mr Fell pointed out, the policy behind the relief is that it should be available as a means of helping to relieve the significant extra cost involved in adapting a vessel for use by the disabled person concerned and if that significant extra cost were not necessary then there was no policy reason why the relief should be available. We
20 accept that submission, the relief is not available simply because the vessel concerned is to be used by a disabled person, it is available where substantial adaptations are necessary to enable it to be so used. In our view the addition of wheelchair clamps alone do not mean that the Boat in this case was “substantially adapted” as required by Item 2(i).

43. In relation to the third issue, the question is whether the fact that the Boat was purchased and supplied to Mr Cadbury rather than Richard himself means that relief is not available. Paragraph 3.2.1 of PN701/7 makes it clear that in this context HMRC treat a supply as having been made to the disabled person where, inter alia, a parent acts “on behalf” of the disabled person. There is no further guidance on how
30 far this concession extends, for example, is it necessary that the disabled person should have a proprietary interest in the vessel. In this case, however, it was clear that the Boat was not imported for the benefit of Richard alone, it was to be used by the Cadbury family generally and their guests. Bearing in mind the wider use that the Boat could be expected in this case, in our view it could not be said that the Boat had
35 been acquired “on behalf of” Richard. Where a parent purchases a vessel which is to be used extensively by a disabled person the question as to whether it has been purchased on behalf of that person will be a matter to be determined on the facts of each particular case.

44. In relation to the fourth issue, which is closely linked to the third issue, the
40 question is whether the intended use of the Boat, which as freely admitted by Mr Cadbury was for use of his family and friends as well as Richard, was sufficient to constitute a supply to Richard for his “personal use” as required by Item 2(i). The two authorities referred to by Mr Fell, namely *Aquavit* and *Portland College*, in our view establish the principle that there must be a strong link between the supply of the

vessel and its use by a specific person. Whilst it cannot be correct that a boat would not qualify for relief just because the disabled person was accompanied on its trips by others, particularly where the person's disability was such that he could not sail the boat on his own, in our view the relief would only be available where the acquisition
5 was made with a view to its predominant use being by a specified disabled person. In the present case it is clear that the Boat is extensively used by the Cadbury family and its friends and it is available for use when Richard is not present. In those circumstances in our view the Boat was not imported for Richard's "personal use" as that term is used in Item 2(i).

10 45. Mr Cadbury referred to the fact that he had no difficulty in obtaining VAT relief when he acquired a motor vehicle for use by Richard where substantial adaptations were made to accommodate Richard and his wheelchair. Mr Cadbury told us that the vehicle concerned was used as daily transport for the whole of his family and not just Richard, so he did not understand why if the relief was available in those
15 circumstances it was not available in relation to the Boat.

46. It is not for us to review the factual circumstances surrounding other goods that Mr Cadbury may have purchased for Richard's use; we must simply apply the law to the factual circumstances of the particular case before us. We are not in a position to judge whether the circumstances regarding Mr Cadbury's purchase of a motor vehicle
20 are such that relief was properly given in that particular case.

47. Finally, we address the issue as to whether the fact that Mr Cadbury received a clearance following Peters & May's application on his behalf affects the position. In our view this cannot preclude the issue of the Assessment, which was made after clearance was issued. It is clear from Article 78 of the Customs Code, as set out in
25 paragraph 28 above, that HMRC is entitled to carry out post-clearance investigation of import entries. Peters & May had used an incorrect form which stated that the Boat had been specifically designed for use by persons with disabilities and declared that VAT relief had been applied for under the terms of PN701/7. In those circumstances it was open to HMRC to investigate whether the conditions for relief had been
30 satisfied and having concluded that they had not, proceed to issue the Assessment.

Conclusion

48. We find on the basis of our analysis of the circumstances relating to each of the issues that we have identified that the conditions for relief set out in Item 2(i) were not
35 satisfied in relation to Mr Cadbury's importation of the Boat and that HMRC were entitled to make the Assessment. Accordingly, the Assessment must stand and the appeal must be dismissed.

49. 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
40 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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**JUDGE TIMOTHY HERRINGTON
TRIBUNAL JUDGE**

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RELEASE DATE: 4 February 2013