Neutral Citation: [2022] UKFTT 00440 (TC)

Case Number: TC08650

FIRST-TIER TRIBUNAL
TAX CHAMBER

London, Taylor House

Appeal reference: TC/2019/05994

Strike out application – jurisdiction of Tribunal - section 83(1)(b) VATA 1994 – whether capable of extending to issues arising out of Border Force decisions in relation to export certification under VAT Retail Export Scheme – yes – application refused - Chhabria & Others v Director of Border Revenue, TC/2016/04286, considered

Heard on: 25 November 2022
Judgment date: 29 November 2022

Before

TRIBUNAL JUDGE MARK BALDWIN

Between

HUILAN GE

Appellant

and

DIRECTOR OF BORDER REVENUE

Respondent

Representation:

For the Appellant: Mr Karim Boukeba, a family friend of the Appellant

For the Respondents: Mr Michael Newbold of counsel, instructed by the Cash Forfeiture and Condemnation Legal Team, Home Office

DECISION

INTRODUCTION

1. This decision is concerned with an application by the Director of Border Revenue ("the Respondent" or "DBR") to strike out the appeal an appeal by Huilan Ge ("the Appellant" or "HG") seeking repayment of VAT incurred on the purchase of goods in the UK for export to China. The application is made pursuant to rule 8(2) of the First-tier Tribunal (Tax Chamber) Rules, on the basis that this Tribunal ("the FTT") does not have jurisdiction in this matter.

BACKGROUND

2. By way of an appeal received on 7 September 2019, HG seeks to recover VAT paid on goods purchased by her in the UK. HG asserts that:

> (a) Goods were purchased by her (and/or by her family members) in the UK while she was on holiday.
>
> (b) Before her return flight, she approached a Border Force officer at Gatwick Airport seeking to recover the VAT paid on those goods, presenting relevant paperwork.
>
> (c) Upon being asked by the officer to produce the goods, she informed him that her luggage had already been checked in. At that point the officer refused the claim on the basis that the "Goods [were] not produced".
>
> (d) The officer refused to further consider the position, or even to have regard to those goods which could have been produced from hand luggage.

3. HG's factual narrative, as set out in her notice of appeal, is accepted by DBR for the purposes of this strike out application only. Mr Newbold complained that the notice of appeal itself contains little or no particularisation which would allow the DBR to indicate the extent to which it agrees or disagrees with the asserted facts. Mr Boukeba agreed that, if the appeal is allowed to proceed, the next step should be for HG to remedy these deficiencies and I deal with that below.

4. In the notice of appeal, Mr Boukeba (who represented HG before me and who also accompanied HG as she left the UK) indicated that the DBR officer at Heathrow "spoke to us in a demeaning, condescending and rude manner" and when, after HG had departed because she was worried about missing her flight, Mr Boukeba returned to speak to the officer he spoke to him sarcastically, in "an even more condescending manner" and laughed at him.

THE VAT RETAIL EXPORT SCHEME

5. Although not expressly stated in her notice of appeal, the Appellant's challenge arises in the context of the operation of the VAT Retail Export Scheme ("VATRES").

6. The Scheme operated in the UK while the UK was an EU member state and would have been of application when the matters giving rise to the appeal took place (whereas it is now of application in Northern Ireland only). Its basis is found in Council Directive 2006/112/EC ("the Directive").

7. In accordance with Article 146(1) of the Directive, member states are required to exempt certain transactions for the purposes of VAT:

> "1. Member States shall exempt the following transactions: …

> (b) the supply of goods dispatched or transported to a destination outside the Community by or on behalf of a customer not established within their respective territory, with the exception of goods transported by the customer himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use;"

8. Article 147 of the Directive sets out the conditions which must be met for the exemption in Article 146(1)(b) to be engaged:

> "1. Where the supply of goods referred to in point (b) of Article 146(1) relates to goods to be carried in the personal luggage of travellers, the exemption shall apply only if the following conditions are met:
>
> (a) The traveller is not established within the Community;
>
> (b) The goods are transported out of the Community before the end of the third month following that in which the supply takes place;
>
> (c) the total value of the supply, including VAT, is more than EUR 175 or the equivalent in national currency, fixed annually by applying the conversion rate obtaining on the first working day of October with effect from 1 January of the following year. However, Member States may exempt a supply with a total value of less than the amount specified in point (c) of the first subparagraph.
>
> 2. For the purposes of paragraph 1, 'a traveller who is not established within the Community' shall mean a traveller whose permanent address or habitual residence is not located within the Community. In that case 'permanent address or habitual residence' means the place entered as such in a passport, identity card or other document recognised as an identity document by the Member State within whose territory the supply takes place. Proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office of exit from the Community. Each Member State shall send to the Commission specimens of the stamps it uses for the endorsement referred to in the second subparagraph. The Commission shall forward that information to the tax authorities of the other Member States."

9. Article 169 of the Directive allows a taxable person to deduct VAT incurred on supplies of goods or services to the taxable person where the goods or services are used for the purposes of transactions which are exempt under Articles 169 to 149. In effect, therefore, exemption under the Directive in these circumstances is the same as zero-rating in UK domestic VAT law and the terms are used interchangeably in this decision notice.

10. In domestic law, at the time relevant to this appeal, section 30(8) of the Value Added Tax Act 1994 ("VATA") provided:

> "(8) Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where—
>
> (a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both—
>
> (i) the removal of the goods from the United Kingdom; and

(ii) their acquisition in another member State by a person who is liable for VAT on the acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and

(b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled."

11. Regulation 131 of the Value Added Tax Regulations 1995 provided (again, at the time relevant to this appeal):

"(1) Where the Commissioners are satisfied that—

(a) goods have been supplied to a person who is an overseas visitor and who, at the time of the supply, intended to depart from the member States before the end of the third month following that in which the supply is effected and that the goods should accompany him,

(b) save as they may allow, the goods were produced to the competent authorities for the purposes of the common system of VAT in the member State from which the goods were finally exported to a place outside the member States, and

(c) the goods were exported to a place outside the member States, the supply, subject to such conditions as they may impose, shall be zero-rated."

12. VAT Notice 704 set out the operation of VATRES for traders. Parts of that Notice had the force of law.

13. Notice 704 identified that VATRES allowed certain customers to receive a refund of VAT paid on goods exported outside the EC and allowed retailers to zero-rate the supply of goods to customers where the necessary evidence of export was available and VAT had been refunded to the customer. Paragraph 2.3 within Notice 704 (which had the force of law) contained the relevant conditions which had to be satisfied for a supply to be zero-rated:

"Retailers and refund companies (see paragraph 5.5) may only operate the VAT Retail Export Scheme when they comply with the conditions set out in this notice. Briefly these are:

• the customer must be entitled to use the scheme (see paragraph 2.4)

• the goods must be eligible to be purchased under the scheme (see paragraph 2.6)

• the customer must make the purchase in person and complete the form at the retailer's premises in full (see paragraph 3.1 and 7.4.2)

• the goods must be exported from the EC by the last day of the third month following that in which the goods were purchased

• the customer must send the retailer or the refund company evidence of export stamped by Customs on an official version of Form VAT 407, an approved version of Form VAT 407 or an officially approved invoice (see section 4)

• the retailer or the refund company must not zero-rate the supply until the VAT has been refunded to the customer (see paragraph 5.2)."

14. Paragraph 2.3.1 of Notice 704 (which again had the force of law) provided:

> "Retailers and refund companies must not zero-rate goods exported after the last day of the third month following the month in which the goods were purchased - even if the VAT refund document has been stamped in error by a UK or other EC Customs officer."

15. Paragraph 3.7 of Notice 704 provided:

> "When you receive a VAT refund document stamped by UK or other EC Customs, check that all goods have been exported from the EC by the last day of the third month following that in which the goods were purchased. Where they have, you should make any refund due to your customer by the method agreed at the time of sale. You cannot zero-rate the sale unless you have a stamped VAT refund document showing that the goods have been exported within the time limit and can show that the refund has been made to your customer. Refund forms stamped outside the EC are not to be accepted as evidence of export under any circumstances."

16. Paragraph 4.10 of Notice 704 (which had the force of law) provided:

> "If your customers send you VAT refund documents which have not been stamped by UK or other EC Customs, you cannot zero-rate the supply because export of the goods from the EC has not been certified as required by the scheme."

17. In Mr Newbold's view, for a supply to be zero-rated under VATRES, it was necessary for a number of conditions to be satisfied:

(a) The customer had to be entitled to use the scheme;

(b) The goods had to be eligible for the scheme;

(c) The customer had to make the purchase in person;

(d) The relevant form had to be completed at the retailer's premises in full;

(e) The goods had to be exported from the EC within 3 months of purchase;

(f) The relevant VAT refund documentation had to be stamped;

(g) The customer had to send the relevant stamped VAT refund documentation to the retailer;

(h) The refund had to be paid to the customer by the retailer.

Only at that point was the retailer entitled to zero-rate the supply. Interestingly, whilst these requirements can be collected from UK law (or HMRC publications which had the force of law), requirement (h) is not to be found in Articles 146 or 147 of the Directive. The genesis of requirement (h) is (presumably) section 80(3) VATA, which gives HMRC a defence to VAT repayment claims where making the payment would unjustly enrich the claimant. The potential relevance of this point to this appeal is discussed at [29] below.

DBR'S SUBMISSIONS

18. On behalf of DBR, Mr Newbold submits:

(1) The FTT has no general supervisory jurisdiction over actions of HMRC or the DBR. Any jurisdiction is a matter for statute.

(2) The actions of the DBR in this case do not engage any provision which affords an opportunity of challenge other than section 83(1)(b) VATA.

(3) The provisions creating VATRES make no specific reference to an appeal to the FTT against decisions taken in the administration of the scheme.

(4) In *Chhabria & Others v Director of Border Revenue* [2017] UKFTT (Tax) – TC/2016/04286, the FTT held that it had jurisdiction under section 83(1)(b) VATA to entertain a challenge to the DBR's decision not to stamp paperwork required for VATRES, and that this arose as a result of section 83(1)(b) VATA. That decision, being a decision of the FTT, is persuasive but not binding in this appeal. Mr Newbold submits that this case was wrongly decided and should not be followed.

Propositions (1), (2) and (3) were accepted before me and the discussion centred around proposition (4).

HG'S SUBMISSIONS

19. Mr Boukeba did not make any detailed submissions on behalf of HG. He repeated the central point made in HG's notice of appeal, that she had legitimately purchased good during her visit to the UK and "she would simply like the tax money that she is rightfully owed returned to her". In his closing submission, Mr Boukeba asserted that HG has an enforceable EU law right for the goods she took out of the UK to be zero-rated and she is looking for an opportunity to prove that, apart from DBR's failure to stamp the documentation at the point of departure from the EU, all the required conditions for zero-rating had been met.

DISCUSSION

20. As indicated above, the issue before me is whether section 83(1)(b) is, as Judge Morgan decided it was in *Chhabria*, wide enough to allow HG to, in effect, challenge DBR's administrative decision not to stamp the paperwork required for VATRES. At this point, we should pause to consider Judge Morgan's decision in *Chhabria*.

21. In June 2016, whilst visiting the UK, the appellants in that case bought goods at various retail stores including Harrods. They sought to reclaim the VAT paid on those purchases under VATRES, but it was not refunded as Boarder Force personnel at Heathrow Airport refused to authorise the refund when Mr Chhabria presented the relevant forms for stamping. In that case, as here, DBR (who were represented before Judge Morgan as they were before me by Mr Newbold) applied for the taxpayers' appeals (which were made on the basis that "*the refunds of VAT sought have been granted*") should be struck out on the basis that the Tribunal did not have jurisdiction to hear them. The key paragraphs of Judge Morgan's decision, where she set out her conclusions, are as follows:

> "[34] BR's argument is essentially that the appellants are not entitled to appeal to the tribunal under section 83 VATA as a decision by Border Force not to stamp the VAT refund forms (and by the retailer not to make the refunds and not to apply zero-rating rating) are not matters listed in s. 83 against which there is a right to appeal to the tribunal. They appear to take the view that there would be such a right only if HMRC have specifically issued a decision or determination rejecting zero-rating. They gave the example of the case where a retailer has zero-rated the goods on its VAT return but HMRC refused to accept the categorisation of the supplies as zero-rated. They acknowledged that in those circumstances it is open to the retailer to challenge that decision

> by HMRC and, in accordance with the decision in *Williams and Glyn's Bank Limited*, the relevant taxpayers, as the persons having paid the VAT, may have standing to challenge such a determination.
>
> [35] The effect of BR's stance is, therefore that a taxpayer who considers that he/she has incorrectly been denied the benefit of zero-rating (and so has not received a VAT refund) because of the refusal by Border Force to stamp the required refund documents where, as it is argued here, there was no valid reason for the refusal, has no recourse to the tribunal. In BR's view the only recourse in those circumstances is via judicial review proceedings. That is the case, in their view, notwithstanding that that the effect of the refusal to stamp the forms (if it is correct that the refusal was not validly made) is that standard rating has been incorrectly applied to the supply on the basis that the conditions for the zero-rating were in fact satisfied.
>
> [36] I cannot see that BR's view is supported by the plain wording of s. 83(1)(b), which simply refers to the right to bring an appeal in respect of the VAT chargeable on the supply of any goods or services. There is nothing to indicate that a taxpayer is not entitled to appeal to the tribunal under that provision where, as here, the disputed VAT treatment on the supplier arises as a result of HMRC in effect delegating the administration of their requirements for a particular VAT treatment to apply to Border Force through the conditions set out in Notice 704 (as opposed to where HMRC directly deal with that themselves).
>
> [37] The parties may take different views of the effect of the condition in Notice 704 as to stamping of the refund forms by Border Force. They may be issued as to the precise scope of the tribunal's jurisdiction given that HMRC have discretion to impose the conditions set out in Notice 704 and the application of zero-rating in these circumstances depends on them being "satisfied" as regards conditions in regulation 131. There may also be issues in respect of the interaction of the UK and EU rules, for example, as to whether the UK provisions (in seeming to deny zero-rating even where Border Force incorrectly refuse to stamp the relevant documents) prevent a taxpayer being able to enforce a directly applicable EU right. However, these are matters to be debated at a substantive hearing before the tribunal; they do not preclude the Appellant from bringing and appeal to the tribunal at all.".

22. Mr Newbold made a number of criticisms of Judge Morgan's decision. Firstly, he said that reading section 83(1)(b) in this way is far too wide. Those words simply do not cover a decision by DBR in relation to an administrative step in the process which may (or may not) lead to goods being zero-rated. Mr Newbold asserted, as he had before Judge Morgan, that the taxpayer's only remedy where DBR refuses to certify the required documentation at the point of exit is judicial review. In his submission, section 83(1)(b) is limited in its effect to a decision as to the overall chargeability of the supply. In other words, it is limited to cases where, after all the requirements have (or appear to have) been satisfied, HMRC nevertheless assert that the goods are not zero-rated.

23. Secondly, he said that, if Judge Morgan's reading of section 83(1)(b) were correct, it would have the effect of giving the Tribunal jurisdiction over matters such as an alleged failure by a shop assistant to furnish the taxpayer with a receipt (proof of purchase) which could be

endorsed at the point of leaving the EU or a failure on the part of the supplier to refund VAT at the end of the process.

24. Thirdly, he said that Judge Morgan's assumption that the Tribunal had jurisdiction because HMRC had delegated its functions to DBR was not correct.

25. Finally, he criticised Judge Morgan for having, in his opinion, asserted jurisdiction for the Tribunal without having worked out what it was that the Tribunal had jurisdiction to do or what remedy it might ultimately be able to offer an appellant. Judge Morgan's inability to do this demonstrated, in his view, the fallacy of her basic premise. As Mr Newbold put the point, the stamping of the documentation at the point of departure is a necessary requirement for zero-rating, but in itself it is not sufficient. The Tribunal cannot have jurisdiction to review DBR's failure to take a step (even a necessary step) if at that point there are still many other conditions to be satisfied before zero-rating is available. Most obviously, asserts Mr Newbold, even if all the other requirements were met, if the retailer refused to reimburse the traveller, zero-rating would not be available. The Tribunal's jurisdiction is to determine final "chargeability" not to adjudicate on steps along the road to (non-)chargeability.

26. In this context I asked Mr Newbold what he made of the comment of Judge Berner in *Iveco Limited v HMRC*, [2013] UKFTT 763 (TC). At paragraph 59, Judge Berner observed:

> "In my view, s. 83(1)(b) is capable of encompassing appeals on all questions relating to the chargeability of supplies of goods and services. It is wide enough to include such questions arising from the direct application of a VAT directive, insofar as those questions bear upon the chargeability of a taxable person to VAT, which includes questions as to the manner in which the domestic provisions may be applied, or construed in applying, to the proper charge to tax as provided for under either domestic or EU law.".

27. Although I agree with Mr Newbold that the Tribunal does not have jurisdiction to direct DBR to stamp the relevant paperwork, it does have jurisdiction to consider whether the supply of goods should now be treated as zero-rated and in that context to consider whether the failure by DBR to stamp the paperwork is an impediment to zero-rating. That, it seems to me, is an issue which goes to the chargeability of the supply in question. *Iveco* was concerned with the impact of post-supply rebates on the chargeable amount and that issue (which is a complex one we do not need to unravel here) was impacted by the interaction of EU and UK law. One of Mr Newbold's points was that the goods were correctly standard rated at the time of supply, but *Iveco* confirms that the Tribunal has jurisdiction to consider issues (including EU law issues) which could subsequently change the position (in that case, the value of the supply; here the basic categorisation, standard rated to zero rated). The Tribunal clearly has jurisdiction to deal with all questions of EU and UK VAT law relevant to the question whether VAT is initially or permanently chargeable on a supply and, if it is, how much VAT is due.

28. I asked Mr Newbold whether it can be right that, if it is the case that the zero-rating of the goods is dependent on certified proof of export, state authorities can apparently subvert the clear intention of the Directive (that goods exported outside the EU should be zero-rated) by simply refusing to stamp the relevant paperwork. Mr Newbold may well be right that in those circumstances the taxpayer has a right to seek judicial review of DBR's failure, but it may well also be the case that there is a directly effective EU right (to zero-rate the goods) where it can be shown that they have been exported and the state authorities have simply refused, for whatever reason, to stamp the relevant documentation.

29. I have already noted that the requirement that a retailer refund VAT as a prelude to zero-rating is a requirement of UK domestic law, but does not seem to be required by the Directive. On that basis, it may be the case that zero-rating can be achieved simply by exporting the goods and holding appropriate proof of export and, if export can be shown to have taken place against a wilful failure by state authorities to certify export, it may also be the case that the fact of export alone may be sufficient for the purposes of the Directive. I am not sure that Mr Newbold is right when he asserts that repayment of VAT by the retailer is a further precondition to zero-rating. It may well be a valid pre-condition to HMRC having to repay VAT to the retailer and to the retailer treating the supply as zero-rated, but it seems to me to be far from clear that a VAT refund is a requirement for the goods to benefit from exemption under the Directive. Mr Newbold (and to some extent the author of Notice 704) may be eliding three quite different matters, namely:

(1) The VAT liability of the supply, which is governed by the requirements of the Directive;

(2) The purchaser's ability to reclaim the proportion of the price which reflects VAT from the retailer; and

(3) The retailer's ability to reclaim from HMRC the VAT originally charged on the supply.

This Tribunal has jurisdiction over questions (1) and (3) (see section 83(1) (b) and (t) VATA) but clearly not question (2), which is a private law matter between the purchaser and the retailer.

30. As far as Mr Newbold's suggestion that, giving section 83(1)(b) this interpretation would seem to give the Tribunal jurisdiction over decisions of shop assistants (to give a traveller an invoice for goods purchased) or a retailer (to refund VAT, to the extent it is relevant to zero-rating), the answer to that would seem to lie in the First-Tier Tribunal and Upper Tribunal (Chambers) Order 2010 (SI 2010/2655) which allocates to the Tax Chamber of this Tribunal functions of certain state bodies, namely most functions of HMRC, certain functions of the National Crime Agency, the exercise by the Director of Border Revenue of functions under section 7 of the Borders Citizenship and Revenue Act 2009 (sic – the Act is in fact the Borders, Citizenship and Immigration Act 2009), functions of the Compliance Officer for the Independent Parliamentary Standards Authority and functions of the Welsh Revenue Authority. The Tax Chamber is not allocated "functions" of private businesses or citizens, such as retailers or shop assistants. If a taxpayer needs to compel a retailer to perform its contract with them so that the taxpayer can enjoy the benefits of zero-rating, that is clearly a private law matter not within the jurisdiction of this Tribunal. *The Claimants in the Royal Mail Group Litigation v Royal Mail Group Ltd*, [2021] EWCA Civ 1173, indicates the complexities that can arise where private law rights and obligations and the world of VAT come into contact with each other. Tellingly, that litigation is being conducted in the civil courts, not in this Tribunal. This issue does not arise here, except to the extent that Mr Newbold suggests that Judge Morgan's reading of section 83(1)(b) would give the Tribunal jurisdiction over such matters and this suggests that her reading of section 83(1)(b) is wrong. For the reasons I have given, I do not share his concern and discount it as a factor in interpreting section 83(1)(b).

31. The functions allocated to the Tax Chamber include the exercise by DBR of functions under section 7 of the Borders, Citizenship and Immigration Act 2009, which provides that the functions of HMRC that are exercisable in relation to customs revenue matters are exercisable

by DBR concurrently with HMRC. The definition of "customs revenue matters" includes value added tax so far as related to the export of goods from, or the import of goods into, the United Kingdom; section 7(2)(f) of the 2009 Act. Therefore, insofar as Judge Morgan in *Chhabria* considered that DBR was exercising functions of HMRC by delegation, that was not a correct analysis of the position; in relation to customs revenue matters HMRC's functions are "exercisable by the Director of Border Force concurrently with the Commissioners" by virtue of the provisions of the 2009 Act. Although Mr Newbold's criticism of Judge Morgan's identification of delegation as the source of DBR's authority and functions is undeniably right, it does not seem to me that it has any impact on the reasoning in *Chhabria*, still less on the answer to the question before this Tribunal. This Tribunal clearly has jurisdiction in relation to customs revenue matters, whether the relevant functions are being exercised by HMRC or DBR, and which state authority is acting does not seem to me to matter at all when it comes to asking whether the issue before the Tribunal goes to the VAT chargeable on a supply of goods.

32. Drawing all these points together, it seems to me that HG may be able to prosecute her appeal on the basis that,

> (1) In circumstances where it can be shown that all the other relevant requirements in the Directive have been satisfied, but DBR simply refused to stamp the required documentation at the point of her departure from the EU, the goods she purchased in the UK and exported are zero-rated at the point of export, notwithstanding the requirement in Article 147 for proof of export in the form of an endorsed invoice or other document in lieu thereof and even though the retailer has not refunded the VAT element of the purchase price as the UK domestic scheme appears to require.
>
> (2) As the person supplied, she has an interest in the VAT liability of supplies made to her and so, if as a matter of directly effective EU law the supply of these goods was zero-rated, she can assert that right just as much as the supplier; *Williams & Glyn's Bank Ltd v CCE*, [1974] VATTR 262.

33. If HG pursues her appeal in this way, as Mr Boukeba indicated she might, it would be an appeal with respect to the VAT ultimately chargeable on a supply of goods. On that basis it would fall within section 83(1)(b) VATA and it would be an appeal which this Tribunal can entertain. As Judge Morgan indicated in *Chhabria* there might be, there could be any number of other ways of articulating HG's complaint which bring it within section 83(1)(b).

34. It is not for me to decide whether HG will in fact be able successfully to make out a case on this (or any other) basis, but the possibility of her framing it in at least one way which brings it within section 83(1)(b) is sufficient for me to conclude that it should not be struck out at this point.

HG'S NOTICE OF APPEAL

35. As I mentioned in paragraph 3 above, Mr Newbold complained about the lack of particularity in HG's notice of appeal. HG's notice of appeal, prepared by Mr Boukeba, describes in some detail HG's treatment at the hands of the Border Force officers at Gatwick Airport and their failure to stamp the relevant documentation, but it is lacking in further detail. In particular, the notice of appeal does not identify the date when HG left the UK, nor does it give details of the goods purchased and exported or the dates of purchase. Without that information, Mr Newbold says, it is not possible for HMRC to evaluate the claim. Mr Newbold asked that HMRC's time for serving their statement of case should be extended until these

particulars have been provided. Mr Boukeba indicated that it would not be difficult to produce this information. He has or can obtain the relevant receipts, pictures of the goods in question and (he says) it would be easy to show personal use.

36. It may also be useful if, before any hearing of this appeal, HG refined her grounds of appeal to indicate exactly what it is that she is asking this Tribunal to determine. If necessary, that can be addressed by Directions in due course.

DISPOSITION

37. The Respondent's application to strike out the Appellant's notice of appeal is dismissed.

38. It is directed that:

(1) Within twenty-eight days of the release of this decision, the Appellant is to deliver to the Respondent and the Tribunal particulars of (a) the goods alleged to have been purchased and exported by the Appellant to which her notice of appeal relates together with proof of purchase (including the date of purchase) and (b) the date of her departure from the EU; and

(2) The time for the Respondent to serve its statement of case under rule 25 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 is to run from (and include) the day after the day on which the Appellant has complied with that direction.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

39. 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.

MARK BALDWIN
TRIBUNAL JUDGE

Release date: 29th NOVEMBER 2022