



**TC06725**

**Appeal number: TC/2012/08851**

*VALUE ADDED TAX – Zero Rating - vehicles adapted for the carrying of a wheelchair - whether customers “usually wheelchair users” - whether vehicle includes features whose “design” is such that their “sole purpose” is to allow a wheelchair to be carried.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RICHARD BALDWIN MOTORHOMES**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S**

**Respondents**

**REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MARILYN MCKEEVER**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 6 September 2018**

**Mr Tim Brown, Counsel for the Appellant**

**Ms Farah Chaumoo, an Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### Preliminary matters

1. The Appellant's appeal was notified to the Tribunal late. However, since HMRC stated that they do not object to the late notification, I give permission under Section 83G(6) Value Added Tax Act 1994 (VATA) for the appeal to be notified late.
2. The Appellant had made two Applications, on 21 August and 29 August respectively, to admit additional witness statements on behalf of Mr Gary Morgan, a partner in Richard Baldwin Motorhomes LLP. The first additional statement exhibited photographs to demonstrate how the racks accommodated the wheelchairs and the second referred to conversations which Mr Morgan had had with members of staff about their recollections of seeing customers in wheelchairs. HMRC did not object to the admission of these additional witness statements and I gave permission for them to be admitted.

### Introduction

3. The Appellant is a retailer of motorhomes. Between 2006 and 2009 it supplied motorhomes to a number of customers which were zero rated on the basis that they fell within Group 12 of Schedule 8 to the Value Added Tax Act 1994 and in particular, Item 2A of that Group.
4. Following visits to the Appellant's premises, Officer Brierley of HMRC raised assessments for underpaid VAT on the Appellant on the basis that they had wrongly zero-rating certain supplies of motorhomes to disabled customers. The initial assessment was for £276,238. Following a review, the provision of further evidence and the decision in the case of *Tyne Valley Motorhomes v HMRC* [2014] UKFTT 969 (RC) ("*Tyne Valley*") the assessment was gradually reduced and now stands at £83,263.
5. The remaining cases included in the assessment raise two issues, one of law-the correct construction of Note 5L to Group 12, and the other of evidence-whether the customers who bought certain of the motorhomes (or a member of their family) in fact "usually uses a wheelchair".
6. I had before me a bundle of documents and authorities and I heard oral evidence from Mr Gary Morgan, a partner in the business. I found Mr Morgan a straightforward and credible witness.

### The Law

7. Item 2A of Group 12 provides, so far as relevant, that the following supply is zero-rated:

"[2A (1) The supply of a motor vehicle ... to a person ("P") if—

- (a) the motor vehicle is a qualifying motor vehicle by virtue of paragraph (2) or (3),
  - (b) P is a disabled person to whom paragraph (4) applies, and
  - (c) the vehicle is supplied for domestic or P's personal use.
  - (2) ...
  - (3) A motor vehicle is a “qualifying motor vehicle” by virtue of this paragraph if—
    - (a) it has been substantially and permanently adapted to enable a person to whom paragraph (4) applies to travel in it, and
    - (b) the adaptation is necessary to enable P to travel in it.
  - (4) This paragraph applies to a disabled person—
    - (a) who usually uses a wheelchair, or
    - (b) ...”
8. Group 12 is supplemented by a series of notes. Note 5L applies in the present case. During the period in question, Note 5L provided as follows:
- “[(5L) A “qualifying motor vehicle” for the purposes of item 2A is a motor vehicle ...—
- (a) that is designed or substantially and permanently adapted to enable a handicapped person—
    - (i) who usually uses a wheelchair, or
    - (ii) ...
 to enter, and drive or be otherwise carried in, the motor vehicle; or
  - (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.]”
9. The provisions relating to the zero-rating of motor vehicles supplied to disabled customers were changed substantially in 2017 to simplify the rules and Note 5L no longer applies.

**The facts and evidence**

- 10. The basic facts are set out in the introduction above.
- 11. Originally HMRC had 45 queries, but in the course of correspondence, this reduced to 13. There were six transactions involving five customers (one bought two vehicles) where the issue was whether the customers were usually wheelchair users. There were seven cases (some overlapping with the first group) where the issue was whether a carrier fitted to the motorhome fell within Note 5L(b).
- 12. Mr Morgan gave evidence that there was not, and still is not, a product on the market which is sold as a wheelchair carrier for affixing a wheelchair to the outside of a vehicle. At one time, wheelchair users would be carried in their wheelchairs inside a motorhome and the wheelchair would be secured by clamps and straps. However, the floor of a motorhome is made of wood and in the event of an accident, the clamps might be torn out and the wheelchair thrown about injuring its occupant.
- 13. It therefore became standard in the industry to use cycle racks to affix the wheelchair to the back of the motorhome. The photographs attached to one of the additional witness statements showed how well adapted the racks were to this

purpose. They are able to carry a wheelchair securely, removing the risk of injury from a wheelchair becoming loose in an accident. They can accommodate all sizes of wheelchairs. Some wheelchairs when folded are wider than others. The racks come in different sizes with two, three or four rails. The wheels of a smaller wheelchair might fit into a two rail carrier, when folded. A larger wheelchair might need a three or four rail rack.

14. Clearly the racks were manufactured to carry bicycles but in the absence of a specific product, they are also perfectly designed for carrying wheelchairs. In the context of a disabled person buying a motorhome, they were purchased as “wheelchair carriers”.
15. Mr Morgan has worked in the motorhome industry for many years and has been involved in three dealerships. He described the industry as being “social” and dealers, despite being competitors speak to one another and adopt common processes.
16. A motorhomes is only zero rated for VAT purposes as “qualifying motor vehicle” if it is supplied to a disabled person who usually uses a wheelchair. VAT Notice 701/59 which was in use at the time but has now been withdrawn, provided guidance on how to ensure that the purchaser qualified for zero rating. The notice included a form which contained a declaration of eligibility for zero rating. I will return to this form in more detail below. Paragraph 12.5 of the guidance was headed “What must the supplier do?” and stated as follows:

“You are responsible for ensuring that you are charging the correct amount of VAT. Possession of an eligibility declaration **does not** mean that you can automatically zero rate your charge. [emphasis in the original]

You must be satisfied that the declaration made by the disabled wheelchair user...is valid before signing your section of the form.

You should be able to show that you have taken reasonable steps to confirm the validity of the declaration. You may wish to ask for additional information or documents to support a claim for VAT relief....”
17. The original form did not include a declaration that the customer usually used a wheelchair. In any event, paragraph 12.5 makes it clear that the supplier should not rely on the declaration alone, but should take steps to satisfy themselves that the customer is indeed eligible for zero rating. A new form was introduced which included a specific statement by the customer that “I am substantially dependent on a wheelchair...to be mobile”. This version of the form was available when Mr Morgan joined Richard Baldwin Motors in 2008, but the firm was still using the old form. Mr Morgan introduced the new form. In some of the cases which HMRC had originally disputed, the matter was resolved by the customer (who had signed the old form) signing the new form. In some cases, including some of those in dispute, the customer had died, so this was not possible.

18. In each of the remaining cases, there is other evidence of wheelchair use. In addition, Mr Morgan or other members of staff recall seeing the customers in their wheelchairs on several occasions. Although some of the sales took place before Mr Morgan joined the firm, he did meet some of those customers afterwards. The Appellant put on annual bingo evenings or “fun days” which customers who had previously bought vehicles attended. Mr Morgan got to know past customers through these events and had seen them in a wheelchair.
19. Mr Morgan’s further additional witness statement set out that he had spoken to another employee of the Appellant, a Mr Paul Heeley, who had confirmed that he had seen certain customers (Mr Stephenson, Mr Cannell and Mrs Moore) in wheelchairs when they visited the showroom. Mr Heeley was unable to attend the Tribunal to give evidence in person. Mr Morgan’s statement is accordingly hearsay, which limits the weight I attach to it, but it is helpful in corroborating the other evidence and I have no reason to believe it is inaccurate.
20. Ms Chaumoo pointed out that the fact a person was seen in a wheelchair at the showroom did not mean that they “usually” used a wheelchair.
21. HMRC submitted that the Appellant had not discharged the burden of proof as the evidence presented did not conclusively prove that the customer, even if seen in a wheelchair at the showroom, “usually” used a wheelchair.
22. The burden of proof is on the Appellant to show that the individual customers whose purchases are in dispute were people who usually used a wheelchair. It must satisfy the Tribunal of that fact to the normal civil standard of the balance of probabilities. That is, I must be satisfied that it is more likely than not that the customer usually used a wheelchair. As the HMRC guidance contained in VAT Notice 701/59 makes clear, the Appellant is required only to take *reasonable steps* to satisfy itself that the customer meets the conditions. It does not have to obtain conclusive proof.
23. I will now turn to the disputed purchases and will consider whether, in each case, the Appellant has discharged the relevant burden of proof. I will then consider whether the requirements of Note 5L are satisfied in those cases involving wheelchair carriers.

**Did the customer (or family member) “usually use a wheelchair”?**

24. Mr Cannell and Mr Balmforth (as carer for Mrs Moore who was the actual alleged wheelchair user) had had special handles fitted to the motorhomes to assist the disabled person to enter the vehicle. HMRC accepted that the adaptations themselves qualified under Note 5L(a) and the question was whether the individual in question was a regular wheelchair user.
25. In the cases of Mr Robertson, Mr Stephenson and Mr Powell, both questions arose. That is, were they regular wheelchair users and did the wheelchair carriers qualify the vehicles for zero rating?

26. There were other customers for whom the issue was solely the application of Note 5L.
27. In each case I was provided with copies of the order form for the vehicle, showing the adaptation requested, the eligibility declaration form and other evidence.
28. The old eligibility form, which was an annex to VAT Notice 701/59 set out the following:
  - (1) The name and address of the customer
  - (2) A declaration that “I am chronically sick or disabled by reason of...” and the customer would enter the nature of the condition.
  - (3) The name and address of the supplier. In all cases it was Richard Baldwin Motorhomes
  - (4) A description of the vehicle with the statement that it is “being supplied to me for domestic or my personal use”
  - (5) Details of the adaptation required “to adapt a motor vehicle to suit my condition”
  - (6) A claim for relief from VAT under Group 12 of Schedule 8 to the VATA.
29. At the foot of the form was a Note To Customer: “If you are in any doubt as to whether you are eligible to receive a motor vehicle...zero rated for VAT you should consult your local VAT office before signing the declaration.”
30. There was also a Note To Supplier: “...The production of this certificate does not automatically justify the zero-rating of the supply. You must also ensure that the motor vehicle and services you are supplying qualify for zero-rating.”
31. Underneath these notes the form states:

“Warning: Section 72(3) of the VAT Act 1994 provides for severe penalties for anyone who makes use of a document which they know to be false for the purposes of obtaining VAT relief.”

### **Mr Cannell**

32. The adaptation shown on the order form was an entry handle.
33. Mr Cannell described his condition on the eligibility form as being angina.
34. The additional evidence was a copy of Mr Cannell’s “Blue Badge” which entitled him to parking privileges.

35. The Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (“the Regulations”) set out, among other things, the criteria for the issue of disabled person’s badge (a “Blue Badge”).
36. There are six categories of person to whom a local authority may issue a Blue Badge under Regulation 4. Four of them do not appear to be relevant to Mr Cannell. They are a person who uses a vehicle supplied by the Department of Social Security, a registered blind person, an ex-serviceman who receives a special mobility supplement and a person with upper limb disabilities which renders them unable to use a steering wheel. The others are:
  - (1) A person who receives the higher rate of the mobility component of the disability living allowance
  - (2) A person who has a permanent and substantial disability which causes inability to walk or considerable difficulty in walking.
37. I infer from the fact that Mr Cannell held a Blue Badge and a consideration of the Regulations that Mr Cannell had substantial mobility problems. The copy of Mr Cannell’s badge stated that it expired on 30 April 2007. The copy of the order form in my bundle was virtually illegible. I could not make out the date of sale clearly although it was in 2007 and the month might have been February (written as the number 2). The delivery date was stated to be “June/July” and the eligibility declaration was signed on 19 September 2007. On reviewing the paperwork for the other customers, the date of delivery was typically between one and three months from the date of the order (sometimes longer) and the declaration of eligibility was often signed after the collection date. A Blue Badge is normally valid for three years when it must be renewed, assuming the holder remains eligible.
38. Mr Heeley told Mr Morgan that he recalled seeing Mr Cannell in a wheelchair when he visited the showroom.
39. I also note that Mr Cannell (and all the other customers in this case) had signed the declaration that they were eligible for relief from VAT in the light of the warning of severe penalties for a false declaration at the foot of the form.
40. Although it is not clear whether Mr Cannell's Blue Badge was valid or had expired at the date of the order, having taken account of all the circumstances, I find, on the balance of probabilities that it was valid.
41. Angina does not necessarily affect mobility. However, Mr Cannell was also a Blue Badge holder and I infer from this that he did indeed have problems walking. He required handles to enter the motorhome which also suggests mobility problems. In addition he was seen in a wheelchair whilst visiting the showroom. As Ms Chaumoo pointed out, the fact that a person is seen in a wheelchair at the showroom does not prove conclusively that they are a regular wheelchair user. However, when considered in conjunction with the other evidence, that a person has mobility problems, requires their vehicle to be adapted to assist with those

mobility problems and has made a declaration that they are entitled to a relief (available only to people who usually use a wheelchair) in the light of the warning on the form, it is reasonable to infer that that person does usually use a wheelchair.

42. I find that, on the balance of probabilities, Mr Cannell usually used a wheelchair and that his purchase of a motorhome should be zero-rated.

### **Mr Balmforth**

43. Mr Balmforth was the customer and was carer for Mrs Moore. It is Mrs Moore who has to satisfy the condition that she is usually a wheelchair user.

44. The adaptation was “door handles-to enter motorhome”.

45. Mrs Moore’s disability was arteritis.

46. The additional evidence was a letter from Mrs Moore’s doctor dated 11 October 2007. The letter stated:

“...[Mrs Moore] is an 89 year old lady who has a number of medical problems. I gather from her daughter they are in the process of buying a motorhome and I confirm she has mobility problems. She is only able to walk very short distances, then only with the aid of a stick.

She has a history of temporal arteritis, poor balance, and has been prone to fall. I can also confirm that these conditions are permanent and are also unlikely to significantly improve.”

47. Mr Morgan’s additional witness statement states that Mr Heeley told him he had seen Mrs Moore in a wheelchair.

48. Mr Balmforth had signed the declaration of eligibility.

49. The bundle also contained a statement provided in the course of the enquiry by the Appellant. This statement suggested the reason HMRC had denied zero-rating was because the entry door handle was not a sufficient adaptation rather than because Mrs Moore was not a regular wheelchair user. It stated that Mr Balmforth bought the vehicle as transportation for his elderly mother. Following her death, he sold the vehicle through the Appellant’s brokerage scheme. This suggests that the vehicle was only needed to enable Mrs Moore to get about.

50. In this case the vehicle was bought as transport for an elderly lady with severe mobility problems who was seen in a wheelchair.

51. Taking all the evidence together, I am satisfied, on the balance of probabilities, that Mrs Moore usually used a wheelchair.



## Mr Stephenson

52. Mr Stephenson bought two motorhomes, the first in 2007 which was replaced by the second in 2008.

53. Mr Stephenson signed a letter in 2010 addressed “to whom it may concern” which stated that he had purchased the motorhomes:

“complete with the adaptations of a wheelchair carrier and a steering wheel spinner [the latter assists a disabled driver to turn the steering wheel of the vehicle].

I further confirm that [the] wheelchair carrier and the steering wheel spinner were swapped from my 07 vehicle to my 08 one by Richard Baldwin Motorhomes.

All of the aforementioned adaptations were supplied and fitted to accommodate our [sic] disabilities.

54. The order form for the first vehicle listed “cycle rack” as an extra. It also listed “R[oad] F[und] licence free (DLA404).

55. The DLA404 is a certificate issued by the Department of Work and Pensions confirming entitlement to Disability Living Allowance. The form also certifies that the holder may apply for exemption from paying the vehicle licence. Mr Stephenson’s form, which was issued in 2006 and valid up to 2010, stated that he got “the higher rate of Disability Living Allowance for help with getting around”. It also showed that Mr Stephenson’s entitlement to Disability Living Allowance for the purpose of getting around started in 2000.

56. Section 73 of the Social Security Contributions and Benefits Act 1992 sets out when a person will be entitled to the mobility component of the Disability Living Allowance:

“73.—(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—

(a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or

(b) he falls within subsection (2) below; or

(c) he falls within subsection (3) below; or

(d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

(2) A person falls within this subsection if—

(a) he is both blind and

(b) he satisfies such other conditions as may be prescribed.

(3) A person falls within this subsection if—

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above”

57. The mobility component is accordingly available where an individual is unable or virtually unable to walk, but also in other cases.
58. Regulation 12 of The Social Security (Disability Living Allowance) Regulations 1991 prescribes when a person is unable or virtually unable to walk for the purposes of Section 73 of the 1992 Act:

**“Entitlement to the mobility component**

**F112.**—(1) A person is to be taken to satisfy the conditions mentioned in [F2section 73](1)(a) of the Act (unable or virtually unable to walk) only in the following circumstances—

(a)

his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to the place of residence or as to place of, or nature of, employment—

(i)

he is unable to walk; or

(ii)

his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or

(iii)

the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health; or

(b)

he has both legs amputated at levels which are either through or above the ankle, or he has one leg so amputated and is without the other leg, or is without both legs to the same extent as if it, or they, had been so amputated.”

59. Mr Stephenson stated in each of the eligibility declarations he completed that his disability was “severe arthritis in both hips and spine”. In the first declaration he commented that it was inoperable. In both declarations he declared that the required adaptation was a “wheel chair carrier”. The later declaration also referred to an entry handle. The fact that a person requests that a wheelchair carrier, which costs several hundred pounds to supply and fit, be fitted to their vehicle strongly suggests that the individual regularly uses a wheelchair.
60. Mr Morgan said that Mr Heeley had confirmed that he had seen Mr Stephenson in a wheelchair when visiting the showroom.
61. It is a reasonable inference that a person with disabling arthritis who is entitled to a benefit only available to those with severe mobility problems, who states that he needs a wheelchair carrier to suit his condition and who has been seen in a wheelchair is a person who usually uses a wheelchair.
62. I make that inference and find that, on the balance of probabilities, Mr Stephenson usually used a wheelchair.

### **Mr Robertson**

63. Mr Robertson's order form showed "cycle racks x 2" as an extra. Mr Morgan explained that that meant the carrier had two rails which would be suitable for smaller wheelchairs when folded.
64. Mr Robertson was carer for Mrs Winsborough so it is Mrs Winsborough's condition which is relevant. The eligibility declaration, which was signed by Mr Robertson, stated that Mrs Winsborough had lung emphysema. The required adaptation was a wheelchair carrier.
65. The Appellant provided additional evidence in the form of a copy of a letter from the Benefits Agency to Mrs Winsborough dated 30 January 2000 informing her that she was entitled to the higher rate of disability living allowance. The letter expressly stated that she was entitled because:

"you are virtually unable to walk considering the distance, speed, manner and time you are able to walk without severe discomfort."
66. Mr Heeley could not recall Mr Robertson.
67. So here we have a lady who is receiving a benefit on the stated basis that she is virtually unable to walk. Her carer is buying a motorhome with a requested adaptation of a wheelchair carrier and has declared that the vehicle is eligible for zero rating.
68. Again, on the balance of probabilities I find that Mrs Winsborough was a regular wheelchair user.

### **Mr Rowell**

69. Mr Rowell's order form listed "cycle rack x 2" as an extra.
70. His eligibility declaration specified that he was disabled by reason of "double hip replacement and kidney problems (dialysis)". The requested adaptation was a wheelchair carrier.
71. The additional evidence was the DLA404 certificate confirming that Mr Rowell was entitled to apply for exemption from paying for a vehicle licence because he was receiving the higher rate of Disability Living Allowance for help getting around. His entitlement started in 2006 and the certificate was valid up to 2009. This suggests that Mr Rowell's problems with mobility were not a temporary matter resulting from the hip replacement operation, but an ongoing disability.
72. An additional statement provided by the Appellant in the course of the enquiry indicated that HMRC's reason for disallowing zero-rating was questions raised over whether a wheelchair rack is a sufficient adaptation, rather than whether Mr Rowell was a wheelchair user.

73. Mr Heeley could not recall Mr Rowell.
74. It is clear that Mr Rowell had severe mobility problems. He had stated that he needed a wheelchair carrier in the light of his condition and was prepared to pay over £300 for it.
75. Again, taking all the evidence into account, I am satisfied, on the balance of probabilities, that Mr Rowell usually used a wheelchair.

### **The Note 5L issue**

76. HMRC accepted that the cycle racks were “substantial and permanent” adaptations.
77. Ms Chaumoo submitted that the cases to which I was taken, *Tyne Valley* and *Concept Multi Car Limited* [2014] UKFTT 110(TC) could be distinguished from the present case. Those cases were concerned with Note 5L(a) which does not have a sole purpose test. One of the issues in those cases was whether it mattered that the adaptation could have a dual purpose and could be used by an able-bodied as well as a disabled person. It was held that it did not.
78. Ms Chaumoo contended that the test in 5L(b) is different. In particular, she focussed on the requirement that the adaptation must include features whose *design* is such that their sole purpose is to allow a wheelchair to be carried in or on the vehicle. The correct question, she said, is “was the design of the cycle rack such that its sole purpose was to allow a wheelchair to be carried on the vehicle?” HMRC’s answer is “No. The cycle rack was designed to carry cycles.”. Accordingly, she argued, an adaptation to a motor home consisting of the fitting of a cycle rack in order to carry a wheelchair did not fall within Note 5L(b) and the motor vehicle did not therefore qualify for zero-rating.
79. Mr Brown reiterated that there was no piece of equipment available which was specifically designed to carry a wheelchair, but that a cycle rack was perfectly designed for the job. Clearly, a wheelchair user will need to take his wheelchair with him when driving or being driven in the motorhome so that he can use it at his destination. Space inside a motorhome is limited and a wheelchair, even when collapsed can take up a lot of room. Also, it needs to be secured to prevent accidents. An external wheelchair rack is the most suitable way of transporting the wheelchair. Mr Brown submitted that I should adopt a purposive construction of Note 5L(b). The legislation is designed to zero-rate a vehicle which is adapted to allow a wheelchair used by a handicapped person to be carried in or on the vehicle. If HMRC’s argument is correct, all wheelchair users who need or wish to carry their wheelchair on the outside of their vehicle (where it is safer and more convenient) will automatically be denied zero-rating as there is no specific wheelchair carrier on the market.
80. Mr Brown first took me to the *Concept Multi Car* case. Whilst acknowledging that this was about Note 5L(a), he submitted that the approach to interpreting the provision was relevant. The Tribunal in that case indicated that it is an objective

question of fact as to whether the purpose of the adaptation was within the requirements of the legislation. The Tribunal went on to say:

“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.”

81. *Tyne Valley* was concerned with the question whether the adaptation-large handles to assist with entering the vehicle-was “substantial and permanent”. In considering the meaning of “substantial”, the Tribunal said:

“In this respect we were referred to *Croall Bryson & Company Limited* [2011] UKFTT 494 (TC). In that case the tribunal held (at paragraph 140) that Parliament can be taken to have intended to provide the zero rate for persons who use wheelchairs and, although it is not spelled out, the tribunal appears to have interpreted the provision on the basis that as long as the effect of the adaptation is to achieve that object its substance will be judged accordingly. In other words substance should be judged according to the effect achieved by the adaptation rather than by its extent; whether in terms of the cost of materials or time and skill required to make the adaptation”

82. Mr Brown argued that the purposive approach to the construction of the Note in looking to the presumed intention of Parliament is equally applicable to paragraph (b) as it is to paragraph (a).
83. He went on to say that the “design” requirement does not detract from the purposive approach. Parliament cannot have intended that an adaptation using the only piece of equipment available for the specified purpose was ineligible for zero-rating.
84. He submitted that “designed” must be construed in the context of the adaptation, rather than the context of the object being supplied in the abstract.
85. The starting point in construing any statute is the words used.
86. Leaving out irrelevant words, Note 5L(b) defines a “qualifying motor vehicle” as “a motor vehicle...that by reason... of being... adapted, includes features whose design is such that their sole purpose is to allow a wheelchair...to be carried...on the motor vehicle”.
87. In my view, the words “by reason of being adapted” are important and colour the requirement that the design of the features is such that their sole purpose is to allow a wheelchair to be carried. Those words link the design to the adaptation. There must be elements of the adaptation designed, in the context of the adaptation, for the sole purpose of allowing a wheelchair to be carried on the vehicle.
88. If one asked the manufacturer of the cycle racks what they were designed for, they would, of course, say for carrying cycles.

89. If one asked a disabled customer who had requested the Appellant to fit a wheelchair carrier to their motorhome what the racks were designed for, they would say for carrying a wheelchair. In *Concept Multi Car*, the Tribunal considered that the question as to purpose was an objective matter of fact, but it went on to say that the focus must be on the particular vehicle and the particular adaptation. In the cases subject to this appeal, one can say, on an objective basis, that as a result of the adaptation (the fitting of the racks), the vehicle includes features (the wheelchair carriers) whose design is such that their sole purpose (in the context of the adaptation of that vehicle) is to allow a wheelchair to be carried on the vehicle.
90. It is also clear that in the context of the specific purchasers and the specific vehicles, the “sole purpose” of the adaptation was to allow the purchaser’s wheelchair to be carried on the vehicle. The purchasers or their family members were all, by definition, people with severe mobility problems. So far as they were concerned they were buying wheelchair carriers to carry their wheelchairs. In that context that was the only possible purpose for which the adaptation was designed even though, in other contexts, the carriers might have had other uses.
91. On this basis I conclude that the wheelchair carriers fitted by the Appellant were properly zero-rated as falling within Note 5L(b) even though they started out as cycle racks.
92. It is also relevant, when construing a statutory provision, to consider that provision in the context of the surrounding provisions and the structure of the relevant Act as a whole. The VATA sets out a regime for charging VAT on goods and services. Normally, VAT is charged at the standard rate. Schedule 8 of the VATA sets out exceptions to the general rule by providing for certain types of goods and services to be zero-rated. Group 12, which includes the provisions relating to “qualifying motor vehicles” is concerned with “drugs, medicines, aids for the disabled, etc.”. When one looks at the other items in Group 12 it is clear that the whole purpose of the Group is to assist disabled persons by reducing the cost (through relieving the VAT charge) of goods and services which are necessary or helpful in enabling the disabled person to cope with their disability. This reinforces my view that the correct interpretation of Note 5L(b) is one which zero-rates an adaptation which has been carried out solely for the purpose of assisting a disabled person to take his wheelchair with him when he goes out in his vehicle. If he were unable to take the wheelchair with him, he would, in practice, be unable to travel, as he would not be able to go anywhere at the end of his journey.

## **Decision**

93. For the reasons set out above I have decided that the the five named customers considered above did usually use a wheelchair and were therefore persons within paragraph (4) of Item 2A of Group 12 in Schedule 8 VATA.

94. I have also decided that the cycle racks fitted as wheelchair carriers by the Appellant satisfy the requirements of Note 5L(b) and that the vehicles to which they were fitted were therefore correctly zero-rated.
95. Accordingly, I allow the appeal and quash the assessment.
96. 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.

**MARILYN MCKEEVER  
TRIBUNAL JUDGE**

**RELEASE DATE: 21 September 2018**