



TC03250

Appeal number: TC/2012/06324

VAT – Zero rating- whether camper vans converted from VW T5 motor vans supplied to disabled customers by appellant were adapted “permanently and substantially” to enable a disabled person who usually used a wheel chair “to enter and drive or otherwise be carried in” the vehicle for the purposes of Note 5L to Item 2A Schedule 8 Group 12 VATA 1994 – combination of adaptations consisting of ambulance ramp fitting strip and swivel seats fulfilled criteria – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CONCEPT MULTI CAR LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE SWAMI RAGHAVAN
DEREK SPELLER FCA**

Sitting in public at Folkestone Magistrates Court on 18 September 2013

Mrs Hilary Shortland, managing director of the appellant for the Appellant

Ms Kim Tilling, HMRC Officer, Appeals and Reviews, for the Respondents

DECISION

Introduction

1. The appellant is a small motor business which specialises in making conversions to VW motor vans. This appeal relates to 8 vehicles that the appellant supplied to disabled customers and whether each of those supplies were correctly treated by the appellant as zero-rated for VAT purposes on the basis that the adaptations made to each of the vehicles satisfied the particular criteria for zero rating treatment in Item 2A of Schedule 8 group 12 of the Value Added Tax Act 1994 (“VATA 1994”) which are that the vehicle is “substantially and permanently adapted to enable a handicapped person...who usually uses a wheelchair...to enter, and drive or otherwise be carried, in the motor vehicle.”
2. The appellant argues that various features of the vehicles such as front seats that swivel, an ambulance ramp kit, and grab handles amount to adaptations which satisfy the legislative requirements for zero rating.
3. HMRC disagree and say that features such as the swivel seat do not meet the relevant criteria because they are an option put in by the manufacturer which is available to able bodied persons as well, and that the other features such as the ambulance ramp kit and grab handles are not put in with the specific needs of the particular disabled person. Further they say that the adaptations are not permanent or substantial for the purposes of the legislation and that even if the adaptations enable a disabled person to enter the vehicle they are not adaptations which enable the disabled person “to drive, or otherwise be carried” in the vehicle. The legislative requirements are not therefore met.
4. HMRC raised two assessments, one for the VAT period 07/09 and 07/10 in the amount of £25,304.00 and another for VAT periods 04/11 and 07/11 in the amount of £17,880.00. The appeals were consolidated on 12 March 2013. No point was taken by HMRC on the original appeal being out of time (the latest date for filing it in time was 25 May 2012 but because the decision letter to be sent along with the form was not originally sent in the appeal was not notified to the Tribunal until 13 June 2012). Given HMRC’s non-objection and the short period of delay, we determined that it was in the interests of justice for the appeal to proceed out of time.

Evidence

5. On behalf of the appellant we heard oral evidence from Mrs Hilary Shortland. Mrs Shortland was cross-examined by HMRC and also answered the Tribunal’s questions. She is the managing director of the company and also a shareholder in it. The business is a small one employing 9 people and Mrs Shortland deals with the customers and oversees the handover of the vans to them. Mrs Shortland was a knowledgeable and credible witness.
6. On behalf of the Respondents we received a witness statement from Anne Newman, an officer of HMRC working in VAT assurance who had visited the

appellant and had corresponded with the appellant in relation to the vehicles. The witness statement which had been served in advance on the appellant and the Tribunal exhibited Mrs Newman's notes and correspondence with the appellant. We directed the evidence stand as evidence in chief. HMRC were given permission to ask Mrs Newman supplemental questions and Mrs Newman also answered questions from Mrs Shortland and the Tribunal. We found Mrs Newman to be a credible witness.

7. We also had before us as an agreed bundle of documents containing correspondence between the parties, the appellant's records of van conversions they had made ("the conversion records"), declarations and correspondence from customers, photographs of some of the vehicles, the appellant's brochures and materials from the the manufacturer of the ambulance ramp and fitting.

Law

8. Section 30(2) of VATA 1994 provides:

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

9. Schedule 8 Group 12 provides:

"Group 12 — Drugs, medicines, aids for the handicapped, etc

Item No

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—

(a) medical or surgical appliances designed solely for the relief of a severe abnormality or severe injury;

(b) electrically or mechanically adjustable beds designed for invalids;

(c) commode chairs, commode stools, devices incorporating a bidet jet and warm air drier and frames or other devices for sitting over or rising from a sanitary appliance;

(d) chair lifts or stair lifts designed for use in connection with invalid wheelchairs;

(e) hoists and lifters designed for use by invalids;

(f) motor vehicles designed or substantially and permanently adapted for the carriage of a person in a wheelchair or on a stretcher and of no more than 11 other persons;

(g) equipment and appliances not included in paragraphs (a) to (f) above designed solely for use by a handicapped person;

(h) parts and accessories designed solely for use in or with goods described in paragraphs (a) to (g) above;

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

5

Item 2A

2A

The supply of a qualifying motor vehicle—

(a) to a handicapped person—

(i) who usually uses a wheelchair, or

10

(ii) who is usually carried on a stretcher, for domestic or his personal use; or

(b) to a charity for making available to such a handicapped person by sale or otherwise, for domestic or his personal use.”

10. Note 5L to Group 8 sets out the meaning of “qualifying motor vehicle”.

15

“(5L) A “qualifying motor vehicle” for the purposes of item 2A is a motor vehicle (other than a motor vehicle capable of carrying more than 12 persons including the driver)—

(a) that is designed or substantially and permanently adapted to enable a handicapped person—

20

(i) who usually uses a wheelchair, or

(ii) who is usually carried on a stretcher,

to enter, and drive or be otherwise carried in, the motor vehicle; or

25

(b) that by reason of its design, or being substantially and permanently adapted, includes features whose design is such that their sole purpose is to allow a wheelchair used by a handicapped person to be carried in or on the motor vehicle.”

11. In relation to wheel chair users it can be seen in summary that, Item 2(f), and the two subparagraphs in Note 5L (which is relevant to Item 2A) between them cover 3 different scenarios.

30

12. Item 2(f) deals with scenarios where the design of the vehicle or adaptations to it are for a person to be carried in the vehicle while the person remains in the wheelchair.

35

13. Note 5L (subparagraph (b)) deals with design or adaptations which include features which allow the *wheelchair* used by the disabled person to be carried in the vehicle.

14. Note 5L (subparagraph (a)) deals with design or adaptations which enable a disabled person who usually uses a wheelchair to enter and drive or otherwise be carried in the vehicle without necessarily remaining in the wheelchair.

15. This appeal concerns the last of these scenarios (Note 5L subparagraph (a)). Neither of the other two scenarios is in issue in this appeal. The appellant did not seek to argue that the adaptations in question were to enable a disabled person to be carried in the vehicle while remaining seated in their wheelchair. In relation to adaptations
5 which enable the carriage of the wheelchair there was insufficient evidence before us to suggest that any such adaptations were made to any of the vehicles to which the appeal relates.

Background facts

16. The appellant company has been in the business of adapting vans for the last 25
10 years. The appellant is the UK conversion agent of Reimo GmbH a manufacturer and supplier of motor caravan components and accessories. Reimo produce a range of conversions for the panel van based motorhome market specialising in the in VW T5 Transporter but also offering conversions to Vauxhall and Mercedes vans.

17. Mrs Shortland is the managing director of the company. She estimated the
15 company converted 30 to 40 vehicles a year and on average 2 a year for disabled customers. Customers come from all over the country. She did not think there had been any disabled customer conversions in 2007 to 2009 but agreed there had been 8 in the subsequent 2 year period. Mrs Shortland told us the company has latterly attended an exhibition at the NEC in Birmingham. They exhibited their vans and took
20 along ramps so as to allow disabled attendees to view inside the vehicle.

18. The company was a small one and one in which Mrs Shortland had a hands on role. She worked in general sales, giving quotations, arranged the adaptations, and liaised with customers as well as doing the accounting. In relation to disabled
25 customers she found out whether they were on higher rate DLA (disability living allowance) in order to make a decision as to whether they were eligible for zero rating. She saw the vehicles and handed them over to the customers when they came to collect them.

19. The vehicles were generally based on T5 Volkswagens vans with dimensions
30 of 1.904m width and heights ranging from 2m to 2.72, (high top roof) and length ranging from 2m to 2.72m. They included between 4 to 7 travelling seats and 2-4 sleeping seats.

20. The VW T5 converted vehicles come in different ranges and are called
35 "Weekender plus, Sport Camper, City Van, Lucky Classic, Trio Style, and Multi-Style." The conversions included the following sorts of work and items: installing an elevated roof, vehicle insulation, anti-slip vinyl flooring, beds, kitchen area with combination cooker, sink, hot water, fridge, full electrical system with mains hook up, auxiliary battery and charging system.

21. The main supplier to the appellant for the VW motor vehicles is a company
40 called JCB located in Sittingbourne. The basic motor vehicle is bought from the supplier with a number of additional factory fitted options included. These additional options can include air conditioning, alarm packs, alloy wheels, cruise control, DAB

digital radio reception, parking heaters, parking sensors, privacy glass, heated cab seats, swivel seats (described in more detail below), trip computer, tyre pressure warning lights and window packs.

22. The appeal relates to 8 vehicles, details of which are set out in the table at [38] below. It is not in dispute that each of these vehicles was bought by a disabled person who would fall into the legislative description in Item 2A (a handicapped person who usually uses a wheelchair.)

The adaptations which are the subject of this appeal

Swivel seats

23. Swivel seats are offered for all models for the cab seats. They enable the front seats to be swivelled to face the rear and become part of the usable living space. Swivel seats are mentioned either explicitly or implicitly in the appellant's brochure. The copy in the appellant's brochure for the Weekender Plus, City Van and Trio Style models reads: "Dual front swivel seats combine with the multi position rear seat to give a flexible living space...". For other models it is clear that swivel seats may be installed from diagrams which show that the front seats may be turned around to allow for sleeping space in conjunction with forward-facing rear seats. Swivel seats are also mentioned in the brochure under the heading of "popular conversion options to consider" at a price of £206.50 per seat.

24. While it was possible for the appellant to retro-fit swivel seats to the cab seats, in relation to the vehicles which are the subject of this appeal, the insertion of the swivel bases needed to put in the swivel seats was specified to JCB in the appellant's order forms to them using the designation "seat pack D" (the appellant's conversion records used this designation too.)

Ambulance ramp kits – the ramp and the fixing

25. The ramps are manufactured by Unwins. They comprise two telescopic sections which slide within each other reducing from 1.95m to 1.06m. They are designed to allow wheelchair access into a vehicle or a building. The maximum guidance height is 460mm from ground to entrance height. The maximum combined wheelchair and passenger weight must not exceed 300kg per pair. The fixing strip is fitted across the side door (although it can also be fitted across the rear door).

26. The strip has the appearance of a carpet gripper i.e. a long thin metal strip with several fixing heads the top of which look like Philips screw heads. It has two parallel lips which protrude above the level the van interior and which allow the top curved end of the ramp to be hooked onto the fixing in order to stabilise it. Installation of the fixing requires holes to be drilled into the vehicle floor. The strip is bolted into the vehicle floor with counter sunk bolts.

27. The ramps and fixing kits had been bought by the appellant in bulk. In addition we saw one invoice which we accepted from Mrs Shortland's evidence related to the

ramp and fixing. This was dated 30 June 2008 (no 10477) and was from Euro Motive in the amount of £112.00. The invoice did not describe the ramp but merely referred to "Items supplied to Nigel in June". Mrs Shortland explained Nigel was her workshop foreman.

5 *Grab handles*

28. Mrs Shortland explained that some disabled customers needed grab handles by the door to help get into the vehicle, to manoeuvre within it and also to get up from the bed e.g. on the wardrobe fitting. Grab handles needed to be bolted securely onto the vehicle. They needed to be securely fixed in order to sustain the weight of a person pulling themselves up. The customer did not pay extra for these and the cost was included in the conversion cost.

Wheelchair stowage / wheelchair clamps

29. Although some of the conversion records made reference to wheelchair storage, and clamps and some of the photographs from customers showed how the wheelchair could be stored in the back of the vehicle in various positions, beyond it being apparent that there was space in the van to wheel a chair in and store it there was insufficient evidence before us which indicated that adaptations had been made to enable storage of a wheelchair or to fix it in place while the user remained seated in it. Mrs Shortland clarified that the reference in some of the records to clamps did not refer to wheelchair clamps.

Extent to which ambulance ramp kits were present on 8 vehicles

30. There was an issue as to whether there were ambulance ramp kits on each of 8 vehicles relevant to this appeal. HMRC highlighted that the appellant's conversion records and the VAT exemption certificates (containing the disabled person's disability and details of adaptations) did not refer to the ambulance ramp fitting.

31. On 13 April 2011, Mrs Newman, an HMRC assurance officer, visited the appellant's premises. She examined various documents there including declarations, conversion records, sales invoices and purchase order from the appellant to JCB and copied down details of these into her notebook.

32. There was no mention of ambulance ramps in the details for vehicle registrations RCK81, W40MJB, GN10EWK and GN09DDK.

33. There was however an e-mail from the customer who bought vehicle GN10EWK attaching a photo with the message "I trust these photos are sufficient to prove I have disabled access to my camper van."

34. We saw a letter from the customer who bought vehicle RCK81 confirming her vehicle had a ramp adaptor, and letters and photos from the customers who bought vehicles GN09DDK, and W40MJB and GN10EXE which referred to and showed pictures of ramp adaptors.

35. Mrs Shortland was cross examined on why the ambulance fitting did not appear in the conversion records for the respective vehicles. She said where the customer was a wheelchair user the appellant went ahead and put the fitting in “regardless of position”. By this we understood that she did not make further enquiries to confirm the customer wanted the fitting but assumed that such customers would want the fitting put in.

36. Mrs Shortland explained that improvements had subsequently been made in relation to the quality of the appellant’s document and record keeping in preparation for getting quality assurance standard ISO9001. The fact the ambulance ramp kits were not mentioned on the original conversion records Mrs Newman saw did not in our view mean the kits were not fitted to the vehicles.

37. Mrs Shortland was familiar with the vehicles and we found her to be a credible witness. We accept her evidence that the vehicles were fitted with the ambulance ramp fixing. In relation to vehicle registrations RCK81, GN09DDK, W40MJB, and GN10EXE, there is corroboratory documentary evidence, but even where there is not we are satisfied on the basis of Mrs Shortland’s evidence there were ambulance ramp kits fitted on each of the 8 vehicles.

38. A summary of the adaptations we have found together with other details of the vehicles is set out in the table below.

| Vehicle invoice date and number | Registration (Vehicle) | Invoice value (£) | VAT HMRC say is due (£) | Adaptation |
|--|---|--------------------------|--------------------------------|--|
| 16/07/10 4944 | RCK81 Reimo Cielle based on VWT5 LWB | 33,790.00 | 5,032.55 | Swivel seats Ambulance Ramp Kit |
| 19/04/10 4584 | GN10EXE Reimo Lucky motor home | 33,790.00 | 5,032.55 | Swivel seats Ambulance Ramp Kit Grab Handles |
| 19/05/10 4696 | W40MJB VWTS SWB SE Motor home | 36,500.00 | 5,436.17 | Swivel seats Ambulance Ramp Kit |

| | | | | |
|------------------|--|-----------|----------|--|
| | window van | | | |
| 27/05/10 4742 | GN10EWK VWT5 SWB Reimo motor home | 32,990.00 | 4,913.40 | Swivel seats Ambulance Ramp Kit |
| 29/05/09 3676 | GN09DDK T30 Cityvan | 37,515.26 | 4,893.29 | Swivel seats Ambulance Ramp Kit |
| 04/03/11 5609 | C6DAD VW T5 LWB | 42,325.00 | 7,054.16 | Swivel seats Ambulance Ramp Kit Wheelchair storage |
| 06/05/11 5853 | GN11FVJ VW T5 SWB | 25,969.00 | 4,328.00 | Swivel seats Ambulance Ramp Kit Grab handle |
| 28/05/11 | GN11HYH VW T5 | 38,990.00 | 6,498.33 | Swivel seats Ambulance Ramp Kit Grab Handle |

39. It was not in dispute that each of the appellant's customers were disabled and that they usually used a wheel chair. As of November / December 2011 five of the vehicles remained with the buyer. One had been part exchanged for a larger vehicle, and one had been sold with the ramp fitting in place. There was no suggestion that the treatment of the sales as zero rated was part of an abusive scheme entailing resale to others.

Parties' submissions

40. The appellant's primary argument was that it had not changed its practices in terms of the adaptations of motor vehicles for disabled wheelchair users during the duration of the company and that on previous inspection visits by HMCE where the adapted vehicles had actually been seen and inspected zero rating of the supplies had been accepted. By contrast the HMRC visit in 2011 and review did not involve an inspection to the vehicles.

41. The appellant's complaint is that it has followed the published guidance of HMRC only to now find that HMRC are introducing additional qualifying requirements at a later point. An example was in relation to the requirement that the vehicle be adapted "substantially" and HMRC's guidance that "a substantial adaptation would alter the vehicle in a meaningful way enabling a wheelchair user to use the vehicle which he or she could not use before it was adapted".
42. The appellant is adopting similar practices to its competitors who had not been challenged by HMRC and following industry standards.
43. In any case the ambulance ramp fitting is a substantial permanent adaptation which is capable of being used for the lifetime of the wheelchair user. It is impossible to enter without the ramps and the fitting kit is necessary to make the ramp safe.
44. The fitting of the swivel cab seats are similarly a permanent adaptation enabling the wheelchair user to use the vehicle. The fact many able-bodied customers take the option does not and should not affect the VAT relief for disabled customers.
45. The other equipment such as wheelchair storage kits and grab handles also qualify for zero-rating on the above basis.
46. HMRC say the adaptations are insufficiently substantial and permanent to meet the requirements of Note 5L.
47. The ramps are separate from the vehicle and the lipped rail (the ambulance ramp fitting) does not satisfy the requirement for there to have been a permanent and substantial adaptation. The adaptation is to be contrasted with that in *Quentin Hylands v CCE* (2004 Decision 18560) where the VAT Tribunal found the ramps did amount to a substantial adaptation. There the ramps attached to the vehicle and had a pivot and could be swivelled into a storage position in the vehicle.
48. The "stretcher beds" the appellant had mentioned in its conversion records are in fact the basic bed option available as an extra by the supplier and are not an adaptation specific to the needs of the disabled person.
49. HMRC say there is no credible nexus between the adaptations and the ability to enter and drive or otherwise by carried in the vehicle. They say that even if it can be shown there is an adaptation which enables entry into the vehicle, that is not enough as the legislation also requires the adaptations to enable the person to either drive or be carried in the vehicle.
50. Furthermore HMRC argues the appellant did not assess the particular individual needs of the disabled person before making the adaptation. If ramp kits were put in these were put in as a matter of course for the disabled customer.

Discussion

51. The issue before us is whether each of the 8 vehicles meet the particular criteria set out in Note 5L in order for the vehicle to be a "qualifying motor vehicle". The

5 extent to which HMRC has changed their stance in relation to the appellant following previous visits is a matter of their conduct and is not something which is within our jurisdiction in relation to this appeal. The appellant's arguments that HMRC are applying stricter guidance to them that was not in place at the time of the supplies are not relevant to the issue before us which is which the correct treatment of the supplies under the legislation and in particular the words of Note 5L.

10 52. As HMRC explained at the hearing the particular guidance referred to is non-statutory and does not have the force of law. Although Mrs Shortland told us she had spoken to competitors who she said had made similar adaptations to the vehicles for disabled customers and had not been challenged this again is not relevant to the issue of the correct VAT treatment of the particular supplies of vehicles under appeal.

53. We begin our discussion with the particular points of legal interpretation of the terms used in Note 5L before going on to apply them to the facts.

Issues of legal interpretation

15 *Note in 5L requires 2 elements to be satisfied?*

54. HMRC argue that the reference in the legislation to "to enter, and drive or be otherwise carried in the motor vehicle" amounts to a two pronged test. The adaptations or design must either enable the person to 1) enter and drive the vehicle, or 2) enter and be carried in the vehicle.

20 55. By definition a person must have been able to enter a vehicle before they can drive it or be carried in it. We have considered whether this could support an argument that the words "drive or otherwise be carried in" the vehicle are an explanation for what someone will do once they have entered the vehicle rather than separate requirements in and of themselves i.e. the target of the legislation is design or adaptations to enable a person to enter the vehicle (with the consequence they can 25 then either drive or be carried in it).

56. The better view however is that meaning must be given to the words "drives, or otherwise be carried in" and that they are not included simply by way of explanation. This is supported by the explanatory notes to the Value Added Tax (Vehicles 30 Designed or Adapted for Handicapped Persons) Order, SI 2001/754 which inserted item 2A and Note 5L and which refer to travel in the vehicle and do not focus merely upon entry into the vehicle. The explanatory note provides as follows:

35 "Articles 3 and 6 of the Order make provision for the zero-rating of supplies of vehicles carrying up to 12 persons and designed, or substantially and permanently adapted, to enable a wheelchair or stretcher user to travel in the vehicle without the need to be in a wheelchair or on a stretcher".

40 57. An adaptation or design that only dealt with entry into the vehicle would not necessarily have anything to say about how the person was then enabled to travel in the vehicle without being in the wheelchair.

Meaning of substantial and permanent

58. HMRC submit that if an adaptation is to be sufficiently substantial and permanent it must be a) securely constructed – the adaptation must be substantial in a real sense; and b) not of a temporary nature such that it is capable of being “unadapted” at short notice (they refer to *Quentin Hylands*). They accept that the degree of complexity of the adaptation is not relevant.

The Quentin Hylands decision

59. The meaning of permanent and substantial in the context of Note 5L was considered in this case. The issue in this appeal was whether the ramp and floor track adaptations to a US manufactured motor home, “the Rambler” were fit for the purpose of enabling a handicapped person to enter, drive, or be carried in the vehicle.

60. The Tribunal directed itself to consider the definitions of “substantial” or “permanent” as set out HMRC’s Notice 701/59 noting later at [31] that these definitions did not have the force of law but that the fulfilment of such criteria was in its judgment “enough to satisfy the requirements of Items 2, 2A and Note 5L of Group 12 of Schedule 18...”.

61. The Notice stated in answer to the questions of what was a permanent adaptation and what was a substantial adaptation:

“An adaptation is permanent if it can be used for as long as the disabled wheel-chair user requires it. Generally the adaptation would require welding or bolting to the vehicle.”

“A substantial adaptation enables a wheel-chair user to use a vehicle which he could not use before it was adapted.”

62. The Tribunal found that the top mounting of the ramp was either bolted or welded to the floor and that it appeared to them that the adaptations were capable of being used for so long as the disabled person would require them.

63. In relation to whether the adaptation was substantial the Tribunal noted the adaptation “did not appear to us to be of a temporary nature or to be composed of materials such they could be unadapted at short notice.” It noted that whether the adaptation took up a lot of the interior space appeared to them to be of no relevance. It also seemed clear to them that without the ramp the appellant’s father (who was a disabled wheel chair user) would be unable to enter the Rambler and without the flooring mounting for the wheel chair he would be unable to be transported in it safely.

Our views on “permanence” and “substantial”

64. Whether an adaptation has been made permanently and substantially will very much be dependent on an appraisal of the particular facts surrounding the adaptation including the nature of adaptation, its function, and the vehicle being adapted.

65. The interpretation of permanence set out above at [61] (as reflected by the reference in the Notice to “generally”) cannot we think be exhaustive in the sense that it cannot be ruled out that there are other ways an adaptation can be permanent without it being bolted or welded.

5 66. In our view whether an adaptation is “substantial” has to be assessed in the context of what it is the adaptation enables someone to do. But beyond that, whether the adaptation is substantial will turn on the particular facts surrounding the adaptation.

10 67. We are not persuaded the term “substantially” goes as far as requiring the level of causative link that HMRC’s guidance suggests namely that but for the adaptation a disabled person could not use the vehicle. The notion of a wheel chair user doing something they would otherwise be unable to do is already captured by the reference in the legislative provision to “enable”. The inclusion of “substantially” suggests that
15 the vehicle is not an all or nothing issue. Rather it will depend on an appraisal of the particular facts.

68. We agree that the size or complexity of the adaptation are not factors which by themselves are determinative.

20 *Does it matter if adaptations are not necessarily designed with specific person in mind?*

69. Although not developed by HMRC at the hearing their Statement of Case points out that the adaptations do not satisfy the legislative standard because they have not been supplied as an adaptation specific to the needs of the disabled person. In VAT1616 (guidance for suppliers) it is stated under the heading of “what is meant by permanent and substantial adaptation?” that:
25

“the adaptation must be both necessary and specific to suit the customer’s individual needs.”

30 70. Although HMRC pointed out there was no assessment of individual needs in that the ramps were put in as a matter of course HMRC did not seek to rely on this argument at the hearing focussing instead on their argument the adaptations did not meet the substantial and permanency tests. We are in any case doubtful this is what the legislation requires.

35 71. Item 2A identifies that the supply to which zero rating is applied is to a supply of a qualifying motor vehicle to “a handicapped person”. That will be a particular individual. However Note 5L which explains what a qualifying motor vehicle refers to “ a handicapped person – i) who usually uses a wheel chair” (emphasis added). This reference is not **the** person to whom the supply was made but to *a* handicapped person who fulfils the further criteria. If the legislation was intended to refer back to the particular disabled person there would be no need to refer to “a” instead of “the”
40 and further no need to set out again the characteristics of the handicapped person.

72. It does not therefore matter whether adaptations are made with the specific disabled customer to whom the vehicle is supplied in mind.

Application to facts

5 73. It was not in dispute that each of the customers was a disabled person who usually uses a wheelchair.

74. We consider first whether the ambulance ramp kits were substantial and permanent adaptations.

10 75. It needs to be made clear that the adaptation in question here is not the actual ramp but the fixing. Although the ramp itself was supplied along with the ramp fixing it was a separate item and did not constitute an adaptation to the vehicle.

15 76. We are satisfied that adapting the vehicle to include this fixing is permanent. In order to attach the fixing holes needed to be drilled into the vehicle which will remain in the bodywork. The fixing was bolted with counter sunk bolts. The fixing could not be “unadapted” at short notice. Even if it was the case that the fitting was removed this would not reverse the adaptation as in order to “unadapt” the vehicle and return it to its prior state the holes which had been drilled into the body would need to be filled in.

20 77. In addition we are satisfied the ramp fixing was a substantial adaptation. This requirement is not, as discussed above, defined by the size and complexity of the adaptation. It ought, in our view, to be assessed taking into account the degree to which adaptation furthers the purpose of enabling a disabled person meeting the requisite characteristics to “enter and drive, or otherwise be carried” in the vehicle. Getting into the vehicle safely is essential. The fixing enables safe access to the vehicle. We are satisfied the adaptation is made “substantially” to enable a disabled person who usually uses a wheelchair to enter the vehicle.

30 78. We accept the fixing was clearly different from the ramp in the *Quentin Hylands* case which was described as “a large piece of equipment” which “turned on a swivel from the operative position” to be stored in the vehicle. However the decision in that case does not mean that some other different type of ramp related equipment could not be found to be substantial. In any case the vehicle in *Quentin Hylands* as a US motor home (and one which could stow a 111 inch ramp) was on a different scale to the vehicles under consideration in this appeal so even if that decision purported to set a minimum level as to what sort of ramp equipment counted as substantial it would not necessarily assist this Tribunal on what would be substantial in the context of a smaller van.

35 79. The presence of ambulance ramp fixings satisfies the “enter” element of the test in Note 5L but not the ‘drive, or otherwise be carried in’ element. We go on to examine whether any of the other features satisfy that element.

Swivel seats

80. The appellant says that while these seats may be convenient for able bodied users they are essential for disabled users. HMRC highlight the swivel seats are a standard option.

5 81. These arguments raise the issue of whether this is an adaptation “to enable” a disabled person to drive or otherwise be carried in the vehicle.

82. As discussed above the legislation does not require the adaptation to be made with the particular disabled customer in mind.

10 83. We also note that it does not matter that the adaptation was made by JCB rather than the appellant. The question posed by the legislation is whether a particular vehicle has been adapted by the time it has been sold to the disabled customer. It does not matter that the adaptation has been made by someone other than the person supplying the vehicle.

15 84. In our view the ordinary meaning of the term “to enable” requires us to look at the purpose for which the adaptation was made. It is therefore not enough that the adaptation has the effect of enabling a disabled person to drive or otherwise be carried in the vehicle. (It clearly does that in our view as without the swivel seat a disabled person who usually uses a wheelchair cannot access either the driver’s seat or the front passenger seat.)

20 85. On the other hand we do not think the reference to “to enable” goes as far as requiring that the sole purpose of the adaptation is to enable the disabled person to drive or be carried in the vehicle. Where the legislation requires something as a sole purpose it specifically states this e.g. in Note 5L (b). The fact that there may be another purpose to the swivel seats e.g. for passengers / drivers to turn round to face
25 other members of the party while the vehicle is stationary e.g. to eat or socialise together does not rule out the adaptation being for the requisite purpose. These other purposes are reflected in the mention of the swivel seats in the appellant’s brochure. While the fact that the adaptation is offered as an option to customers generally points against the adaptation being solely to enable a disabled person who usually uses a
30 wheelchair to enter, drive or otherwise be carried in the vehicle it does mean that this cannot be one of the purposes of the adaptation. The omission of the brochure mentioning that the swivel seats enable persons who usually use wheelchairs to access the cabseats does not mean that cannot also be a purpose. It is perhaps unsurprising that something that would serve an obvious function of access to a particular subset of
35 their customers would be singled out for mention in their general marketing material.

86. It is clear to us that the vehicles do not come with swivel seats as a default. The option must be specified for them to be put in and the brochure indicates that this comes at an extra cost.

40 87. How then can it be determined whether one of the purposes of the adaptation fulfils the legislative requirements?

88. In our view it is an objective matter of fact as to whether there is such a purpose. (We did not receive any evidence as to the subjective intention of the party carrying out the adaptation but in any case to hang the zero rating off the subjective intention of the person making the adaptation would risk different outcomes being reached in relation to the same supplies from the point of view of the consumer and would thereby breach principles of fiscal neutrality.)

89. Our focus must be on the particular vehicle and the particular adaptation. The fact that similar adaptations may be made to other vehicles for different purposes is not relevant in our view. In relation to each of the vehicles the adaptation came about because of requests made by the disabled customer. Noting the position and height of the front doors of the van from the photographs we saw we think it is reasonable to infer that in each case one of the reasons if not the main reason for wanting the adaptation would be to access the front cab seats in order to be able to drive the vehicle or to be carried in the front passenger seat. The customers may well have had other reasons for wanting the adaptation such as being able to enjoy a greater amount of usable living space when the vehicle was parked up but that did not rule out them wanting to be able to use the cab seats for driving or for use as a passenger.

90. There is then an instruction from or on behalf of a disabled person to carry out the adaptation. The disabled person falls within the class of disabled person contemplated by Note 5L namely a handicapped person who usually uses a wheelchair. The party carrying out the adaptation in respect of each of the vehicles acted pursuant to this instruction and would not have made the adaptation were it not for the adaptation being requested.

91. In these circumstances we think it can be said that at least one of the purposes of the adaptation looking at the matter objectively, (even if it cannot necessarily be established as a sole purpose) is “to enable” a disabled person who usually uses a wheelchair “to drive, or otherwise be carried in, the motor vehicle”.

92. The knowledge of the person carrying out the adaptation which goes to their subjective intention in making the adaptation is not in our view relevant. (Further as discussed above their knowledge of the particular disabled person’s needs is not relevant to the question of whether the adaptation enables a disabled person who usually uses a wheelchair to do certain things as opposed to the particular disabled customer).

93. We are satisfied that putting in the swivel seat amounts to an adaptation. We did not understand it to be disputed that to the extent the addition of swivel seats were an adaptation to a vehicle that this adaptation was permanent and substantial. Special swivel bases for the seats have to be installed. The swivel seats meet the criteria of being permanent and substantial.

94. We should note that in reaching the conclusion that the swivel seats fulfilled the second element of the legislative requirement of Note 5L(a) we do not mean to suggest that any adaptation (subject to it being permanent and substantial) will qualify simply because it has been requested by a disabled person who usually uses a

wheelchair. It has to be established that the adaptation is “to enable” a disabled person to enter, and drive or otherwise be carried in the vehicle. There will no doubt be adaptations sought by such customers which are not related to those functions.

5 95. Where what is sought is fitted in the vehicle as standard, this would raise the issue of whether the feature was designed with the requisite purpose. That issue does not arise here as the swivel seats do not come as standard but must be selected.

96. Our conclusion is that collectively the ramp fixings and the swivel seats amount to adaptations which satisfy Note 5L.

97. We have also considered the adaptations in the form of grab handles

10 98. The grab handles were fitted specially for disabled customers. They were relevant to the person entering the vehicle and to being carried in it in that the grab handles are needed in order to be able to manoeuvre within the vehicle. They will need to be used by the customer to access other seating in the vehicle and in order to be carried in it because there is no other fixing provided in the van for the customer to
15 remain seated in the wheelchair while being carried in the vehicle. The grab handles are fixed securely in order to sustain the weight of person supporting themselves by it.

99. If we are wrong in the conclusions we have reached on the swivel seats then we would find that grab handles are adaptations which are permanently and substantially to enable a disabled person to be carried in the motor vehicle.

20 100. In combination with the ramp fixings we would find that those vehicles which contained grab handles and the ramp fixings satisfy note 5L (i.e. the vehicles which would satisfy Note 5L are vehicle registrations GN10EXE, GN11FVJ and GN11HYH).

25 101. There was no evidence before us which suggested that adaptations for wheelchair storage had been made and therefore subsection b) of Note 5L did not apply in relation to any of the vehicles.

Conclusion

30 102. Each of the 8 vehicles were adapted in a way which meant they were a “qualifying motor vehicle” for the purposes of Note 5L. The supplies of the vehicles to disabled customers meeting the legislative criteria were correctly zero rated. The assessments under appeal are reduced to zero and the appeals against the assessments are allowed.

35 103. 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.

5

**SWAMI RAGHAVAN
TRIBUNAL JUDGE**

RELEASE DATE: 21 January 2014