



TC03094

Appeal number: TC/2013/00774

VALUE ADDED TAX - Zero rating of the supply of a qualifying motor vehicle for handicapped person who usually uses a wheelchair – Items 2(A) and 2(f) and Note 5L Group 12 Schedule 8 VATA 1994 considered. Whether supply made to handicapped person/disabled wheelchair user for domestic or personal use – whether sufficient evidence available to supplier to allow zero rating of supply – Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHN MARTIN HOLDINGS LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE W RUTHVEN GEMMELL,WS
 PETER R SHEPPARD, FCIS, FCIB, CTA**

**Sitting in public at George House, 126 George Street, Edinburgh on 5 November
2013**

Bill Saunders for the Appellant

**John Nicholson, instructed by the General Counsel and Solicitor to HM Revenue
and Customs, for the Respondents**

DECISION

- 5 1. John Martin Holdings Ltd (“JM”) appealed against a decision of the Commissioners for HM Revenue and Customs (“HMRC”) made on 11 January 2013 for a claim for £32,003.47 overpaid output tax in the period 07/12.
- 10 2. HMRC issued the decision on 30 October 2012 and the decision was confirmed in an internal review which was completed on 11 January 2013. HMRC did not consider that JM had evidence that JM had actually supplied “a disabled wheelchair user with an adapted vehicle that was used for domestic or personal use of that of a disabled wheelchair user”.
- 15 3. Consequently, HMRC were not satisfied that JM were entitled to treat the supply of a Rolls Royce Phantom motor car as a zero rated supply under Item 2A and Note (5L) of Group 12, Schedule 8 to the Value Added Tax 1994 (“VATA”) being the supply of a qualifying motor vehicle to a handicapped person who usually uses a wheelchair or who is usually carried on a stretcher, for domestic or his personal use.
- 20 4. JM claim that they met the statutory requirements for entitlement to treat the vehicle as zero rated in terms of Schedule 8, Group 12, Item 2 (f) of VATA to qualify for zero rating and that the output tax accounted for on the sale and declared in the VAT return ended 31 July 2012 should be repaid.
5. The Notice of Appeal was based on a submission by the appellant that it believed the sale met the conditions for zero rating set in Schedule 8, Group 12, Item 2(f) of VATA.
- 25 6. In their review letter and ‘skeleton’ argument and at the hearing, HMRC consistently considered the supply at issue under Schedule 8, Group 12, Item 2(A) and note (5L). Item 2(f) relates to the supply to a handicapped person for domestic or his personal use, motor vehicles designed or substantially and permanently adapted for the carriage of a person *in a wheelchair* (emphasis added). Item 2(A) relates to the supply of a qualifying motor vehicle, defined as one that is designed or
30 substantially and permanently adapted to enable a handicapped a person – (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.
- 35 7. The substantial difference between the two items, as it relates to this case, is that Item 2(f) is for a vehicle designed to carry a person in a wheelchair whereas Item 2(A) is for a handicapped person who usually uses a wheelchair and specifically requires the design or substantial and permanent adaptation for the handicapped person to enter and drive or be otherwise carried in the motor vehicle.
- 40 8. In considering the case, the Tribunal considered that the important issues related to the supply to a handicapped person for domestic or his personal use of a qualifying motor vehicle.

9. The Tribunal accordingly considered the appeal on Item 2(f) whilst hearing submissions in relation to Item 2(A).

10. Evidence was given by Patrick Sweeney, Finance Director, of JM, Brian Dickson, a sales consultant with JM and Shirley Green, Higher Officer of HMRC.

5 11. HMRC and the appellant both produced a bundle of documents.

12. The Tribunal record that we found all the witnesses to be reliable and to have given honest evidence. We set out the relevant evidence below and accept it except where we indicate to the contrary and find facts accordingly.

Legislation

10 Value Added Taxes Act 1994

Schedule 8

GROUP 12— DRUGS, MEDICINES, AIDS FOR THE HANDICAPPED, ETC.

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

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

2A The supply of a qualifying motor vehicle—

(a) to a handicapped person—

(i) who usually uses a wheelchair, or

25 (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.]

(5L)A “qualifying motor vehicle” for the purposes of item 2A is a motor vehicle
30 (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—

(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

5 (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.]

VAT Notice 701/59

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12.5 What must the supplier do?

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.

15 You must be satisfied that the declaration made by the disabled wheelchair user, charity or eligible body 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, such as relevant correspondence.

20 You must not accept a declaration that you know or suspect to be untrue.

As a concession, if you have taken all reasonable steps to check the validity of a declaration and acted in good faith, you will not normally be asked to account for VAT if the declaration is subsequently found to have been made in error – see Notice 48 Extra-statutory concessions.

25 You should retain the declaration and any supporting documents as part of your records.

Cases References

Croall Bryson & Company Limited and the Commissioners for HM Revenue and Customs [2011] UFTT494 (TC)

30 *D G Bunning and Another trading as Stafford Land Rover and the Commissioners for HM Revenue and Customs* [2012] UKFTT32(TC)

The Evidence and Finding of Fact

13. The sale of the Rolls Royce Phantom motor car began on or about 30 April 2012 at the instigation of a Mr Fred Sines, junior who advised that the car was for a Mr John Clarke. Initially, there was no mention that the vehicle was to be adapted but at some stage it became clear that it was to be adapted. Mr Sines spoke with Mr Dickson on approximately three occasions during the last of which he advised that the matter would then be dealt with by a Mr Scott Davis, a car dealer, whom Mr Dickson had dealt with previously, with whom he had a good relationship and whom he knew was a car dealer.
14. Mr Sines paid a deposit of £4,000 using his VISA debit card on 30 April 2012.
15. Mr Dickson obtained from the internet an “Eligibility Declaration by a Disabled Person in relation to the supply for goods or services” and which referred to VAT Notice 701/7. This was not the Eligibility Declaration by a Disabled Person suggested by VAT Notice 701/59 - Motor Vehicles for Disabled People.
16. Mr Dickson completed the full name on the form as ‘John Clark’ with an address of 3 Valley Park, Lower Road, Hexstable, BR8 7RZ. Mr Dickson then completed part of the supplier or first part of the form giving his employer’s name, the Murray Motor Company, the relevant subsidiary of JM, and the address of 22 Bankhead Drive, Edinburgh, EH11 4DT. The second part of this form related to the supply to the “person named above of the following goods”, where Mr Dickson wrote a “Rolls Royce Phantom VINUH0199”.
17. The first part of the form was signed J Clarke (with an “e”) dated 2 May 2012 and the address completed as 3 Valley Park, Lower Road, Hexstable, BR8 7RX. Mr Dickson had written the name as John Clark (without an “e”) but this was not corrected by the signatory.
18. The second part of the form, in the name of Brian Dickson, was also signed by J Clarke on 2 May when this should have been signed by Mr Dickson as it was the part of the form where the supplier can make relevant declarations
19. Mr Dickson, having no address for Mr Clarke, sent the unsigned form to Scott Davis who advised that Mr Clarke’s daughter was assisting in faxing the return of the Eligibility Declaration and other documents, as Mr Clarke could not do this himself.
20. Documents consisting of four pages appeared to have been sent by fax from Swanley Information Centre between 1.30 and 1.34 pm on 2 May 2012. The documents consisted of the first page of a letter from Dr A K Muthappan of 31A Main Road, Hexstable, Swanley, Kent BR8 7RB. It was dated 23 September 2006 and addressed to the Community Law Partnership, Birmingham and contained a medical report “in accordance with Mr Clarke’s medical records and from his own personal involvement” and set out the medical history that Mr Clarke had been run over by a vehicle and had sustained multiple injuries to the extent that the diagnosis was “T12 complete paraplegia” and stated “Mr Clarke has no sensation in either leg. He is unable to turn around in bed or get up without help. He is in continuous pain even

with very powerful analgesics including patches. He is wheelchair bound". The letter ends there abruptly and without conclusion or signature. It appeared as though the remainder of the letter had been purposely excluded from the faxed copy. The copy shows a stamp marked 'received 28 September 2006'.

5 21. A second document was a letter from the Department of Work and Pensions ("DWP") advising that Mr Clarke was entitled to the higher rate care component for help with personal care and the higher rate mobility component for help with getting round. Also sent was a copy of a Blue Badge (Disabled Badge). The date of expiry of this badge was 6 February 2014 and although the copy was poor the box for where
10 the signature should appear was clearly either blank or had been excluded. Also faxed was a poor copy of a valid photographic driving licence which barely showed Mr Clarke's signature.

22. A separate fax sent from the Swanley Information Centre at 1.50 pm on 2 May forwarded a copy of the Eligibility Declaration. The declaration had been signed by
15 Mr Clarke who had not corrected the incorrect spelling of his surname and he had also signed the supplier (second) part of the declaration which should have been signed by Mr Dickson.

23. Mr Dickson gave evidence that it was usual for him to complete or partially complete forms for customers. He was unable to remember whether the originals of
20 all the faxed documents had been sent and was unable to provide them to the Tribunal. Mr Dickson witnessed the adaptation that was carried out by Mountside Mobility who had installed push and pull hand controls.

24. Mountside Mobility is a company based in Guildford, Surrey who had been put forward by Mr Davis as an appropriate firm to carry out the adaptation of the vehicle
25 because he said they knew Mr Clarke and his condition. Mr Dickson took photographs of the adaptation and believed that both the documents and the adaptations were reasonable and fit for purpose.

25. Mr Dickson was wary of the transaction to the extent that it was unusual in some but not all respects. Mr Dickson said that in the sale of Rolls Royce motors it was not
30 unusual to deal with brokers or to receive payment from third parties. It was unusual to the extent that a disabled individual was buying a Rolls Royce motor car as this had only happened on two previous occasions over an extended period of time whereas the average rate of sales of Rolls Royce motor cars was in the region of 20 each year. In respect of the three sales, the cost of the adaptation had been £500 and £400 for the
35 first car sold and for the supply at issue whereas there had been, in 2011, adaptations for a well known Edinburgh business man at a cost of £13,000 which was a pure electronic system. Mr Dickson considered that the cost of the latter was "monumental" and that it was the £13,000 for adaptations that was unusual rather than the £400 to £500 amounts.

40 26. Mr Dickson considered that it was not unusual for the sale of Rolls Royce vehicles to be, what are referred to as, "distant sales" by which he meant that 90% were sold by telephone or internet.

27. As a result of it being a distant sale, Mr Dickson believed that he was never going to meet Mr Clarke but wanted to make sure that he was disabled and believed that he did so by obtaining this documentation and by confirming that the adaptations were reasonable and fit for purpose.
- 5 28. Mr Dickson consulted with the Managing Director of JM, Mr Gordon Nisbet, who also approved of the zero rating and reviewed the documentation which had been faxed
29. An insurance cover note was then provided by a company called Tradex whom HMRC say deal with only businesses and business customers whereas JM say their Homefleet product also covers individuals and evidence was provided to confirm both. Mr Dickson had not dealt with Tradex before but the cover note was, he said, as complete as most that are acceptable and allowed by law showing only the name of the individual and dates of cover but often not the specific type of car as it could be for any car owned by the insured.
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- 15 30. Mr Dickson confirmed that he did not follow what the Finance Director, Mr Sweeney, considered to be the internal procedures whereby the Finance Department of JM reviewed any zero rated cases. He had on this occasion contacted the Managing Director rather than the Finance Director.
31. Mrs Green gave evidence that the company had been given a general warning about abuses of the zero rating scheme using the disability exemption as this became public knowledge and motor dealers were made aware of this in approximately July 2007. At some time after July 2007, Mr Sweeney had said that he and his department would vet the zero rated transactions but neither he nor they were given the opportunity to do so with the supply in issue.
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- 25 32. HMRC had taken comfort from the fact that in relation to a previous supply in 2011, Mr Dickson had contacted the motor unit of HMRC and had explained the circumstances so the supply of a Rolls Royce Ghost, which was the car referred to with the adaptations costing £13,000. A verbal assurance had been given and Mr Dickson had asked for this in writing. At a visit with Mr Sweeney, Mrs Green referred to this and Mr Sweeney said he was aware of this and explained that it was for a well known local business man. As a consequence of this assurance, Mrs Green did not examine the documentation for that Rolls Royce Ghost transaction. Mrs Green stated that she expected that JM should have telephoned in respect of the supply at issue.
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- 35 33. On 3 May 2012 a transfer of the balance of the purchase price of £188,075.83 was received from “Heritage Green”.
34. Mr Sweeney confirmed that in a visit from HMRC in around 2007, that followed up a letter from HMRC in relation to the abuse of the adaptation of vehicles and claims for zero rating from VAT, a report and review was carried out of all the vehicles sold by JM, not just Rolls Royces and then disseminated to each of JM’s branches which, at that time, amounted to approximately 10.
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35. Mr Sweeney said that the documentation given by HMRC gave no specific guidance on how to detect fraud and was chiefly concerned with giving an overview and an emphasis of the concerns relating to a gang of individuals making repeated purchases and sales but the transaction in 2011 of the Rolls Royce Ghost was subsequently discussed with HMRC.

36. Mr Sweeney received no notice of the sale to Mr Clarke until after it had taken place. Approximately three weeks after the sale an advertisement was noticed in Autotrader (in a box immediately below a separate advertisement by the Murray Motor Company), offering the Rolls Royce Phantom for sale at a price of £210,000. Mr Sweeney then carried out a review of the documentation which he was not uncomfortable with, and thought there was no significance of the cover note having been provided by Tradex.

37. The documentation faxed on behalf of John Clarke was, accordingly, reviewed by Mr Dickson who was partially involved in its preparation, by Mr Gordon Nisbet, the Managing Director of JM and by Mr Sweeney, the Finance Director of JM all of whom were satisfied with the contents.

38. Notwithstanding this, JM decided to advise HMRC of the sale of the Rolls Royce Phantom, within three weeks of it having been purchased at a considerably higher price than JM had sold it for.

39. The invoice for the Rolls Royce Phantom vehicle was made up of two parts, one of which showed no charge for a DVLA road licence but a subsequent invoice that did. Similarly, the invoice for the Rolls Royce Ghost sold in 2011 also referred to the cost of a DVLA road licence and it was explained that whereas those who qualified as disabled usually did not have to pay road tax but there was an exception if more than one car was owned. No evidence was given as to the number of cars owned by the purchasers of either the Rolls Royce Phantom or Ghost.

40. Evidence was submitted of events which took place after the supply at issue which amongst other matters related to explanations demanded by JM from Scott Davis as to why the vehicle was being sold so soon after the supply date, information about Mr Clarke's injuries and invoices between Heritage Green and another company. It was confirmed in evidence that none of these matters had been in the knowledge of JM at the time the supply in issue was made.

Submissions by HMRC

41. HMRC say that the conditions set in Schedule 8, Group 12, Item 2(A) of VATA were not met, that the Rolls Royce in question was unlikely to have ever been in Mr Clarke's possession and was most likely purchased by Heritage Green Limited, the deposit being paid by Mr Fred Sines, junior and the bank transfer for the balance purchase price being made by Heritage Green Limited.

42. HMRC accept that Mr Clarke exists and is disabled, as described in Dr A K Muthappan's letter dated 23 September 2006; that he lives in a mobile home park and believe he is not in a financial position to purchase a car of this value.

43. HMRC say that distant sales of high value vehicles are not unusual but say that the combination of a distant sale and a zero rated VAT position make it unusual and that caution should have been exercised although they accept that JM acted in good faith. HMRC do not accept that an extra Statutory Concession, 3.11 from Notice 48, is appropriate and say it is outside the jurisdiction of the First-tier Tribunal.

44. HMRC say that Public Notice 701/59 has an Eligibility Declaration for use by a disabled person wishing to buy an adapted motor vehicle for domestic and personal use and that the form, initially completed by Mr Dickson, although similar, was incorrect and instead taken from Public Notice 701/7.

45. HMRC say that JM were aware of the risks associated with cars being supplied zero rated to disabled persons from 2007 onwards and on 19 July 2007 HMRC's motor trade team issued a letter to JM regarding an exercise carried out to review this practice.

46. HMRC say the declaration form appears not to have been completed by Mr Clarke and it is highly suspicious that he did not correct the spelling of his name which was otherwise correctly shown on his Disability Living Allowance statement and the letter from his doctor which were faxed at different times from the Swanley Information Centre.

47. HMRC say that the absence of the signature on Mr Clarke's Blue Badge is "conspicuous by its absence" and would have enabled a comparison with the signature on the Eligibility Declaration.

48. HMRC say that the initial enquiry for the Rolls Royce was made by Mr Fred Sines, junior who paid the deposit, that the insurance was from Tradex who they say deal largely with insurance for businesses in all sectors of the motor trade and that there is a significant lack of information in the cover note.

49. HMRC say that the employment of Mountside Mobility of Guildford to fit the hand controls to a vehicle at premises in Edinburgh is suspicious in itself given the distance travelled and the amount charged for the job and that the fitting of basic hand controls appears to be difficult to understand when Mr Clarke's physical condition refers to him being unable to turn himself in bed which presumably, they say, would require greater significant adaptations.

50. HMRC say that there was no mention of any hoist or lifting aids which would be expected, given Mr Clarke's level of disability and that Mountside Mobility's website reveals the cost of the hand controls to be in excess of £400 which does not include the cost of fitting.

51. HMRC contend that JM should have realised this was not a genuine sale to a disabled person for their personal use and, accordingly, that they should have charged VAT at the standard rate.

52. HMRC contend that the cost of fitting a low value set of hand controls raises suspicions when compared with a cost of £13,000. HMRC say that the question of

who paid for a vehicle has no bearing on treatment for VAT but that it is an issue when it requires to be established that the supply is made to a wheelchair user as payment by the wheelchair user would point to the supply being made to him/her.

5 53. HMRC refer to the case of *Croall Bryson & Company Limited* and distinguish it to the extent that in that case all the disabled wheelchair users attended the dealership; the supplies were actually made to the wheelchair users; the issue involved disabled wheelchair users buying cars not for their personal use but for resale; the suppliers were not aware of the wholesale abuse of the system, being prior to 2007, and the adaptations to the vehicles were not alleged not to be permanent.

10 54. HMRC say JM was fully aware of the abuses to the VAT system and that Mr Clarke did not at any time attend JM's premises.

15 55. HMRC also cite the case of *Bunning and Another trading as Stafford Land Rover* and, in particular, refer to the statement that the possession of eligibility documents is not a legal requirement but refer to the Judge's comments that there is a requirement to carry out reasonable checks as to the accuracy and correctness of the information provided.

Submissions by JM

20 56. JM say that they were in possession of sufficient information, believed that they were selling the car at the time to Mr Clarke and that Mr Clarke was going to use the car for domestic and his personal use.

25 57. JM say that HMRC's case is credible only with the benefit of hindsight and after determining that the buyer had not used the car for personal use and that much of the evidence they produced to the Tribunal related to information that was not in JM's possession or knowledge at the time of the supply of the motor vehicle at issue. Specifically they say that they were unaware that Mr Sines was a known associate of Mr Clarke and are still unaware of this.

58. A newspaper article produced in the bundle by HMRC in relation to the injuries sustained by Mr Clarke, as a result of a vicious domestic dispute, was also unknown to them and is irrelevant to the matters they considered when supplying the vehicle.

30 59. HMRC say that the defects in the declaration are explained by Mr Dickson filling in Mr Clarke's surname using its "normal spelling" and that, in any event, there is no legal need for a declaration. They cite the *Bunning* case where the form was incomplete as no details of the vehicle or its adaptations were inserted in the form by Mr Gilbert, the salesperson and where the Tribunal stated "nevertheless Mr Randall
35 (the purchaser) did declare that the adapted vehicle was for his personal use and that he usually used a wheelchair to be mobile". In both sales under review in the *Bunning* case the appeal was allowed despite the declaration being incomplete. Accordingly, although the declaration is helpful, JM say it is not essential and other evidence can be used.

- 5 60. JM say that Mr Clarke signed a declaration that the supply was for his personal use and the other evidence provided, principally the letter from Dr Muthappan dated 2006, stated that Mr Clarke was wheelchair bound. As regards the doctor's letter and HMRC's submission that the adaptations were inappropriate for someone referred to in the letter who was "unable to turn around in bed or get up without help" JM say this related to his condition in 2006 whereas the sale was some six years later. JM say that the doctor's diagnosis of T12 complete paraplegia relates only to a loss of control below the waist, that the condition can allow an individual to sit comfortably and drive.
- 10 61. JM also referred to the DWP letter dated April 2009 and to the Blue Badge which had an expiry date of 6 February 2014. JM say that it is not unusual in the motor trade to receive an incomplete insurance cover which looked authentic and contained the minimum of information required by law. The details had been provided Mr Davis, the broker, who spelt the name incorrectly in the same way that Mr Dickson had. JM say that the spelling of the name in these documents provided by 15 those other than Mr Clarke himself are minor errors.
62. JM drew the Tribunal's attention to the fact that Tradex provide insurance for individuals through their Homefleet policy.
- 20 63. JM say that the involvement of Mountside Mobility was not unusual in the circumstances; that they are a legitimate installer and that they had been asked to carry out the work because they knew Mr Clarke and his condition.
- 25 64. JM say that the amount of Mountside Mobility's account is not unusual but that an amount of £13,000 for conversions is unusual and that the amount charged was similar to the first of the three disabled car transactions they had been involved in and gave no cause for concern. Photographs were taken by Mr Dickson who was satisfied that they were reasonable and fit for purpose. JM referred to the *Bunning* case and, in particular, to a statement relating to a steering wheel spinnaker knob which they confirmed was not "an expensive item" and referred to a fitting charge of £30 including VAT.
- 30 65. JM made reference to the *Croall Bryson* case where the adaptations were inspected and photographs taken. JM say that whereas they were alerted to the widespread fraud that was being carried out as a result of publicity released in 2007 and at a subsequent meeting with HMRC, the information given was very general and it was along the lines of being wary of repeated purchases by the same purchasers.
- 35 66. JM concede that the paperwork in the sale of the Rolls Royce Phantom case had not been reviewed by Mr Sweeney but Mr Dickson felt able to review this himself and was capable of detecting any signs of wrong doing. Nonetheless he did consult Mr Gordon Nisbet, the Managing Director of JM. JM say that if the matter had been referred to Mr Sweeney there would have been no difference in the result as 40 Mr Sweeney did review the documents after the advertisement selling the car had been noticed and concluded that JM did "not have a problem" with the zero percent rating in this transaction.

67. JM say that when the case was reported, they expected HMRC to take appropriate steps against the purchaser and not themselves and that the case was not unusual because it was a distant sale or through a third party or broker. JM accept that it was unusual because the buyer was disabled and was not visiting the showroom and, therefore, they were looking out for wrong doing. Accordingly, they obtained the DWP letter, the Blue Badge, the signed declaration and the doctor's letter and also wished to ensure that the adaptations were carried out and took photographs to prove this. JM say that they acted responsibly and diligently and throughout were under the impression that Mr Clarke owned the car and was buying this for domestic purposes and his personal use.

68. JM say that in the *Bunning* case, which involved two vehicles, the declaration was incomplete but there was no suggestion of fraud and it does not follow that an incomplete declaration should raise alarm bells.

69. In *Croall Bryson* JM say the sale of three cars was allowed, albeit before car dealers were made aware of the widespread incidence of fraudulent use of the disabled zero rating. JM say that the sale of the Rolls Royce Phantom was similar to the circumstances in *Croall Bryson* to the extent that the car owner was targeted by HMRC, the documentation was insufficient, the car dealers did take reasonable steps to ascertain the appropriate facts and did not ask if the wheelchair user had sold a number of other vehicles or whether there were dealers in motor vehicles. JM say that although they were aware of the abuse, this had been notified to them five years before; the broker involved was known to JM and there was never any suggestion that Mr Clarke was involved in multiple purchases and that he was unlikely to have answered the question correctly even if he had been asked.

70. JM say that Mr Dickson was involved in previous adaptations and felt qualified to conduct this one and that his assessment of the evidence entitled him to believe that he was selling the car for personal use to an individual who was disabled.

Decision

71. The Tribunal considered that much of the evidence before them in relation to Mr Clarke and the onward sale of the Rolls Royce Phantom were of limited evidential value as it was admitted by both parties that this was not, and in the most part could not be, in the knowledge of JM at the time of the supply at issue.

72. The Tribunal considered the issue of whether the circumstances of the sale of the motor car were unusual and should therefore have raised suspicions and have required particularly thorough checks of the evidence as to domestic or personal use, disability and adaptations.

73. The Tribunal accepted that in relation to the sale of Rolls Royce motor cars that it was entirely understandable where there was no adaptation and, therefore, no zero rating of VAT, that it was not unusual for a broker to be involved, for the purchaser not to visit the showroom or visit the car on the basis that there are a limited number of cars manufactured; their specification would be quite detailed; the standard of

finish is expected to be very high and that payment might well be made by a third party such as a company, spouse or other individual other than the purchaser or owner of the vehicle.

5 74. The Tribunal did, however, consider that whereas these circumstances were not unusual for a sale which would not involve any zero rating of VAT, this was not the case for a transaction which did, especially when JM had been warned of widespread attempts to abuse this benefit.

10 75. The Tribunal accepted that an Eligibility Declaration form is not by itself legally required but, in terms of the legislation and the notice provided by HMRC, it goes a long way to satisfying the requirements for zero rating and, in the absence of the correct form having been completed, and, in particular, the supplier (JM's) part of the form, a thorough assessment of the other evidence available is required to satisfy the requirements in the legislation.

15 76. As a result of the form not being completed correctly and not being the correct form, there was no written record of the details of the adaptations or the services to adapt the motor vehicle to suit the purchaser's condition or mention of the services of installation, repair or maintenance of the motor vehicle by JM. There was, in fact, no statement that JM believed the vehicle was for the personal use of the disabled person, because that part of the certificate was not signed by JM and no other written
20 evidence was submitted to show how this conclusion had been reached.

77. Notwithstanding that the incorrect form was unsigned, it does contain the following note at the end of the form "You should keep this declaration for production to your VAT officer. The production of this declaration does not automatically justify the zero rating of the supply. You must ensure the goods and services you are
25 supplying qualify for zero rating."

78. The declaration was faxed at 1.50pm on 2 May 2012. Prior to this, a letter had been faxed at 1.31pm being what appeared to be a partially photocopied letter dated 23 September 2006, addressed to the Community Law Partnership at an address in Birmingham. The copy letter shows a stamp marked "received 28 September 2006"
30 which seemed to indicate that the copy of the letter was obtained from the Community Law Partnership rather than Dr Muthappan. The letter does refer to the history of Mr Clarke's injuries and that he is wheelchair bound but as JM say, it was six years old at the time of receipt. The copy of the letter presented to the Tribunal appeared to have part of the letter removed and was unsigned.

35 79. The DWP letter of 22 April 2009 clearly showed that higher rate mobility component of the Disability Living Allowance was available. The faxed copy of the Blue Badge appeared clearly to have the signature section of the badge blanked out as there is no writing whatsoever where this should be. There was also a driving licence which showed a picture of John Clarke and his signature although this was barely
40 legible on the copies produced to the Tribunal.

80. The guidance provided by HMRC from Notice 701/59 Motor Vehicles for Disabled Persons states “you must be satisfied that the declaration made by the disabled wheelchair user is valid before signing your section of the form”. In this case JM did not sign this form or their section of the form.

5 81. The guidance continues “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, such as relevant correspondence.”

10 82. The Tribunal considered that Mr Dickson entered into this transaction on the basis that this was a genuine sale to Mr Clarke whom he knew was disabled after this information was released to him by Mr Sines and was aware of the procedure for vehicles for the handicapped.

15 83. Mr Dickson had carried out an exemplary procedure in relation to the sale of the Rolls Royce Ghost in that he had specifically discussed the matter with HMRC as to the appropriateness of how to proceed and obtained written confirmation of their approval. He was, or should have been aware, that the supply of the Rolls Royce had also been approved by HMRC at their subsequent visit when it was discussed. It was unclear as to why this procedure was not followed for the sale of the Rolls Royce Phantom or why the internal procedure involving Mr Sweeney was not invoked.

20 84. The documentation, with what the Tribunal considered to be substantial flaws, was reviewed by Mr Dickson and by Mr Nisbet prior to the sale and by Mr Sweeney after the sale and they were all satisfied that the documentation was in order. It was also unclear, if they were satisfied that the documentation was in order and that the zero rating had been correctly given, why the matter was reported to HMRC by
25 Ashley Perks of JM after the advertisement for the resale of the Rolls Royce Phantom came to light some three weeks after the sale by JM.

30 85. The Tribunal considered whether JM had taken reasonable steps in meeting the legislative requirements, particularly as refined by the published Tribunal cases. JM did not follow their own procedures or the exemplary way they had dealt with the previous sale of a Rolls Royce Ghost motor car. Although many of the factors concerning this sale were not unusual, in relation to the sale of Rolls Royce motor cars generally, that did not involve zero rating of VAT, JM should have considered any zero rating sale to a wheelchair user they knew they were not going to meet as worthy of particular scrutiny, particularly in relation to the evidence of disability,
35 given that they had been made aware of possible widespread abuse and had notified HMRC of an internal procedure to deal with this.

40 86. In this instance, unlike the sale of the Rolls Royce Ghost, Mr Clarke was not seen by JM, he did not appear in person, he did not sign the order form, and he did not pay for the vehicle. No written declaration or confirmation was made by JM as to the method of adaptations and they made no declaration that they believed the sale was for Mr Clarke’s domestic or personal use and no other document was produced to the Tribunal that evidenced this. The Tribunal find that when dealing with a broker and

receiving payment from a third party for a sale of this kind that it was incumbent on JM not only to specifically declare this but also to use reasonable steps to evidence it.

5 87. The acceptance of a letter dated some six years earlier addressed to a firm of solicitors, should also have raised questions as to why Mr Clarke could not obtain a letter from his doctor which was up to date and addressed to Murray Motor Company. Furthermore the poor quality and the apparent lack of signature on a Blue Badge should have raised concern or even suspicion as should have the very poor quality of all the documents supporting the Declaration, faxed to JM.

10 88. Taking all these factors into account, the Tribunal find that there was insufficient evidence to allow JM to satisfy themselves that they had supplied a vehicle, in terms of the legislation, to allow them to treat the supply as zero rated.

89. The Appeal is dismissed.

15 90. 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.

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**W RUTHVEN GEMMELL, WS
TRIBUNAL JUDGE**

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