



Press Summary

14 February 2024

Jersey Choice Ltd (Appellant) v His Majesty's Treasury (Respondent)

[2024] UKSC 5

On appeal from [2021] EWCA Civ 1941

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Leggatt, Lady Rose, Lord Richards

Background to the Appeal

This appeal concerns liability to pay Value Added Tax (“VAT”) on low value goods which were sold and despatched by mail order from the Channel Islands to customers in UK, at the time when the UK was a member of the European Union (“EU”).

The appellant, Jersey Choice Ltd (“JCL”), is a Jersey-registered company that grows horticultural products in Jersey, which it mainly exports by way of mail order directly to consumers in the UK in small packets. The value of the contents of these packets was so low at the relevant time as to attract the then applicable low value consignment relief (“LVC Relief”). LVC Relief operated to exempt goods valued below £15 from import VAT. In 2012, the UK passed legislation which removed LVC Relief on mail order imports into the UK from the Channel Islands. This was intended to combat a practice known as “round-tripping”, which involved the export of goods from the UK to the Channel Islands in order to then re-import the goods into the UK VAT free.

JCL brought proceedings against the respondent, His Majesty's Treasury, which is responsible for UK taxation policy. It claimed that the withdrawal of the LVC Relief constituted a serious breach of EU law which was contrary to the Treaty on the Functioning of the European Union (“TFEU”) and general principles of EU law, including principles of equal treatment and proportionality. JCL claims for loss and damage it says it suffered as a result of the breach.

The High Court struck out JCL's claim on the basis that it had shown no reasonable grounds for the claim. That decision was upheld by the Court of Appeal. JCL now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses JCL's appeal. It finds that JCL's case disclosed no reasonable grounds for the claim. Lord Lloyd-Jones and Lady Rose give the judgment, with which all the other Justices agree.

Reasons for the Judgment

The legislative provisions

The relationship between the EU and the Channel Islands was governed by Article 355 TFEU and the 1972 Treaty of Accession of the United Kingdom. Whilst the UK was a member of the EU, EU rules relating to the common customs area and the internal free market for goods applied in full to the Channel Islands. The EU rules on VAT did not apply to the Channel Islands [7], [10].

The EU legislation which governed the application of VAT was the Principal VAT Directive (2006/112/EC) ("the **VAT Directive**"). Article 6(1) of the VAT Directive specified territories forming part of the EU customs territory to which the Directive did not apply ("**article 6(1) territories**") [11]. Imports from article 6(1) territories were treated as VAT imports even if the goods were already in free circulation within the EU customs area. The Channel Islands were article 6(1) territories. The VAT Directive granted Member States the power to exclude mail order imports from LVC Relief [12].

The appeal was argued on the basis that, as the proceedings were commenced before the withdrawal of the UK from the EU, JCL was entitled to pursue its damages claim [26].

Should the legality of the removal of the LVC Relief be assessed under the EU fiscal regime or the customs regime?

JCL's primary argument is that the reimposition of VAT as a result of the withdrawal of the LVC Relief amounted to a charge having equivalent effect to a customs duty contrary to the TFEU provisions regarding free movement of goods [30].

The EU customs and fiscal regime are mutually exclusive; the removal of LVC Relief can only fall within one of them [33]. For a measure to be characterised as equivalent to a customs duty it must satisfy two tests. [39]. First, it must be shown that the charge affects only imported products, as opposed to internal taxation which affects imported products and domestic products alike [30]. Second, the measure must not be part of a general system of internal dues applicable systematically to categories of products according to objective criteria applied without regard to the origin of the products.

In the present case, the charge to VAT on imports from the Channel Islands fails both tests [40]. As regards the first test, the mere fact that a charge is made because goods cross a border cannot of itself make it equivalent to a customs duty. Otherwise, all charges to VAT on importation would be equivalent to a customs duty. The charge arises because importation counts as a relevant transaction for the purposes of the VAT system; corresponding products supplied within the UK are subject to VAT in the same way. The charge also fails the second test, as it is properly characterised as internal taxation [41].

EU law did not prohibit a selective disapplication of LVC Relief as between territories outside the VAT Directive area. Even if did, the resulting unlawful VAT charge would still fall to be assessed under the fiscal regime and not the customs regime [44]-[45].

Can JCL rely on EU law general principles?

JCL argues that the UK breached general principles of EU law by removing the LVC Relief from the Channel Islands but leaving it in place for imports from other article 6(1) territories.

The general principle of equal treatment applies in the field of taxation [58]. That principle has no application to imports from third countries [60]. The key question is whether Jersey should be treated as a third country or as a Member State in the context of the VAT Directive. The Court holds that Jersey was a third country for the purposes of the VAT Directive [68]. The Directive made clear that imports from the Channel Islands were to be treated as being from a third territory, notwithstanding that the Channel Islands formed part of the customs territory. This reflects the selective application of EU law to Jersey, as agreed in the Treaty of Accession and article 355 TFEU.

Similarly, the principle of proportionality has no application in respect of the VAT treatment of third territories which are outside of the VAT Directive area [77].

Failure to protect fundamental rights under the Treaty on the Functioning of the European Union (“TEU”), the Charter of Fundamental Rights (“CFR”) and the European Convention on Human Rights (“ECHR”)

JCL argues that the Court of Appeal failed to provide effective legal protection for its EU law rights under the TEU and CFR. The Court finds that the right to a remedy under the TEU and CFR only arises where there has been a breach of rights; it cannot of itself generate a right under EU law or a breach of right [83]. JCL’s claim to damages is therefore not a “possession” protected by Article 1 of Protocol 1 of the ECHR.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)