[2021] UKFTT 0298 (TC)

TC08240

Biofuel duty – reclaim – four year time limit – dispute over liability- date when four year time limit starts

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01462

BETWEEN

UK RENEWABLE FUELS LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE RACHEL SHORT

The Tribunal determined the appeal on 2 August 2021 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 9 April 2020 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 13 July 2020, HMRC's amended Statement of Case dated 16 September 2020 and the Appellant's Replies dated 17 September 2020 and 10 November 2020 (with enclosures).

DECISION

INTRODUCTION

This is an appeal against HMRC's refusal to accept a claim for repayment of fuel duty under s 137A Customs and Excise Management Act 1979 ("CEMA 1979"). HMRC refused the claim because it was made more than four years after the duty was first paid. The Appellant argues that as a result of a protracted dispute about who was actually liable for the payment, including as a result of HMRC's own change of position, the claim was not made out of time.

BACKGROUND FACTS

1. The Appellant, UK Renewable Fuels Limited ("RF") purchases and sells biofuel in the UK. The biofuel which is the subject of this dispute is fish oil which it purchased from its UK supplier, MBP Limited and sold on to its client, Tesco in the UK.

2. RF was assessed to fuel duty on 11 September 2014 for a consignment of bio fuel purchased from MBP Limited and paid duty (the "Fuel Duty") of £357, 907 (reference EXA 491/14) to HMRC.

3. However, its UK supplier, MBP Limited was also assessed on part of the same consignment of biofuel which was sold to Tesco in the UK, and paid fuel duty on 1 December 2015, meaning that fuel duty of £84,284 had been paid twice on one consignment of fuel (the "Buy Back Duty"). This appeal relates to this duty paid on this Buy Back Fuel.

4. It is not disputed that fuel duty was charged twice on the same fuel.

5. The reason for the double payment of duty is a dispute with HMRC about which of the entities in the supply chain should be liable for the duty.

6. RF paid the duty in September 2014 in reliance on HMRC guidance, Excise Notice 212, about the duty point for biofuels. It was notified on 13 December 2016 by HMRC that HMRC had changed their position and now considered that it was MBP Limited not RF who was liable for the Fuel Duty. At this point HMRC stated that the assessment on RF had been withdrawn, resulting in a repayment due to RF of £1,186,103 (being the total amount of the Fuel Duty paid by RF including the Buy Back Duty).

7. RF requested repayment of the Fuel Duty which should have been paid by MBP Limited in January 2017. Lengthy correspondence ensued with HMRC. In June 2018 HMRC finally notified RF that they should make a reclaim on the basis set out in Excise Notice 212.

8. RF notified HMRC that they intended to make a reclaim for the Fuel Duty on 15 November 2018 and made a claim on 10 January 2019.

9. A dispute over the liability for the Buy Back Duty was considered by a Tribunal in August 2019 when it was concluded that it was MBP Limited, not RF, who was liable to pay the Buy Back Duty. As a result, MBP Limited have now claimed an amount equal to the Buy Back Duty from RF

10. On 27 March 2019 HMRC changed their position again in respect of the Fuel Duty and notified RF that it was them, not MBP Limited who was liable for the Fuel Duty, while also accepting that RF could make a reclaim for the Buy Back Duty of £84,284 which had been paid twice.

11. RF resubmitted their repayment claim on 7 April 2019 reduced to the Buy Back Duty only.

12. On 26 July 2019, after considerable delay, HMRC rejected RF's repayment claim for the Buy Back Duty because RF were out of time for making the claim, because: "It concerns

amounts paid to HMRC more than four years before your initial claim was made on 19 January 2019"

13. RF appealed against this decision on 27 August 2019 and HMRC issued their review conclusion letter on 10 March 2020 saying; "There is no scope for a repayment claim to be accepted more than four years after the duty was paid" by reference to s 137A CEMA 1979.

14. RF appealed against this decision to this Tribunal on 9 April 2020, claiming £95,472 of tax, costs and interest.

THE LAW

15. HMRC's rejection of RF's repayment claim relies on the time limit set out at s 137A CEMA 1979:

> **"137ARecovery of overpaid excise duty.**
>
> (1)Where a person pays to the Commissioners an amount by way of excise duty which is not due to them, the Commissioners are liable to repay that amount.
> (2)The Commissioners shall not be required to make any such repayment unless a claim is made to them in such form, and supported by such documentary evidence, as may be prescribed by them by regulations; and regulations under this subsection may make different provision for different cases.
> (3)It is a defence to a claim for repayment that the repayment would unjustly enrich the claimant.
> (4)The Commissioners shall not be liable, on a claim made under this section, to repay any amount paid to them more than 4 years before the making of the claim.
> (5)Except as provided by this section the Commissioners are not liable to repay an amount paid to them by way of excise duty by reason of the fact that it was not due to them."

16. They also refer to the related regulations at Regulation 9 of the Revenue Traders (Accounts and Records) Regulations 1992:

> "Regulation 9 Claims for recovery of overpaid excise duty
>
> Any claim under section 137A of the Customs and Excise Management Act 1979 shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated."

17. The Appellant refers to the legislation which concerns payments made in error, Finance Act 2001 Schedule 3:

> "Duty paid in error
>
> 1(1)This paragraph applies if—
> (a)the first condition set out below is satisfied, and
> (b)either the second or the third condition set out below is satisfied.
> (2)The first condition is that, due to an error on the part of the Commissioners, any of the following occurs at any time—

(a)a person is refused authorisation for the purposes of section 8(1) or 10(1) of the Alcoholic Liquor Duties Act 1979 (c. 4);
(b)a person is refused a direction for the purposes of section 11(1) of that Act;
(c)a person is refused approval for the purposes of section 9(1) or 14(1) of the Hydrocarbon Oil Duties Act 1979 (c. 5);
(d)a person is refused consent for the purposes of section 10(1) of that Act.
(3)The second condition is that on or after the commencement day a person pays to the Commissioners an amount by way of excise duty which would not have been paid but for the error.
(4)The third condition is that on or after the commencement day the person refused pays for goods an amount which includes an amount which—
(a)represents a payment by way of excise duty, and
(b)would not have been included but for the error.
(5)If the second condition is satisfied the Commissioners may pay to the person refused an amount equal to the duty which would not have been paid.
(6)If the third condition is satisfied the Commissioners may pay to the person refused an amount which appears to them to be equal to the payment by way of excise duty.
(7)The person refused is the person refused an authorisation, direction, approval or consent".

18. Both parties also refer to HMRC's published guidance about repayment claims – Notice 212: "**Statutory Interest and the Repayment of Overpaid Excise Duty**"

> "When can I reclaim excise duty which I have overpaid to you?
>
> If you have paid an amount of duty which was not due, we will repay that amount to you provided you make that claim within four years from the date when the duty was overpaid"

EVIDENCE SEEN

19. Correspondence between the parties from September 2014 to date including:

(1) 13 December 2016 Letter from HMRC to RF withdrawing assessment to fuel duty amounting to £357,907: Ref EXA 491/14

> "We have now established that the duty point arises earlier in the supply chain for the biofuel and to correct this we have withdrawn the assessment for excise duty totalling £357,907 in full"

(2) Letter from RF to HMRC of 27 January 2017 asking how to make a reclaim for the fuel duty for which the assessment had been withdrawn:

> "In your letter dated 13th December 2016 we were notified that the case has been reopened and the earlier assessment totalling £357,907 has been withdrawn. Does this mean that the duty we have paid to HMRC under that Assessment is no longer applicable? Presumably this also applies to the (approx.) £750,000 of additional duty we have paid to HMRC since that Assessment? I would be grateful if you could confirm how and when this duty is to be refunded?"

(3) HMRC letter to RF of 20 June 2018 referring to RF's ability to make a reclaim for the Fuel Duty:

"In the light of the assessment which we have already withdrawn, you have previously asked if this means you will be repaid duty for that amount.....Our view is that this obligation rested and continues to rest earlier in the supply chain, which is why we withdrew the assessment.

You can make a claim for over paid excise duty –Excise Notice 212 explains the procedures..... you will note that a claim should be made within four years from the date the duty was overpaid"

(4) Email from RF to HMRC following meeting of 15 November 2018 asking about how a reclaim should be made.

"I shall now look into raising a claim for the repayment of historic duty paid by UKRF along the lines discussed"

(5) Letter to HMRC from RF of 10 January 2019:

"The first substantive reply we received from HMRC was at the end of June 2018, some 13 months after our first request, advising that the refund request was eligible and mentioning the 4-year cut-off applied. We assumed, reasonably I think, that our first request for reimbursement in December 2016 and repeatedly since then, would register as a request for duty refund that sits well within the 4-year cut-off period."

(6) Letter to RF from HMRC 27 March 2019 setting out HMRC's change of position concerning which entity is liable for the fuel duty:

"In respect of your claim for overpaid excise duty that you submitted on 10 January 2019, this reconsideration of our position means that we now do not consider that UK Renewables Ltd has been overpaying excise duty as a result of HMRC's advice given to you in 2014. We now consider that original advice to be correct"

"However, as you are already aware from the discussions that have been had involving your supplier on this matter, we understand that both companies may have accounted for duty on some product which was referred to in the tribunal hearing you attended as the 'buyback fuel' and which dates back to when this matter first arose in 2014. As you are aware, concerns have been raised with us that this has led to double taxation. I explained to you in our telephone discussion of 19 March why we considered that the liability for this particular fuel still rested with your supplier. If you and your supplier can agree there is an amount of product on which your supplier has accounted for duty, but which UK Renewables Ltd also subsequently accounted for duty, HMRC would support a result that meant neither of the companies was out of pocket due to double taxation."

(7) Letter from RF to HMRC 7 April 2019 concerning the Buy Back Duty:

"Further to the letter received from Steve Kent, dated 27th March 2019, which advises of the decision to rescind the withdrawal of our previous (2014) Assessment. As a result, I understand that the duty paid by UKRF on all fuel delivered for power generation from July 2013 is once again considered to be legitimate, with the exception of a quantity of fuel delivered to us from MBP in 2014 which HMRC still consider the duty point to be MBP. This amounts to some 756,591 litres of fuel that both UKRF and MBP have paid duty on (£84,284) As a result of the reversed decision, I should like to

now revise the claim for repayment of duty and expenses that I submitted on 10th January 2019"

(8) Email correspondence August 2020 between RF and HMRC concerning date from which four year reclaim period should run.

(9) Letter from HMRC Complaints Officer dated 1 August 2019

(10) Letter to RF from Adjudicators Office dated 29 May 2020

THE APPELLANT'S ARGUMENTS

Date of payment or date of overpayment - When does the four-year time limit start?

20. RF argues that the 4 year cap for the making of a repayment claim should run from the date of overpayment not payment. HMRC have assumed the four-year period commences from the date the original Fuel Duty was paid, September 11th 2014 not the date when HMRC confirmed that the duty had been overpaid, in their letter of 13 December 2016.

21. By definition, the Fuel Duty did not become overpaid until the 13th December 2016 when HMRC retrospectively advised that RF were not the correct duty point. It is clear from this that RF could not possibly have made a claim for overpaid duty before this date, because during this time as far as both RF and HMRC were concerned, it had been correctly paid.

22. RF argue that it is neither fair nor reasonable to reject their claim on the basis of the expiration of a four-year period calculated from September 2014 because the Fuel Duty only became 'incorrectly' paid in December 2016. They argue that, irrespective of the unacceptable delay by HMRC in responding RF's request to reclaim the duty, the four-year period should commence no earlier than December 2016, the point the Fuel Duty became incorrectly paid, and not September 2014 at which point it was correctly paid.

When was payment made?

23. Even if that is not correct, the four-year time limit for the making of a reclaim under s 137A can only run from the date when it was concluded that payment was not properly due from RF, being any of either:

(1) The date when RF was originally, wrongly assessed to duty 11 September 2014;

(2) The date when its supplier, MBP Limited was charged with the duty, 1 December 2015;

(3) The date when MBP Limited paid the duty 16 December 2015;

(4) The date when HMRC notified RF of its change of position about the duty point, 13 December 2016;

(5) The date when HMRC notified RF that it was chargeable for the double charged Buy Back Duty 27 March 2019;

(6) The date when it became clear that it was RF's supplier, not RF who was liable for the Buy Back Duty, the date of the Tribunal decision in August 2019.

When was a claim made by RF?

24. RF's letter to HMRC of 27 January 2017 requesting repayment of the overpaid duty should be treated as a claim for repayment. This claim was made well within the four-year time limit from 11 September 2014. It was HMRC's lengthy failure to notify RF of how such a claim should be made which led to further delays.

25. HMRC are given discretion by the legislation about the form in which a claim for repayment should be made. Although RF accept that their letter of 27 January 2017 was not made in the correct format, HMRC did not provide their own guidance about how a claim for repayment should be made until June 2018, 17 months after it was first requested, making it impossible for RF to know how to make a reclaim or to make a proper claim within the three months remaining by the time the information was forthcoming.

26. The Respondent's case for rejecting the claim for repayment is largely based on their assertion that the reduced timescale of "almost 3 months" (from June 2018 until the four-year deadline of September 2018) was considered sufficient time to submit an in-time claim. This is an entirely subjective assertion, with no factual basis and is unreasonable, not least given the Respondents' own inability to comply with statutory deadlines associated with this case.

Payment made in error – Finance Act 2001

27. If the duty was wrongly charged on RF rather than MBP Limited, it was duty charged in error and any time limits are governed by Finance Act 2001 Schedule 3, under which no time limits are stipulated. HMRC's own guidance notes suggest that these provisions should take priority when duty has been paid in error as a result of HMRC's actions. See HMRC's own Guidance Note ERODG3200.

Reliance on HMRC guidance

28. RF also rely on the many statements in HMRC's guidance Excise Notice 212 which refers not to the date of payment but to the date of repayment as the trigger date for the four year reclaim period.

29. Excise Notice 212, a public notice issued by the Respondents in accordance with the requirements of section 137A(2) of CEMA 1979, is acknowledged by HMRC to be 'slightly ambiguous' and this ambiguity (determining whether the 4-year cap commences on the date of payment or on the date of overpayment) is another causal factor in the Appellant missing the deadline as interpreted 'technically and legally' by the Respondent.

HMRC'S ARGUMENTS

When does the four-year time limit start?

30. HMRC say that the legislation is clear; there is a four year reclaim period running from the date when payment of the reclaimed fuel duty is made. In this case the payment of the Fuel Duty was made on 11 September 2014 and the reclaim period closed on 10 September 2018.

31. RF were aware from January 2017 that a repayment claim needed to be made and had at least the period from July 2018 until September 2018 to make a reclaim but failed to do so.

32. HMRC accept that it changed its position about who was liable for the Fuel Duty; it withdrew the original assessment on RF in December 2016, and confirmed that MBP Limited was liable for the duty in June 2018, notifying RF that it should reclaim the duty which it had paid and that there was a four-year time limit within which that claim had to be made.

33. Despite this notification, RF did not make a reclaim but continued to dispute liability for the Fuel Duty with MBP Limited.

When was a reclaim made by RF?

34. RF made a reclaim in January 2019, outside the four-year time limit. By that time HMRC had changed its position and now accepted that it was RF and not MBP Limited who was liable for the Fuel Duty. Therefore, there was no overpayment to reclaim. RF was notified of this on 27 March 2019.

35. The only exception to this was in respect of the Buy Back Duty for which HMRC accepted, in their letter of 27 March 2019 that RF was not liable and that a reclaim for that amount (£84,284) could be made by RF.

36. However, RF's revised claim for a repayment of that amount, made on 7 April 2019 was also out of time and was rejected by HMRC. The legislation at CEMA 1979 does not provide any basis for extending the four-year claim period. The time limit provided for by section 137A(4) of CEMA is clearly expressed to run from the date of the payment of the amount in question rather than from the time when it was realised that the payment represented an overpayment.

37. As the Appellant paid the amount in question on 11 September 2014, its claim made on 10 January 2019 was more than 4 years after the payment and, therefore, out of time.

Reliance on HMRC guidance

38. The legislation overrides any statements made in HMRC's guidance including guidance Excise Notice 212.

Payment made in error – Finance Act 2001

39. HMRC do not accept that Finance Act 2001 Schedule 3 is relevant in this case. Those provisions rely on specific conditions set out a Schedule 1, which are not met here.

AGREED FACTS

40. On the basis of the evidence which I have seen I find the following facts:

(1) RF made a payment to HMRC of £357,907 on 11 September 2014 representing the full amount of fuel duty due on all supplies made by it referred to by HMRC as assessment EXA 491/14. That payment included the fuel duty referred to here as the Buy Back Duty.

(2) HMRC notified RF on 13 December 2016 that its assessment of £357,907 EXA 491/14 was incorrect and would be withdrawn.

(3) RF wrote to HMRC on 27 January 2017 asking for repayment of £357,907 being the Fuel Duty which HMRC had notified them had been incorrectly charged. That repayment included the Buy Back Duty payable.

(4) That request for repayment was not in a form stipulated by HMRC.

(5) RF made a further claim for repayment on 10 January 2019.

(6) HMRC notified RF on 27 March 2019 that it was liable for Fuel Duty for the supplies of fuel in respect of which its 27 January 2017 and 10 January 2019 reclaims had been made. No reference was made to the earlier assessment which had been cancelled.

(7) HMRC also notified RF on 27 March 2019 that it was not liable for the Buy Back Duty. No reference was made to the earlier assessment of this amount.

(8) RF's supplier, MBP Limited had already accounted for the Buy Back Duty to HMRC.

(9) RF made a revised reclaim in respect of the Buy Back Duty on 7 April 2019.

DISCUSSION

41. Looking at the facts of this appeal in the round, it is easy to understand and share the Appellant's frustration with HMRC's decision making process and the delays which have occurred in dealing with this fuel duty reclaim. The Appellant is right to feel aggrieved and we note that an application has been made both to the Revenue's own complaints team and to the adjudicator, both of whom have decided in favour of the Appellant.

HMRC's decision making process

42. HMRC first insisted in 2014 that RF should be paying the Fuel Duty, which it paid. Then, several years later at the end of 2016, changed their mind and decided that it was not RF's liability, cancelling their original assessment. In 2019 they changed their mind again and decided, other than in respect of the so called Buy Back Duty, that RF was liable for the Fuel Duty. By this time RF were told that they were out of time to make any kind of reclaim for the Buy Back Duty, despite it being acknowledged that this had been paid twice and despite HMRC accepting (in their letter of 27 March 2019) that "they would support a result that meant than neither of the companies was out of pocket due to double taxation".

43. It is worth stating at the outset that this Tribunal's powers are limited and it is not generally within its remit to consider the fairness or otherwise of HMRC's decision making processes as a free-standing question of public law. Those claims must be made through judicial review proceedings in the administrative courts. This is set out clear in binding decisions of the Upper Tribunal such as *Hok v HMRC (*[2012]UKUT 363 (TCC)) and more recently *Zeman v HMRC* ([2019] UKUT 0075)

44. What the Tribunal can consider is whether RF can, or has, made a valid claim for repayment of fuel duty under s 137A CEMA 1979. On its face that legislation is clear, as HMRC stress, a claim for repayment of fuel duty must be made within four years of the date when the relevant fuel duty is paid.

When was payment made?

45. Neither party's argument considers in detail the meaning of payment for these purposes. Underlying the Appellant's case however seems to be an argument that duty should be treated as "paid" under CEMA 1979, only if and when it is legally due and payable.

46. HMRC's case is that the Fuel Duty, including the Buy Back Duty was paid in September 2014 at the time of the original assessment on RF. Therefore, the four-year time limit for any repayment claims runs from that date. Although this is not stated by HMRC, this position assumes that:

(1) Any question of whether that Fuel Duty was properly legally due is not relevant to determine when payment was made; and

(2) The fact that the assessment which triggered the payment in September 2014 was withdrawn in December 2016 is also not relevant; and

(3) Payment for these purposes means the transfer of cash payment from the Appellant to HMRC which occurred in September 2014.

47. The Appellant suggests that the position is different; it cannot be the case that the time limit for claiming a repayment of duty is triggered at the date when payment is originally made if, in the meantime, there has been a change of legal position about whether payment is actually due. The Appellant makes the point that if it was decided that payment had been incorrectly made 3 years and eleven months after duty was paid, on HMRC's analysis, a claimant would only have a month in which to make the reclaim.

48. I agree with the Appellant that the position is more subtle than HMRC have allowed. While it is true that RF made its original payment in September 2014, by December 2016 it was clear, and HMRC accepted, that payment had been made under mistake of law. The assessment which underpinned that payment was withdrawn. No repayment claim was made by RF and no repayment was made to RF at that time, but it seems clear as a matter of law that from that date HMRC owed a debt to RF equal to the amount which had originally been paid. Any payments which had been made by RF to HMRC in respect of EXA 491/14 must have been cancelled by HMRC's acceptance that RF had no liability and the withdrawal of the assessment in HMRC's letter of 13 December 2016.

49. Does this analysis lead to the conclusion that from a legal, if not a cash perspective, RF should no longer be treated as having made a payment in September 2014?

50. My view is that this means that from the date when HMRC withdrew their original assessment, it no longer held any payment from RF in the form of fuel duty, it held a debt due back to RF representing an obligation to repay that amount, (which we assume is how it would have been reflected in RF's tax account for that period). It is worth stressing that this debt would include the whole amount of the Fuel Duty originally paid on 11 September 2014, including the Buy Back Duty.[1]

51. As we know, the situation then moved on so that by 2019 HMRC had changed their position again, now concluding that RF was indeed liable for Fuel Duty for the 2014 period other than for the £84,284 of Buy Back Duty. Again, no payments were made or repaid, and nor, as far as has been evidenced, was any further assessment made to reflect this new position.

52. However, following the analysis above this must have been reflected by HMRC cancelling the element of the debt due to RF for all of the duty other than the £84,284 of Buy Back Duty, which remained as a debt due to RF.

53. On this analysis, when is it correct to say that the payment of Buy Back Duty in respect of which this reclaim is made was paid?

54. In my view this can only have been at the time when HMRC changed their legal position in March 2019 (after the Tribunal decision had been made and at or around the time of their

[1] See on this point Whitney *v Commissioners* [1926] AC 37 at [63]:" Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay."

letter to RF of 27 March 2019) and notified RF that they had again decided that the Fuel Duty was payable by them.

55. The only possible counter argument to this is that since no repayment claim was made by RF in respect of the original assessment when that assessment was withdrawn in December 2016, no "new" payment was made when HMRC effectively re-assessed RF in March 2019.

56. That argument rests on the assumption that the trigger for the release of the payment from HMRC to RF is the making of a claim for repayment, rather than the recognition by HMRC that an assessment had been incorrectly made because there is no liability and the withdrawal of that assessment.

57. This is supported by s 137A CEMA 1979 which states that no repayment will be made unless a claim in the prescribed form has been made.

58. We are not convinced that this is a correct approach in circumstances where HMRC have withdrawn an assessment, although the result may be different where a claim needs to be made against an existing assessment.

59. For these reasons we have concluded that the relevant payment of Buy Back Duty for these purposes was made in March 2019. The four-year time limit for making a reclaim of that Buy Back Duty runs from that date. RF's reclaim made to HMRC on 10 January 2019 was therefore made in time.

Was a valid reclaim made by RF?

60. If I am wrong about this, and the release of any fuel duty payment, even if an assessment has been withdrawn, is contingent on the making of a claim, I need to consider whether and when such a claim was made by RF.

61. RF states that it made a claim in its letter of January 2017 stating its intention to make a claim and asking for clarification of what was required. That clarification was provided by HMRC only many months later and a claim was ultimately made only in November 2018 and formalised in January 2019 (as recognised by HMRC in their letter of 27 March 2019).

62. The relevant regulations state that a relevant claim must be made in writing and state the amount of the claim and the basis on which it has been substantiated, (Regulation 9 of the 1992 Regulations)

63. RF's letter of January 2017 did not include these latter details, but did cross refer to HMRC's earlier letter of 13 December 2016 which referred to the specific assessment which was being withdrawn, EXA491/12. It is hard to see what further information could reasonably be required from RF in this situation. Put another way, any exercise of HMRC's discretion under Regulation 9 about the information needed to make a claim could not reasonably have required further information from RF.

64. On that basis, I have concluded that RF's letter of 27 January 2017 should have been treated by HMRC as a claim for repayment of the Fuel Duty, including the Buy Back Duty, fulfilling the conditions at s 139A CEMA 1979 and Regulation 9 of the 1992 Regulations, triggering the right to a repayment at that date.

65. As of 27 January 2017, at the latest, HMRC no longer held a payment from RF representing the Fuel Duty assessed under EXA 491/14, any cash held representing that payment in RF's tax account represented a debt payable to RF as a result of the withdrawal of the assessment and RF's reclaim letter of that date.

66. The date when a reclaim was made was 27 January 2017, less than four years after the original Fuel Duty payment. That claim was therefore made in time. RF's later amended claim

(dealing only with the Buy Back Duty) was, as stated, an amendment to that original, in time claim and should also be treated as made in time.

Payments made in error- Finance Act 2001

67. Having come to the conclusion that the Appellant's repayment claim was made in time, it is not necessary for me to decide whether the provisions of the Finance Act 2001 which the Appellant suggested may be relevant to its case are in fact applicable.

DECISION

68. For the reasons set out above this appeal is ALLOWED

RIGHT TO APPLY FOR PERMISSION TO APPEAL

69. 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.

RACHEL SHORT
TRIBUNAL JUDGE

RELEASE DATE: 19 AUGUST 2021