

THE TAX APPEAL TRIBUNAL

B E T W E E N:

DOVE & BUTTERFLY LTD

Appellant

-v-

THE COLLECTOR OF CUSTOMS

Respondent

RULING

Date of Hearing: 13 August 2025

Date of Ruling: 30 September 2025

Mr Eugene Johnston of the Attorney General's Chambers for the Respondent

The Appellant was not represented by Counsel but appeared through a director and its principal Ms Shi-Vaughn Lee

1. This matter relates to an appeal by the Appellant (acting through its principal Ms Shi-Vaughn Lee ("Ms Lee")), against a decision of the Collector of Customs relating to the rate at which customs importation duty was imposed on a vehicle.
2. The key issue in dispute relates to the customs duty payable on the importation of a vehicle by the Appellant. She claims that because the importation was of a second-hand vehicle for a business, of a particular vehicle-type and because of the type of license approved by the Transport Control Department ("TCD"), that she was entitled to pay duty at the lower rate of 35%. The Respondent required her to pay duty at a higher rate which it maintains was legally applicable, namely 75% on the first \$10,000 of the value of the vehicle, plus 150% on every dollar in excess of \$10,000 (the 75 / 150 Rule). The difference was substantial for a small business.

3. Faced with a decision made against her by Customs, Ms Lee promptly wrote to the Respondent, prior to the expiration of time to appeal, indicating her intention to appeal. She explained that she first needed certain further documents from them, which she had requested and had not been forthcoming, forcing her to make a formal application for documents under the Public Access To Information Act 2010 (“PATI”). The Appellant and the Respondent (acting at the time through Senior Customs Officer Rosita Philpott) entered into an agreement (evidenced by the Respondent’s email of 4 April 2023) formally extending the time to file a formal appeal until 30 days after she received the final response to her PATI requests.
4. On 1 July 2025 the Tribunal held a directions hearing which was followed by a directions order. Given the significant issues in controversy between the parties the Tribunal handed down a substantive Ruling produced on 10 July 2025.
5. The Respondent’s counsel made much of the fact that Ms Lee was a lawyer and implied that she should not be treated as an unrepresented lay person. It seems that Miss Lee, director and principal of the Appellant, was a lawyer who did her pupillage at the AG’s chambers and worked with the Respondent’s counsel, Mr Johnston, there. However having completed pupillage she left the practice of law to establish a separate business. She does not appear to have much experience in the practice of law, and certainly her approach to the preparation of the case suggests an absence of experience with civil litigation. There appeared to be some unhealthy friction as between Mr Johnston and Ms Lee.
6. The substantive hearing of this matter took place on 13 August 2025 and lasted the full day. Mr Johnston arrived approximately 40 minutes late for this hearing, thus he missed everything that took place at the commencement of the hearing. This is noteworthy in that Mr Johnston was similarly late for the Directions Hearing on 1 July for which he was criticised at that time. Mr Johnston’s approach to the Appellant and to these proceedings were at times difficult to comprehend. Parts of his oral submissions, in particular his allegation of serious wrong-doing or criminality by civil servants, to whom he apparently had given legal advice, made the proceedings proceed in a highly unusual manner.

7. The Tribunal has been provided with a transcript of the hearings but notes that the transcript is of poor quality, with many imperfections. Nevertheless it does sufficiently capture what transpired at the hearings. The Tribunal attempted to correct some of the clear typographical errors arising, but there were far too many and time did not permit the correction of all (the Tribunal has no clerical or other staff).

The principle issues in dispute

8. The Appellant's case is that everyone else in a similar position to her is treated properly and lawfully. She submits that she is being treated improperly, unfairly and unlawfully (see email to Customs of 27 January 2025 at page 34 of her Hearing Exhibit). She says that she feels entitled to be treated fairly, like everyone else, in her position.
9. In relation to the above, the Tribunal noted, at the hearing the following parts of Ms Lee's affidavit:
 - a. Page 1 para 2: "I canvassed the idea of importing a commercial car with those who had one already, which led to my understanding that businesses are the only ones who could import second hand cars and the duty rate was thirty something percent... I now know it to be 35%."
 - b. Pg 2 para 4: "... It was my belief that the duty rate was 35% because the other businesses I had spoken to all told me the rate they paid was 33.5% or 35%." (emphasis added)
 - c. Pg 4, para 3: "On January 25, 2023 I wrote to all in the email chain [Customs] to state that I had various conversations with multiple business owners with TCD registered trucks and none of them had paid the rate Ms Lightbourne was telling me to pay..." (emphasis added)
10. This is consistent with the Appellant's statement of case in her Review Notice dated 19 February 2023, which provided that "... Ms Lee was aware that other business with the same registration being Light Passenger Vehicle or Intermediate Passenger Vehicle all paid a concessionary rate of 35% rather than the above rate which is significantly higher." (emphasis added)
11. In fact, the Appellant gave evidence that in relation to another local business with a vehicle licensed in the same way as hers, Customs originally sought to charge the

higher rate, but in response to the local business' complaint, Customs changed this to the lower, correct rate. (See Appellant's email to Customs of 21 January 2023 found at pg 27 of the Appellant's Exhibit to her affidavit).

12. Customs declined to engage with this point, stating that they were not able to discuss any other tax payers. However, knowing the point she made here, and that is was based on documents disclosed to her following PATI Requests, Customs elected to put in no evidence to address this point. Given the way in which the matter proceeded, Customs seemed to go out of their way to avoid saying in evidence, that no one else in a similar position paid tax at the lower rate, or to deny that everyone (or even that anyone) in a similar position paid tax at the higher rate.
13. At the commencement of this saga, Customs stated to Ms Lee that she might be entitled to pay the lower import duty rate, depending entirely on how TCD licensed the vehicle. In an email to her dated 18 December 2022, from Principle Customs Officer Melody Lightbourne, Customs stated:

"... the duty is per the registration of the vehicle.

Your vehicle, appears to be a passenger vehicle and the appropriate duty on a passenger vehicle was discussed with you as you have mentioned below.

It is my understanding that you are seeking a registration for the vehicle through the application process with TCD for the passenger vehicle to be for your business, yet you do not have that matter resolved at this time..."

(emphasis added)

14. So Customs here expressly conceded that the lower duty rate would be paid, if TCD registered the vehicle as she sought to register it.
15. It is important to note here, that Customs makes no mention of the problem being that the vehicle was to be owned by a business or a company. Nor does Customs say or even suggest that the Customs Department took the position that it would be unlawful for TCD to license the vehicle in the manner claimed for by the Appellant, such that she would never be entitled to the lower duty rate. Based on the evidence before the Tribunal, it appears that these additional points were never raised by the Collector at the time of making her original decision. Instead, these novel points appear to be

taken by her counsel, at the hearing of the Tax Appeal Tribunal two and a half years later.

The Legislative Background

The Revenue Act 1898

16. This Act, amongst other things, sets out a statutory basis for the Government of Bermuda to collect customs duties on the importation of goods. It also provides at s. 122 and 122A, for a formal internal review of certain decisions of the Collector of Customs. Any decision of the Collector on review under s. 122A, is capable of being appealed to the Tax Appeal Tribunal, pursuant to s. 122B, which provides in part:

“... the powers of an appeal tribunal on an appeal under this section shall be confined to a power, *where the tribunal is satisfied that the Collector of Customs or other person making that decision could not reasonably have arrived at it*, to do one or more of the following— ...”

s. 122C sets out a time frame for appeals.

17. At the hearing Mr Johnston submitted that it was not clear whether the term “reasonably” here meant *Wednesbury* reasonableness, or something else. He suggested that the decision of Mr Justice Helman in *Collector of Customs v. Rayclan Ltd* (2016) SC (Bda) 13 Civ (4 Feb 2016), suggests some different definition of reasonableness, although when questioned as to what the difference was, Mr Johnston could not point to a material difference.
18. The Tribunal indicated that it ought to follow the words set out in the statute, but could be guided as to their meaning by the case law around the *Wednesbury* decision, which is well known to courts and tribunals. Mr Johnston did not indicate any objection to this approach.

The Taxes Management Act 1976

19. This Act, amongst other things, makes certain further provision for tax payers to challenge taxes assessed by the Collector of Customs. This Act provides in part:
 - a. S. 23 provides for a formal internal objection procedure.
 - b. S. 24 creates an Appeal Tribunal.

- c. S. 25 provides that where a tax payer files an appeal the Collector shall forward this to the Tribunal as soon as practicable.
 - i. A starting point to the problems on this appeal is that the Collector failed to forward the appeal to the Tribunal (whether under the Revenue Act or the Taxes Management Act), taking the position that the appeal was out of time (despite their agreement to extend time).
- d. S. 26 provides that the Tribunal may regulate its own procedure and receive any “lawful evidence” and submissions from the parties.
- e. S. 27(3) provides:

“The Collector and any public officer employed in carrying out or assisting any other person to carry out the Taxes Acts shall not, in any proceedings before the Tribunal, give any evidence which would, without the consent of that person, disclose the private circumstances or business affairs of any person if such person is or may be identified by reason of the evidence given.”

 - i. The Collector, through her counsel, submitted that not only could she not call evidence relating to other tax payers, but further, that neither she nor the Customs officers, were permitted to even comment on the evidence submitted by the Appellant, following her PATI Requests, where the evidence related to other tax payers, even if the evidence was properly put before the Tribunal by a party other than the Collector.
 - ii. This seemed, to the Tribunal, an incorrect reading of the s. 27(3). However the Tribunal further put it to the Respondent that even assuming that their interpretation of the sub-section was correct, that this did not prevent the Collector from putting in generic evidence which did not identify any other tax payer.
 - iii. For example, the Appellant made a factual allegation that “all” other businesses, including companies, which imported a vehicle effectively the same as the one in question in this case, licensed similarly to that of the Appellant, paid duty at the lower rate. S. 27(3) did not prevent the Collector from putting in an affidavit to deny the fact that “all” other

businesses were treated in this way. Instead, the Collector was happy for the Tribunal to proceed on the basis of the evidence adduced by the Appellant, relying instead on written and oral legal submissions, bereft of evidence, about a conspiracy involving the Appellant and certain unnamed politicians and civil servants at TCD, to unlawfully avoid customs duties.

The Tax Appeal Tribunal Regulations 1981 (the “Regulations”)

20. The Regulations provide a procedural framework for appeals to the Appeal Tribunal and further provides:
 - a. S. 3: The practice and procedure of the Tribunal should be that of a court of summary jurisdiction, except where the Act or Regulations provide otherwise.
 - b. S. 5: The Appellant shall file a Notice of Appeal accompanied by a supplementary statement setting out the grounds of appeal, the facts the appellant alleges are relevant and any contentions of law (the “Appellant’s Case”).
 - c. S. 6: The Collector shall file within 30 days, a statement which shall include a statement of admitted facts and the Collector’s contentions of law (the “Agreed Case”).
 - d. S. 7: If the Collector does not admit any of the facts set out by the Appellant, the Collector must, within 30 days of receiving the Appellant’s Case, file a statement setting out the facts admitted and those not admitted; any other facts which she claims to be relevant and intends to rely; and her contentions of law (the “Collector’s Case”). This is compulsory, not optional.
21. The Notice of Appeal, together with supporting documents (the Appellant’s Case) was served on the Collector on 6 January 2025.
22. In breach of s. 6 of the Regulations, the Collector failed to file the Agreed Case within 30 days. To the extent that the Collector disagreed with any of the facts pleaded by the Appellant, the Collector failed, in breach of s. 7 of the Regulations, to file a statement of facts agreed and facts not agreed, with any supplemental facts on which they would rely (ie failed to file the Collector’s Case).
23. At the hearing on 13 August the chairman pointed these breaches out to Mr Johnston (Counsel for the Respondent), noting also that that the Collector has failed to file any evidence in support of her case.

24. Mr Johnston indicated that this was a conscious decision and he accepted that the failure to provide the required statements would amount to an admission of the facts set out by the Appellant.
25. As part of the Directions Order, provision was made for the parties to file legal submissions within 14 days. Following this, the Respondent filed a document entitled the Collector's Case. This document was not the document of the same name, required to be filed under s. 6 of the Regulations (ie a statement of agreed and disagreed facts etc as stated above). Instead this new document was merely the written legal submissions of the Respondent.
26. The Collector's counsel did file with the Tribunal on 9 July 2025 two documents on which she intended to rely:
 - a. The Review Notice date 19 February 2023 and its enclosure; and
 - b. The Review Decision dated 21 March 2023, with its enclosures.

Even accepting these documents as evidence before the Tribunal, they do not, in any way provide evidence of the type Mr Johnston alluded to in his submissions, which we address below.

Motor Car Act 1951

27. The parties, in particular the Collector's counsel, made substantive reference to the Motor Car Act 1951 and sections of this said to be relevant to the case. Some of the key definitions pointed out as relevant include the following:
 - a. "motor car" broadly means any vehicle except an auxiliary cycle or a train. Interestingly, in Bermuda, a motor cycle is included in the definition of a motor car.
 - b. "omnibus" means a motor car seating not less than eleven passengers ... carrying them for hire or reward.
 - c. "passenger motor car" defined in s. 12.
 - d. "passenger truck" defined in s.40(7)
 - i. S.40(7) then defines this as "a light or an intermediate truck of a type approved by the Minister for the carriage of passengers".
 - e. "private light truck" means a truck as specified in Schedule 1, where the permit holder can exceptionally use the vehicle as a private motor car.

- f. “private motor car” means a passenger motor car other than a passenger truck, ..., primarily used to convey its owner.
- g. “public service vehicle” “means an omnibus, minibus, motor taxi, an airport limousine, a limousine...”
Later at s. 26 there is a prohibition on the carriage of passengers for a fare, limiting this to public service vehicles; and at s. 37 there is a provision for regulating carriage of passenger for a fare.
- h. “truck” with the exception of a passenger truck means a motor car constructed primarily for carriage of goods, etc.
- i. S. 12 of the Act is unusual and is set out in full:

“Restrictions on passenger motor cars

12 (1) No person shall use or cause or allow any other person to use a passenger motor car other than a private motor car, passenger truck, a funeral home limousine, a public service vehicle, a community service vehicle, a motor cycle or a self-propelled invalid chair.

(2) In this section “passenger motor car” means a motor car (other than an ambulance) so constructed as to show that its primary purpose is the conveyance of passengers.”

(This section was amended in 1999 and again in 2005)

- j. S. 15 prohibits the importation of second-hand vehicles as private motor vehicles. The parties appear to accept that the effect of this is that the importation of second-hand vehicles is only permitted for commercial vehicles.
- k. S. 16 is headed “Restrictions relating to ownership , etc, of private cars. The Collector relied heavily on the terms of s. 16(9) which provides:
“No motor car licence shall be issued to any corporate body, company, firm or association of persons in respect of a private motor car, nor shall any corporate body, company, firm or association of persons be registered as the owner of a private motor car.”

l. S. 16 (10) provides

“Any motor car licence, any registration of a motor car, and any certificate of registration which is not in compliance with any of the foregoing provisions of this section, shall be void.”

m. At the hearing on 13 August the Mr Johnston submitted that no limited liability company can ever own a Light Private Truck; and as such, it would be unlawful for the Appellant to own one and this was a reason why the Tribunal should find that the Collector acted reasonably in making her original decision.

i. It was pointed out to Mr Johnson at the hearing that the wording of this sub-section did not go as far as he maintained. It restricted corporate ownership of a “private motor car” not a “light private truck”. In any event, the restriction was not limited to limited liability companies, as Mr Johnston maintained, but was broader than this to include a prohibition of ownership of a private motor car by any corporate body, including companies, firms and associations of persons.

ii. Following the conclusion of the hearing, Mr Johnson sent an email to the Tribunal on 14 August to add a post-hearing legal submission. He now pointed to s. 16(16) which provides:

“16 (16) The principles and provisions in this section shall apply—

(a) to a classic car as if for the words “private motor car” there were substituted “classic car”;

(b) to a private light truck as if for the words “private motor car” there were substituted “private light truck”.

iii. Mr Johnston then went on to submit in his aforesaid email that

“So, even if Lee's Mercedes could be considered a private light truck (which is impossible because of its inherent design), it could not be owned by Dove & Butterfly Ltd. Therefore, there is no lawful end-use to be considered when deciding whether to award end-use relief pursuant to CPC 4220. Whatever the other arguments, it cannot be

unreasonable for the Collector to deny end-use relief in the circumstances.”

- iv. To be clear, Mr Johnston appears to be arguing that this new legal theory, that a company cannot own an LP or LPV, introduced for the first time on 14 August 2025, after the conclusion of the hearing, and forming no basis for the Collector’s decision in 2023, could be a ground to find that the Collector’s decision in 2023 to have been reasonable.
- v. The Review Decision which is the subject matter of this appeal, makes no reference whatsoever to this ground as being a basis for the refusal of the Appellant’s application to pay duty at the lower rate. There is no evidence that corporate ownership of the vehicle was a problem for the Collector. This issue was raised for the first time at the Tribunal hearing by Mr Johnston.
- vi. The Tribunal heard evidence that all the Light Private Trucks or Light Passenger Vehicles were owned by businesses. The proper interpretation of the Motor Car Act 1951 was a matter for the Director of TCD, not the Collector of Customs.
- vii. In the absence of any evidence on this issue and any submissions advanced on behalf of TCD, the Tribunal should not decide on the interpretation of s. 16 of the Act, this being unnecessary for the determination which the Tribunal must make, as to whether the Collector acted reasonably, based on the evidence and legal theories she advanced at the time of her decision. The s. 16(9) and (10) points formed no basis of the Collector’s decision, based on the evidence adduced at the hearing.
- n. S. 19 (6) “commercial vehicle” means a light, intermediate or heavy truck.

Further points on the Motor Car Act:

- 28. In his oral submissions, during the main hearing, Mr Johnston argued that the Supreme Court of Bermuda decision in *Collector of Customs v. Rayclan Ltd*, created a problem that the Government sought to remedy, by the amendments made to the Motor Car Act (transcript page 146). It appears that this was aimed at helping small businesses. It was the desire of Parliament to amend the Act, to introduce CPC 4220, to permit cars

to be licensed as light private trucks. But in Mr Johnston's expressly stated opinion, Parliament failed in this regard. He says that in reality, it is impossible to determine when it could ever be used (transcript page 146). As a result, not some but all vehicles licenced in this way (including the Appellant's vehicle), have been so licensed unlawfully. As a consequence none of them should benefit from the lower customs duty rate.

29. It was pointed out that key distinguishing features in Bermuda, as between private motor cars and trucks are that:
 - a. Private motor cars cannot be used for (effectively) commercial purposes;
 - b. Trucks cannot be use for non-commercial purposes and cannot be driven on a Sunday; and
 - c. The designation of Private Light Truck permitted one to transcend the two, so the holder could use it to transport goods and/or to drop his kids to school in the morning; and it could be driven on a Sunday.
30. Reference was made to Schedule 1 of the Motor Car Act which included a section for "Light Trucks and Private Light Trucks", but no reference to a vehicle license-type of "LPV". It is important to note that LPV is not defined in the Motor Car Act or any of the Schedules to the Act.
31. Further reference was made to Schedule 1A of the Motor Car Act setting out the annual permit fees for all forms of trucks including "Light/Light Private Truck" where the fee is set at \$1,100. No separate fee is provided for LPVs, which are not referenced at all.
32. Lastly reference was made by the Tribunal (who produced it for comment by the parties) to the TCD "Annual Renewal Fees" for all vehicles found at <https://www.gov.bm/online-services/renew-your-vehicle-licence> , which contains the annual renewal fees for all vehicles. This is given for "Truck – Light" as "\$883". No separate fee is provided for Light Private Trucks which are assumed to pay the same as Light Trucks. There is no reference here to LPVs, which do not appear to exist as a separate classification in any of the material reviewed by the Tribunal.

The Customs Tariff Act 1970

33. The Collector also took the Tribunal to the Customs Tariff Act 1970 and in particular to End of Use provisions contained in the Fifth Schedule of that Act, particularly to Customs Procedure Code (“CPC”) 4220, which provides in part as follows:

“Description	Passenger motor cars licensed as trucks
CPC	4220
Duty Rate	35%
Eligible Beneficiary	All importers
Qualifying goods	Goods of Heading 87-03
End-Use Conditions / Restrictions:”	

A summary is that the vehicle must be registered as a light, intermediate or heavy truck other than a passenger truck with the Transport Control Department.

34. Mr Johnston argued that a motor car could never meet the definition of a “private light truck” as defined in s. 2, because only a truck could ever meet the statutory language: “*“private light truck” means a truck as specified in Schedule 1...*”. So, he argues, only a truck (not a private motor car) can be a light truck. However this analysis ignores the clear words in CPC 4220 set out above, namely there is express statutory provision for “passenger motor cars licensed as trucks”.
35. Mr Johnston explained his argument by reference to the Customs Tariff Act 1970 First Schedule, known as the Bermuda Nomenclature and Import Duties. Chapter 87 deals with certain types of motor vehicles. 87-03 applies to motor cars and other motor vehicles for the transport of persons. 87-04 applies to motor vehicles for the transport of goods, these often classified as trucks by the Motor Car Act.
36. It is important to note that private motor cars (Goods Heading 87-03) come in at the duty rate of 75% on the first \$10,000 of the import price plus 150% on the balance, ie amounts over \$10,000. On the other hand, trucks (Goods Heading 87-04) come in at the much lower 35% duty rate. CPC 4220 effectively permits vehicles which meet the

requirement in the CPC to be taxed at much the lower commercial rate. This lies at the heart of the present dispute.

37. As to the End-Use Condition of CPC 4220, described above, it is sufficient to satisfy the CPC, that the motor car in question has been licensed as a light truck by TCD.
 - a. Once a motor car has been licensed as a light truck, then it may be said to be deemed to meet the definition of a Light Truck contained in the Motor Car Act.
 - b. The Appellant submits that this exception must apply to LP and LPV registrations because they fall within the category of “Light Truck”, for purposes of the Motor Car Act. The Tribunal accepted this argument, for the reasons set out herein.
38. Mr Johnston invited the Tribunal to find that TCD was wrong and Collector was right, as to the correct manner of interpreting certain sections of the Motor Car Act. In particular, the Collector’s counsel’s oral submissions at the hearing (but forming no part of their evidence), was that all such LP vehicles (hundreds), which are in a similar position to the Appellant, have been unlawfully licensed by TCD. But there are several problems with this approach:
 - a. There has been no finding by any court or tribunal, that TCD have acted unlawfully, nor does TCD appear to concede this point. To the contrary, the evidence before the Tribunal, and the position in any event agreed by the parties, is that TCD continues to license vehicles in this way. If TCD continue to issue these licenses, they must believe that their actions are lawful. Perhaps they received legal advice from someone other than Mr Johnston, we don’t know and have no evidence as to this.
 - b. The Collector could have, but elected to call no evidence on this point.
 - c. The maxim of *omnia praesumuntur legitime facta donec probetur in contrarium* – all things are presumed to be legitimately done, until the contrary is proven, must apply here.
 - d. This principle means that actions are presumed to have been performed correctly and according to law unless there's evidence presented to show otherwise. It's a fundamental concept of legality that places the burden of proof on the party challenging the legitimacy of an action. That burden of proof (on this narrow

point and not the whole appeal) was on the Collector, who has presented no evidence to support the allegation that TCD were acting unlawfully. The written and oral submissions submitted on the part of the Collector are not sufficient to satisfy the burden of proving illegality in this case.

- e. In the absence of any proper evidence as to these issues, it would be inappropriate for the Tribunal to decide that TCD acted unlawfully, or to decide the legality of TCD's action in the present case. In any event, it is not material to the point to be decided by the Tribunal, namely whether the decision of the Collector was reasonable, based on the reasons provided by her at the time of her decision, rather than based on new legal theories put forward for the first time at the tribunal hearing.

The Controversy around the extension of time to appeal

- 39. The Review Decision of 21 March 2023 was communicated to the Appellant by SCO Rosita Philpott on the same day.
 - a. On 4 April 2023 the Appellant responded to Ms Philpott to say that she was making various PATI Requests, which were being delayed by slow responses from the Customs Department, such that the Appellant would not be able to meet the 30 day deadline to appeal to the Appeal Tribunal.
 - b. Quite reasonably, Ms Philpott replied on 12 April 2023, on behalf of the Collector, to agree an extension of time, stating:

“Your appeal must be filed within 30 days of you receiving your final response related to your PATI requests.”
 - c. Ms Philpott, given her title and office, clearly had actual or ostensible authority to agree a simple extension of time, and the Appellant reasonably relied upon this, to the knowledge of the Respondent.
- 40. It seems that two years later, the Collector attempted to resile from the Customs Department very clear agreement to extend time. In doing so, the Collector exhibited a degree of indifference towards, and oppression of, the Appellant that was disturbing. It was surprising to find this coming from a public servant. This attitude seems to have permeated through the entire process and the manner in which the Appellant has been treated.

- a. In attempting to resile from an expressly agreed extension of time, Ms Philpott wrote, almost two years after the agreement, on 27 January 2025:

“I was advised that I should not have emailed Ms Lee and given her a 30 days extension ...

... It is important to note that my extension email refers to “Review Notice Dove & Butterfly Ref: HLR/001/20.11.23” dated 21st March, 2023, which was in response to Review Notice dated 19th February, 2023. Ms Lee asked for a review of the decision made by PCO Lightbourne on January 31, 2023.

This is not the decision that Ms Lee is appealing to the Tax Tribunal at this time. It is my understanding that Ms Lee is appealing a decision made by PCO Lightbourne on January 19th, 2023.”
 - b. This explanation is the most extraordinary attempt to back out of a clearly agreed extension of time. The suggestion that there was more than one appeal to the Tribunal is baseless.
 - c. However, the problem (and a further example of the unreasonableness of the Collector’s behaviour towards the Appellant), is that even assuming that Ms Philpott had no authority to enter into the agreement (and no legal basis is given to explain why Ms Philpott did not have actual or ostensible authority to agree a simple extension of time), the Collector then indicated that she would object to any application by the Appellant to seek an extension of time from the Tribunal itself.
41. The Appellant, having received an extension of time to appeal until after the last PATI request was answered, continued to receive PATI documents until early 2025 (this fact was never contested expressly or impliedly). On that basis she filed her appeal on 6 January 2025 within the time frame of the agreed extension.
- a. On 16 January 2025 the Customs Department acknowledged receipt of her appeal and related papers, stating that they received 20 pages of material. Customs stated that upon payment of the appeal fee, her papers would be submitted to the Tribunal.

- b. The Appellant dutifully paid the fee as requested, but the Collector then failed to transmit the appeal to the Tribunal, on the basis that it was out of time. Further, the Customs Department stated in an email from Tomika Darrell of January 2025 that the Appellant could not proceed with her appeal unless the Tribunal itself granted an extension of time.
 - c. To add insult to injury, the Customs Department stated in the aforesaid email of 27 January that:

“Should you decide to pursue the extension, please be aware that the Collector intends to oppose your application.”
 - d. So, having agreed an extension of time in April 2023, almost two years later, the Collector purported to resile from that agreement, knowing that the Appellant has relied upon the Custom’s Department’s agreement, to the Appellant’s detriment. The Collector now took the novel position that the Collector could not agree an extension, only the Tribunal could, but that the Collector would object to the Appellant’s application to the Tribunal for such an extension, in any event.
 - e. Putting aside the unreasonableness of the Collector’s decision to object to an extension of time, she would be prevented by estoppel, from either resiling from her agreement to extend time, alternatively, if she had no authority to enter such an agreement, then estopped from objecting to an application to the Tribunal for such an extension of time. But we don’t need to rely on Estoppel as the Tribunal stated at the Directions Hearing, that it would allow the extension in any event.
42. At the 1 July Directions Hearing, it was pointed out by the chairman that parties to litigation agree extensions of time every day. When asked whether it was the Collector’s position that this particular time period was of a type which could never have been extended by agreement of the parties, Mr Johnston responded:

“No, but I’ll be very blunt. The Collector does not agree to extend time. They have never agreed to extend time. The overture, made by an officer of the Customs Department, was corrected with the appellant over a year, almost two years ago, so the fact that she’s waited until after PATI requests have been satisfied or not satisfied, until after the Ombudsman’s got involved, until after

she has collected evidential data that she wants collect for whatever reason, it doesn't move the point. The point is the Taxes Management Act says that a person can file an appeal within 30 days, unless the Tribunal grants an extension, and we haven't agreed to the decision to grant an extension.”

43. So Mr Johnston concedes that the time period could be extended, but denies that it was ever extended. This was another extraordinary submission, given the clear wording of the written agreement to extend time.

44. The issue around the extension of time does not relate directly to the current ruling, but it does show a course of unreasonable conduct by the Collector. The extension of time issue was directly relevant at the time of the 1 July directions hearing. In advance of that hearing, the Tribunal had indicated that the Collector has not complied with the requirements of the Act and Regulations, for example by not filing a statement setting out the agreed and disagreed facts. Given this, the Tribunal indicated in advance of the hearing that if the facts were all impliedly agreed, the Tribunal might deal with the substantive appeal on the merits at the hearing on 1 July.

45. Because the Collector did not wish the matter to be dealt with on the merits at the 1 July hearing, the Collector indicated (through her counsel), her desire to file further necessary papers for the purpose of the hearing. Mr Johnston stated at the 1 July hearing:

“Then you need to have all the documents in front of you before we have a substantive hearing. You need them.” (transcript page 33)

It was suggested that the Collector ought not to be deprived of that right. (In the end, the Collector filed no evidence.)

46. Further, the Collector indicated that the agreement to extend time, dated 12 April 2023, was withdrawn within a matter of days, and as such it was unreasonable for the Appellant to rely on that agreement two years after it was withdrawn. Although the Collector and her Counsel did not produce this document, given the clear representation as to its existence, this was taken into account by the Tribunal in its decision, in favour of the Collector, to not deal with the matter on the merits at the 1 July hearing.

47. At the hearing on 13 August 2025 the Collector was ordered to produce the letter or email which purportedly withdraw the agreement to extend time, sent “days” after the 12 April 2023 agreement.
 - a. The Collector was asked expressly to state whether or not the document exists and if it did to produce it. In response, she has now for the first time, in an email to the Tribunal dated 25 August 2025, sent after the conclusion of the hearing (and only because they were ordered to produce the document), stated that they do not in fact possess such a document. It is clear from this that the document does not exist.
 - b. It is surprising for the Collector to have stated this fact only at this late stage, having kept silent during the debate about the existence of this document on 1 July and again on 13 August, where the Collector was represented by Mr Amos, the Assistant Collector of Customs. At each of these hearings, Mr Johnston was adamant that the document in question did exist.
 - c. It appears therefore that the Collector, and her counsel, Mr Johnston, who himself professed to have a copy of this non-existing letter (or email), provided what was a false submission to the tribunal, with the intention of misleading the Tribunal. This is a very significant fact and is emblematic of the approach the Collector has taken to this case and the Appellant.
 - d. Post-hearing, in an email from Mr Johnston also dated 25 August 2025, Mr Johnston states that he made a mistake in referring to the existence of this document. He provides a further explanation that “I gave the Tribunal information which was inaccurate, or which I could not disclose because they were contained in without prejudice communications.”
 - e. The Appellant responded to deny the existence of any such communication and waived the without prejudiced protection in relation to any communication which was directly responsive to the point in issue (the existence of a letter/email dated around 12 April 2023).
 - f. So, whilst the Collector’s email now suggests clearly that the document does not exist, Mr Johnston, even at this later stage, holds out the suggestion it might, but it is contained in without prejudice communications.

- g. The approach of the Collector in relation to this issue, was unreasonable and it appears, typical of her treatment of the Appellant.
48. One does not know if the approach taken here is an example of the general approach of the Collector of Customs to the Public, or whether this oppressive conduct was limited to this Appellant. No doubt this is a matter which should be investigated by the Attorney General and possibly others.

The Collector's stated grounds for ruling that the Appellant must pay duty at the higher rate

49. On 15 December 2022 the vehicle in question, a second-hand 2015 Mercedes Benz GLA arrived in Bermuda, imported by the Appellant. There was originally a dispute with TCD as to the proper licensing of the vehicle. There was a question as to whether, legally, the car could be licensed in the way she sought or whether to do so required some amendment to the existing statutory regime. There was no further evidence around this, however the issue was eventually resolved and the vehicle was given the license number "L031PV" by TCD.
50. The Appellant thereafter thought that, as the Customs duty rate was said to be premised on whether or not TCD gave her the license sought, that she would now be subject to the lower duty rate.
51. Her evidence at the hearing was that she had done some preliminary research before ordering the new car. She discovered that the Government allowed all businesses, in a similar position to hers, which owned a vehicle similar to hers, which was licensed in this way by TCD, to pay duty at the lower rate. This formed the basis of her legitimate expectation. This was buttressed by the email she received from TCD referred to above, dated 18 December 2022. She explained that she ordered the vehicle before she had the license in hand because she thought the licensing was a mere formality, but the car ordering process would take at least 4 months.
52. After a long process, the Collector of Customs wrote to the Appellant on 19 January 2023 (the 19 January Decision), through Principal Customs Officer Melody Lightbourne, informing the Appellant of the Customs Department decision that:
- "Now that the vehicle is registered the appropriate duty must be collected.

A Commercial Passenger Vehicle is 75% for the first \$10,000 ... and over \$10,000 is 150%”

53. The Appellant took issue with this, leading to a more formal decision of the Collector on 31 January 2023 (the 31 January Decision), through the same person, namely Principal Customs Officer Melody Lightbourne, informing the Appellant of the Customs Department decision, that:

“... we are aware that the vehicle in question has been licensed by the TCD [Transport Control Department] as a light private vehicle.

This means that the vehicle does not qualify for the concessionary 35% rate, under CPC [Customs Procedure Code] 4220.”

(underlined emphasis added)

54. It is important to note that this was the only basis given for the decision.
55. The Appellant appealed that decision on 19 February 2023, through an internal appeal process (not the current Tribunal Appeal). This led to a formal review and a decision by the Customs Department dated 21 March 2023 (the Review Decision), signed by SCO Rosita Philpott (the same senior customs officer who would later signed the agreement to extend time to appeal to the Appeal Tribunal).
56. This formal Review Decision was extensive, running to some 38 pages in length. It noted at page 2 paragraph 6 that:

“Ms Lee was aware that other business with the same registration being Light Passenger Vehicle or Intermediate Passenger Vehicle all paid a concessionary rate of 35% rather than the above rate which is significantly higher.”

(underlined emphasis added)

57. Although there has been some question as to which decision is being appealed to the Tribunal, we believe that there is no real question as to the decision being appealed. The 19 January Decision, the 31 January Decision and the Review Decision are part and parcel of the same thing. There is only one underlying dispute relating to this and no question at all as to the object of the appeal.
58. It is noted that the Appellant has consistently maintained that all businesses (not just some) in a similar position to hers, with a similar vehicle with similar licensing, all

paid the lower rate of duty. She claimed that reasonably, she ought to be entitled to the same thing.

59. Much of the Review Decision focusses on why the Mercedes in question was categorized as a private motor vehicle under Customs Goods Heading 87.03. However, this never appeared to be in issue. Only a few lines in the 38 page report address the key question, as to whether the vehicle qualified for the lower rate of duty under CPC 4220. Here the Review Decision merely reproduced the basis for the earlier decision given by PCO Lightbourne. This is set out in Review Decision at paragraph 13, where it provides:

“13. You fail, in your communication with Customs, to cite the provision in the CTA that allows for passenger motor cars licensed as trucks to pay the concessionary rate of 35%. CPC 4220 is inserted below for ease of reference.”
The entirety of CPC 4220 is then set out in full. The key parts of that provision are found at para 33 of this Ruling.

60. Paragraph 13 of the Review Decision then continues:

“As can be derived from the excerpt, the Car, which been licensed by the Transport Control Department as a light passenger vehicle with registration L031PV (Appendix H) does not qualify for CPC 4220 as it does not meet the End-Use Conditions / Restrictions. For the avoidance of doubt, **CPC 220 cannot be used and the concession rate of 35% does not apply. Duty remains 75% on the first \$10,000 and 50% on the value in excess of \$10,000.**”

(emphasis in original)

61. This was followed by four and a half pages of quotes of the Customs Tariff Act 1970 and the Revenue Act 1898 as well as analysis of this these two Acts.
62. Again, no other reason is given as a basis for the Review Decision. Whilst the Review Decision runs for some 38 pages, there is no reference to the Motor Car Act 1951 or the proper interpretation of that Act.
63. At the Tribunal hearing the Collector, through her counsel referred to additional reasons for her decision, but she submitted no evidence of this.

64. Even assuming that what the Review Decision provided expressly or impliedly, that the vehicle in question did not qualify for the lower rate because the Appellant licensed the car as a “light passenger vehicle” and not a “truck”, this argument would appear to be faulty, on the basis that:
 - a. the term LPV does not appear in any of the legislation reviewed, as existing as a separate classification and as such it appears to fall within the “L” class or “Light Truck” class, as being the only possibly relevant term defined in the Motor Car Act.
 - b. The Motor Car Act refers to three types of truck: light, intermediate and heavy. Heavy Trucks are themselves split into three types HA, HB and HC. The distinguishing factors relate primarily to the vehicle size. There are other categories such as “trailers” and “tractors” and it is important to note that every vehicle on Bermuda’s roads must fall within one of the statutorily recognized categories.
 - c. The Motor Car Act defines, as we see above, a Light truck and a Light Private truck. The key distinguishing factors as between a Light (L) and Light Private (LP) is that the LP can be used both for commercial purposes and personal purposes and can operate on a Sunday.
 - d. Given that the Motor Car Act contains no reference to LPVs, these can only be taken as a non-legislative form of Light Truck, caught by all the restrictions and fees associated with the “L” designation in the Motor Car Act (because they must fall somewhere). Given that they can be used for commercial and personal reasons and can operate on a Sunday, these must be a form of light private truck as defined in the Act.
65. The LPV designation appears to be a passenger motor car, which is being licensed as a form of Light Private Truck, for TCD purposes. Like all Light Private trucks it can lawfully carry passengers, but it is nevertheless not a “Passenger Truck”, as that term is separately defined in the Motor Car Act.
 - a. This is confusing, but appears to be the only sensible reading of the legislation, based on the evidence and submissions received by the Tribunal.

- b. The confusion is caused by the Crown and the Appellant should not be penalized for this.
 - c. To the extent that TCD appears to interpret the legislation this way, such that they believe that they can and in fact do continue to register vehicles in this way, the maxim of *omnia praesumuntur legitime facta donec probetur in contrarium* applies.
66. Although the issue of the unlawfulness of the action of TCD is not before the Tribunal for decision, if it were, the analysis above would appear to answer this question, namely that TCD's actions were lawful and therefore, the Appellant's legitimate expectation was to a lawful action.

Key aspects of the Appellant and Respondent's cases

67. At page 6 of her affidavit, Ms Lee explains that the permit she was originally given for an Intermediate Passenger Vehicle IN026PV. She exhibits the permit letter of 10 January 2023 at Exhibit P. She further explains that subsequently her vehicle was measured and determined to be in the "Light" category as opposed to "Intermediate" category.
- a. This can only be a reference to the Motor Car Act Schedule 1 which categorizes "Light Trucks" and "Intermediate Trucks" by reference to their physical dimensions which specify maximum length and width for each category of Truck.
 - b. Looking at the aforesaid TCD Permit letter, whilst it refers to an Intermediate Passenger Vehicle, it makes clear in its instructions to the Appellant that:

"All commercial vehicles are required to carry signage which must include the business name ...

Please contact our Trucks Clerk ... if you require any further assistance.
 - c. On this evidence, and on a review of the evidence adduced by the Appellant, a review of the Motor Car Act 1951 and Schedules thereto, it appears that the LPV licence in question is a form of Truck License as there is no other category of licence under the Motor Car Act, under which this might fall. The Collector had every opportunity to adduce evidence, if it existed, to contradict the conclusion above, but produced no evidence in relation to this.

68. In the Appellant's Notice of Appeal dated 6 January 2025, she included a statement of facts she would rely upon. All of these facts must be deemed to be admitted by the Collector, who failed to provide the necessary statement of agreed or disagreed facts.

The Appellant stated:

“... Customs has charged me the above duty rate, however have charged lower duty rates for imports under the same CPC that are the same Light Passenger Vehicle registered under TCD as my vehicle.

Ms Lightbourne has stated that the duty rate is contingent or determined by the TCD registration.

I have provided a List of Light Passenger Vehicles supplied by TCD which all should have paid the same duty rate as myself or I should have paid the same duty rate as them...”

She then referenced for inclusion in this document certain further information including “supporting evidence” attached to the Notice of Appeal.

69. The deemed admission of these facts, following the formal mechanism set out in s. 6 of the Tax Appeal Regulations, has a material impact on the outcome of the appeal, for the reasons set out herein. On the basis of the admission, and absent any evidence that the treatment of others which she wanted for herself was unlawful, she would win on her legitimate expectation case and her appeal would be successful.
70. However, in case we are wrong to assume an admission of facts by the Collector, the Tribunal has gone on to consider the substantive merits advanced by the Collector, on the basis that no facts are admitted.

Testimony

Shi-Vaughn Lee

71. At the hearing, Ms Lee, the principal of the Appellant, appeared and was cross-examined by Mr Johnston. She was a very credible witness. Her evidence was in line with the correspondence and documentation she submitted.
72. In substance her evidence was not contradicted, instead Mr Johnston submitted that it was irrelevant given his arguments around illegality.

73. The Appellant's evidence as to the treatment of others and her expectation to the same lawful treatment was strong. Whether it was all others or some others, was not a point argued, although the point seems to have been conceded by the Collector's counsel at one point (see paragraph 117 herein). The evidence produced following her PATI searches strongly supported her case, despite the Respondent's suggestion that that evidence was irrelevant, or not proper evidence, or if it was evidence that it proved nothing at all.
74. An issue where there seemed to be a substantial controversy was as to whether Ms Lee had been lobbying to be treated lawfully (as she maintained), or she lobbied to be treated unlawfully (as Mr Johnston maintained). In this regard the Tribunal found unanimously in Ms Lee's favour.
75. Although the Collector did not call any witnesses, the Appellant requested that certain personnel from the Customs Department be made available to be cross-examined. Of the Customs personnel she listed in her application (effectively made under s. 13 of the Tax Appeal Tribunal Procedure Regulations 1981), the Customs Department indicated that two were available and could attend to testify and they were so ordered to attend.

Mr Dean Lema, Principal Customs Officer

76. Mr Lema stated that he was not a decision maker nor involved in the decision making process of this case. However he was the author of certain contemporaneous emails sent to the Appellant. He was also able to speak to the understanding of the Customs Department around CPC 4220, which was helpful to the Tribunal; as well as the Customs Department's decision making process generally. He was a generally credible witness.
77. Mr Lema suggests that it was a basis for refusal of the Appellant's application, that her vehicle was licensed by TCD as an LPV, which he said was a "Passenger Vehicle". He emphasized that "Passenger Trucks" are expressly excluded from CPC 4220 and so she would not qualify on this basis.
78. However, nowhere in the Review Decision does it say that Customs Department concluded that the vehicle was indeed a Passenger Truck. Nor does the Review Decision say that the application was refused for this reason. To the contrary, the evidence is that Customs were satisfied at the importation stage, that the vehicle fell

under Customs Head 87-03, which applies only to passenger motor cars, (see also the Review Decision at page 4, "... in layman's terms... a passenger motor vehicle..."), not trucks, which would be 87-04.

Melody Lightbourne, Principal Customs Officer

79. Ms Lightbourne is the head of the Customs Department's investigations and audit unit. She was a generally credible witness however at times she was evasive and overly defensive.

80. In her email to the Appellant dated 31 January 2023 (the January Decision), she stated, as a basis for the Customs decision, that:

"... we are aware that the vehicle in question has been licensed by TCD (transport Control Department) a light private vehicle.

This means that the vehicle does not qualify for the concessionary 35% rate..." (emphasis added)

81. So in the January Decision she refers to the vehicle as a Light Private Vehicle. Elsewhere it is referred to as a Light Passenger Vehicle, although Customs seem to use the two terms interchangeably.

82. There was evidence that the Customs rate is premised, amongst other things, on how TCD license a vehicle, so the question of the TCD licensing was a key factor for consideration. The Appellant's case was, to an extent, supported by material provided to her following a PATI search (including PATI searches of TCD and Customs Department documents). One of the documents produced, and which she provided early to Customs, was a document produced by TCD showing a long list of vehicles with an LPV or INPV license, found at **Exhibit R** to her affidavit.

a. It was a key part of the Appellant's case from inception that all of these vehicles and the businesses which owned these, were in a similar position to the Appellant and that they paid the lower rate of duty. She testified as to the information provided to her by other business owners to this effect, which evidence was not controverted by the Respondent (in substance). She gave evidence of this, both in her oral testimony, but also in her affidavit evidence and supporting material. The PATI material was significant, but together with her other evidence, including her

testimony, made a compelling case, which was effectively accepted by the Tribunal.

- b. Whilst aspects of her evidence was strictly speaking hearsay evidence, in particular what she was told by others and certain of the documents produced by her, the Tribunal would have decided the case in her favour even not taking into account that hearsay evidence, as the non-hearsay evidence was in itself compelling. However, the Tribunal considers that it could take into account the technically-hearsay evidence on several bases, including:
 - i. Hearsay evidence in Bermuda is admissible in civil proceedings in a court in certain circumstances, and always at the court's discretion, as set out in s.27A – s.27E of the Evidence Act 1905. Order 38 Rule 21 of the Rules of the Supreme Court 1985 works in conjunction with those sections and stipulates that any party wishing to rely on hearsay evidence must serve notice of that desire.
 - ii. The rules of evidence before the Tribunal are more flexible than that of a court, described above. For example, s. 13 of the Tax Appeal Regulations permit the use of evidence at the hearing, by affidavit, something which is not normally permitted at trial in a court. Further, s. 26(1) of the Taxes Management Act, authorizes the Tribunal to regulate its own procedure. The admission of evidence is a procedural law issue, and the Tribunal has a discretion to allow hearsay evidence, where it would be reasonable and just, to do so. That would apply here, for the reasons set out in this paragraph 82.
 - iii. A tribunal's right to regulate its own procedure was confirmed by Bermuda's Court of Appeal in the case of *Dr Gina Tucker v The Public Service Commission* [BM 2020 CA 8]. Paragraph 60 of that judgment states unequivocally: "*The principle that a decision-maker or tribunal is allowed to determine its own fair procedure in the absence of one prescribed by the applicable statute, is long settled in the case law.*"
 - iv. The Appellant gave the Collector advance notice of the intention to call what was effectively hearsay evidence, in particular evidence of what other business owners told Ms Lee and the documents secured from her PATI

searches. The Collector had ample opportunity to call evidence of her own to rebut this, if such evidence existed.

- v. The Collector, knowing all of this, elected to call no evidence on this point, even of a generic nature which did not disclose the identity of any other taxpayer.
- vi. The notice given by the Appellant to the Respondent was of the type required under the Evidence Act (although not using the format specified in the Rules of the Supreme Court 1981). This was sufficient for present purposes.
- vii. Whether or not she gave formal notice as required under the Evidence Act, we would have exercised our discretion to allow this evidence, because it was evidence of which the Collector was fully aware and that she intended to rely on this as supportive of the Appellant's stated case (that other business owners paid the lower rate of duty). For example, in the Statement accompanying the Appellant's Notice of Appeal, she says:

“Therefore, I have provided a list of Light passenger vehicles supplied by TCD which all should have paid the same duty rate as myself or I should have paid the same duty rate as them.”

There is evidence that she gave the Collectors notice of the PATI documents and also provided details of specific business owners in a similar position to hers, who she says told her that they paid the lower rate of duty.

- viii. If the evidence was disallowed to prove its contents (eg that other business people actually paid the lower rate), we would conclude that it should still be admitted to prove that other business people told the Appellant that this was the case (permitting the Collector to engage with the point).
- ix. Even if the Tribunal took into account that the other business people were not present to be cross-examined, and so gave that evidence a lesser weight, this still has some persuasive value, given the Collector's refusal to engage with the point at all, on an evidentiary basis, which the Collector could have done.

- c. The Respondent/Collector was fully aware of the Appellant's position and also of the document referred to above. This principle allegation was impliedly admitted, by Customs failing to provide the counter-notice required by sections 6 and 7 of the Regulations (see above). However, even assuming no admission, this important point was never denied in any evidence filed by the Collector.
- d. Nevertheless at the hearing, when the Appellant attempted to put the document (the aforesaid Exhibit R) to Ms Lightbourne, she claimed ignorance of it and more importantly, of its subject matter. There followed this exchange (at pages 107-108):

“Miss. Lee

So on the list, would you say that that list is of passenger vehicles that list that I provided?

Miss. Lightbourne

I cannot scrutinize that list. It's very small and a little skewed.

Miss. Lee

Would you say that these are passenger vehicle? Sorry page.

Miss. Lightbourne

Passenger intermediate page 68.

Miss. Lee

Is that there passenger trucks?

Mr. Johnston

You're asking her to look at a document she did not produce and to speculate what they are.

Miss. Lee

It's not speculation, it's a list that's provided by another governmental department that you should be working in conjunction with.

Mr. Johnston

I can't allow this. It's speculation it is being compiled by somebody other than.

Miss. Lightbourne

There we go, your questions are for TCD and I'm unable to answer for TCD.”

83. There was also a separate exchange where Ms Lee put it to Ms Lightbourne that the Appellant was originally given a permit for a licence IN026PV. Ms Lee said that the IN stands for Intermediate Truck. But when TCD re-measured the vehicle they realised it was smaller, so in the L (Light Truck) category, not IN. As such that license plate number was given to another business, namely Bermuda Bubble Tea and the Appellant was given a different license plate.

84. Ms Lee put it to Ms Lightbourne that the circumstances of Dove & Butterfly and Bermuda Bubble Tea were identical, yet she was told by Bermuda Bubble Tea that they paid duty at 35%, yet the Appellant had to pay at the much higher rate. When asked why, Ms Lightbourne replied (page 103):

“Because all of the information that was received and reviewed indicated that Dove and Butterfly’s vehicle was deemed a private passenger vehicle.

85. When asked whether she knew what LP stood for she said “no”. That was followed by this exchange (pages 103-104):

“Miss. Lee

Do you know what LPV is?

Miss. Lightbourne

No. I just know there's light. You would have to ask TCD that question.

Miss. Lee

But these are all relevant factors for Customs to know and adjudicate on the duty rates based on those factors.

Miss. Lightbourne

Right, but we adjudicate with that other word you saw there. Truck.

Miss. Lee

So you're saying I don't have a Truck?

Miss. Lightbourne

Well, if you had a truck or if it was deemed that it was a truck. Then they would have sent back saying, it was a truck, so.

Miss. Lee

I don't have a truck?

Miss. Lightbourne

Oh, I don't know. Do you have a truck? I don't know what you have.

Mr. Johnston

That's a legal question.

Mr. Attride-Stirling

So if it was a truck then the outcome could have been different.

Miss. Lightbourne

It could have been, but what I'm indicating is it was sent back as a passenger vehicle. The information from TCD.

Miss. Lightbourne

That's what I recall seeing. Do you? Did you see something else? Do you have something else that says it was a Truck?

Miss. Lee

OK.

And shortly later the following (page 104):

"Mr. Attride-Stirling

So what, I think that I just want to make sure I understand the Customs' case that - The vehicle license in this instance, which is LPV that that is not a truck. That's the basis of your decision?

Miss. Lightbourne

Our basis, this decision was it sent back saying that it was a passenger vehicle.

Mr. Attride-Stirling

Right.

Miss. Lightbourne

Now they have all responsibility and authority to license it as an L so that a business could use it. But when they sent the information back to us and what we viewed it said it was a passenger...

Mr Attride-Stirling

The end use ...

Miss Lightbourne

The L determines that as an end use, they can use it for their business, but at the same time they didn't tell us in any document that it's a truck.

Mr. Attride-Stirling

So the L wasn't sufficient to indicate to you that it was a truck.

Miss. Lightbourne

No, L is just a light so-

Mr. Attride-Stirling

L is just a light truck

Miss Lightbourne

L is a light truck?

Mr. Attride-Stirling

Yes, that's what the act says.

86. And the later exchange at page 125:

"Mr. Attride-Stirling

So, but in, in this instance. Why was the 4220 specifically not applied?

Miss. Lightbourne

Because it says that there was no indication that this was a truck, it was a passenger vehicle."

87. These exchanges are materially relevant as it was Ms Lightbourne who sent the original email of 31 January 2023 informing the Appellant of Customs' decision (previously referred to as the January Decision). This makes it clear that there were very narrow grounds to refuse the Appellant's claim to be entitled to pay the lower rate of duty. This was repeated in the Review Decision presently under appeal.
88. It was and continues to be the Collector's case that the letter "L" in the Appellant's license plate did not indicate the Motor Car Act designation of "Light Truck". They did not accept then and do not accept now that the LPV designation was a sub-set of the Light Truck category. But this ignores the requirement that all vehicles must be licenced under one of the legally recognized categories in the Motor Car Act. In the present case the "L" is an indicator to one of the three categories of "truck", namely

Light, Intermediate and Heavy, recognizing that the Motor Car Act included a sub-category within the Light Truck section of Light Private.

89. At the hearing, in this regard, Mr Johnston made a submission which muddled the position even more. He said (at pg 104) in relation to "L" that this "... *is a truck but LPV is not.*"
90. During her submissions Mr Lee pointed to a photograph appearing at 117 of the Exhibit to her affidavit, of a Mercedes Benz car, not identical to but similar to hers. What appeared in the photograph to clearly be a car, had an "L" license plate. Mr Johnston made the following further allegations of illegality, at pages 129-130 of the transcript:

Miss. Lee

So that's not a truck now.

Mr. Conyers

Right, but this is where she gets confusing. Because to me this looks like a passenger car. But it's a-

Mr. Johnston

I'll address it-.

Miss. Lee

So she's saying it's not a truck.

Mr. Attride-Stirling

Well, part of the problem seems to- I mean.

Mr. Johnston

I'll be quite blunt with you. I'll be quite blunt. Part of the problem comes from the way TCD has been classifying vehicles, but illegally, that's what it actually caused the problem.

Miss. Lee

And that's not my problem. But it's causing me-

Mr. Johnston

And I accept that. I'm not hiding from this. TCD may have been classifying vehicles in a way which is inconsistent with the motor car act and it's causing complications and I will address you on it.

Miss. Lee

Why don't you fix it and then move forward from there.

Mr. Johnston

So I'm not a legislature.

...

Miss Lightbourne

But as a customs officer I see a passenger car. It came back saying passenger. LAGP whatever in front of it. It's a passenger. I have in my duties, I let my team know that we have to collect the right duty because it's passenger.”
(emphasis added)

91. So, whilst it is clear that Customs thought the vehicle was a passenger vehicle not a truck and therefore could not possibly qualify for the CPC 4220 lower duty rate, on the evidence they did so merely on the basis of the description of the vehicle, as confirmed by Ms Lightbourne. There is no evidence at all that the Collector, at the time, thought that TCD were doing something unlawful. The only suggestion that TCD acted unlawfully (and knowingly did so), comes from the oral submissions of Mr Johnston, and that cannot possibly be evidence at all and, in particular, cannot be evidence of the position of the Collector at the time of the decision which is the subject of this appeal.

Legitimate Expectation

92. At the hearing, the Tribunal put it to Mr Johnston that although she does not use the legal term “Legitimate Expectation”, that her arguments all point to this principle and given that the Tribunal might decide the case on that basis, Mr Johnston was invited to address the Tribunal on the point.
93. Mr Johnston thanked the Tribunal for this indication and came back after the lunch break with two authorities, namely *United Policy Holders Group v. AG of Trinidad and Tobago* (2016) 1 WLR and also *Rainbow Insurance Company Ltd v. The Financial Services Commission and others (Mauritius)* (2015) UKPC 15, both decisions of the Privy Council. Mr Johnston submitted that both stood for the proposition that one could not ever have a legitimate expectation to something which was unlawful.

94. On a review of the *United Policy Holders* decision, it is clear that it does not stand for the proposition submitted by Mr Johnston. In that case the Privy Council was prepared to accept that the appellants did have a legitimate expectation, however, the Government was held to be entitled to resile from the assurances given, on the grounds of national economic interests, in particular, given that the issue was within the macro-economic and macro-political area.
95. Whilst not standing for the proposition advanced by Mr Johnston, that case seemed to assist the Appellant. The Privy Council referred to *R v. Inland Revenue Comrs, ExP Unilever* (1996) STC 681, a UK court of appeal decision recognizing a legitimate expectation argument, despite the fact that the expectation was to a concession from the tax authorities which was clearly outside of the statutory limit. This has parallels to the case before us.
96. Mr Johnston's second authority, *Rainbow Insurance Co* does stand, in part, for the proposition advanced by the Respondent, that one cannot have a legitimate expectation to an unlawful act. That is a basic rule. However, that case also contains a discussion of exceptions to the rule.
 - a. A legitimate expectation may amount to a "possession" for the purpose of the European Convention of Human Rights, even if a public authority lacked the statutory authority to make the representation (see *Pine Valley Developments v. Ireland* (A/222)(1992) 14 EHRR 319; and *Stretch v. UK* (442/77/98)(2004) 38 EHRR 12.
 - b. At paragraph 53 "The Board notes that there are obiter dicta in the Court of Appeal in *Rowland* ... that fairness might prevail over legality..."
 - c. Further the Board referred with approval to De Smith's *Judicial Review* (7th ed) "...that (a) the law should be slow to weaken the principle of legality and (b) "an unlawful representation should not prevail where third party interests were or might be compromised".
97. So, the Privy Council suggests that where no third party rights were compromised, there could be a legitimate expectation even where there was an issue as to legality. However, the *Rainbow Insurance* case was not one of these exceptions. In that case

third-party rights were engaged. Further in that case there was found to be no thwarting of a legitimate expectation at all.

98. The present case could be said to fall within the exception described above. The Appellant appears to have had a legitimate expectation, as set out herein. No third party rights are impacted by this.
99. However, and more importantly, in the present case, one does not have to rely on the exception referred to above. That is because here, the suggestion that her expectation was to something unlawful, is not made out on the evidence before the Tribunal.
100. There is no clarity or certainty that what TCD has been doing all these years, and continues to do to this day, is unlawful. This Tribunal has not heard any evidence to support that proposition. Mr Johnston, as part of his oral submissions, stated that TCD and Ministers were advised by the Attorney General's chambers that TCD's actions were unlawful and so therefore they knew of the illegality (crystalizing the illegality finding). But here there was no actual evidence of this. Mr Johnston's oral submissions could not possibly amount to evidence. The Collector was therefore completely missing a fundamental piece of evidence needed to prove her case (see above on the burden of proof around lawfulness/unlawfulness).
101. The Collector made a conscious decision to not present any evidence of this, or much else, to the Tribunal. In the premises, the maxim of *omnia praesumuntur legitime facta donec probetur in contrarium* applies.
102. There is a further issue as to whether, assuming for a moment that the Appellant had a legitimate expectation, that her rights to have this observed is made stronger by the fact that the Government, ie the Customs Department, made no public announcement as to a change in policy, nor was there any public consultation as to such change.
103. In *Regina v. Liverpool Corporation, Ex Parte Liverpool Taxi Fleet Operators' Assoc* (1972) 2 QB 299 this issue was addressed. The Corporation here had given an undertaking that they would not increase the number of taxis above 300 until specific legislation was passed. Then without that condition being met and without any consultation, they resolved to issue new licenses.
104. The Corporation argued that it had no legal authority to give the undertaking so it had no legal value. Lord Denning pointed out that "a person who has a license has a settled

expectation of having it renewed, and that is a thing a value.” This appears to be similar to the position of the Appellant, who having secured what she was told was the necessary TCD license, she had “a settled expectation” that she would pay the lower import duty rate, and that was a thing of value. For this purpose, it may even be a “possession” for the purposes of *Rainbow Insurance Co* and *Pine Valley Developments v. Ireland* referred to above, although we don’t need to decide the possession point.

105. The Court of Appeal in *Liverpool Corporation* made an order of prohibition against the Corporation, premised on the corporation’s failure to give notice of a change in the policy. That principle may be extended to the present case. To the extent that the Respondent/Collector appears to have conceded at the hearing that others had been treated differently and that the previous practice ended with the Appellant (see paragraph 117 below), such a change in policy ought to have been publicly announced in advance, in order to defeat a legitimate expectation argument. The absence of any public notification strengthens the Appellant’s legitimate expectation argument.
106. The Appellant has the burden of proving that the decision of the Collector is unreasonable, which burden is satisfied in this case.
 - a. The Tribunal accepts that other businesses similarly situated, with a similar vehicle licensed as the Appellant’s, paid duty at the lower rate.
 - b. The Appellant has established that it had a legitimate expectation to be treated as those other businesses.
 - c. The Collector ought to have taken into account that legitimate expectation as a reason to allow the Appellant to pay tax at the lower rate of duty.
 - d. Further, if there was to be a change of policy, it would have been reasonable for the Collector to give advance notice of this change. The Collector ought to have considered that in the absence of any notification of a change in policy, that the legitimate expectation of the Appellant should have been respected and allowed.
 - e. The Tribunal is satisfied that Collector could not reasonably have arrived at the decision in question, for the reasons set out more fully in this ruling.

Unusual aspect of the case

107. It has been a consistent part of the Appellant's case that other business owners were permitted to import cars which were effectively identical to hers, licenced by TCD in the same way as hers; and that they all paid the lower rate of duty.
108. Although it formed no part of the reasons given for the Collector's Decision at the time, the Collector now appears to maintain that the Transport Control Department (TCD) has been acting unlawfully and that this is the reason for not taxing the Appellant at the lower rate, which applied to all other business owners with a similar vehicle and licence.
109. The Collector went further and suggested, through their counsel, that the officials at TCD, together with various politicians acted corruptly in permitting the Appellant to licence the vehicle as they did. Further, those same officials, together with Ms Lee, were involved in a conspiracy or an arrangement to unlawfully avoid the payment of customs duty, which is a serious offence.
110. Here we are in the quite bizarre position that the Attorney General of Bermuda, is arguing on behalf of one Government Department which it represents (the Collector), that another Government Department which it also represents (TCD), was acting not just unlawfully, but that TCD and its officials were involved in a conspiracy to defraud the Government or to assist the Appellant unlawfully avoiding customs duty.
 - a. Mr Johnston made this bald submission in the absence of any evidence filed by his client to support this. Instead, he presented this in his written and oral submissions.
 - b. Mr Johnston refused to accept that he was in fact (and improperly) giving evidence in relation to the allegations he was making or that any aspect of his presentation of this part of his case, was improper. No doubt the issues addressed in this Ruling will and should be the subject of review by the Attorney General.
111. When the seriousness of this issue was put to Mr Johnston (an allegation of corruption against civil servants and Ministers) he attempted to row-back on the allegation. First he stated that whilst he put in no evidence, he could rely on the evidence put in by the Appellant, but he pointed to no particular evidence to support his allegation.

Secondly, in rowing back his allegation, he stated that he was not addressing the *mens rea* of any offence.

112. However, the facts which Mr Johnston alleged were clearly allegations of serious wrong-doing or criminality (by taking steps to unlawfully avoid customs duty).

113. Mr Johnston submitted that (transcript page 217):

“They might well amount to duty avoidance arrangements. Prohibiting the collector from giving end use relief, the collector said nothing and knew nothing about the arrangement before we heard – we saw the evidence of – “

114. So here, Mr Johnston appears to say that at the time of the original decision, the Collector did not know of the scheme or arrangement to unlawfully avoid payment of duty.

115. When it was put to Mr Johnston that Ms Lee lobbied politicians to plead that she be treated lawfully (not unlawfully), Mr Johnston submitted in response (transcript page 219) that :

“... After those same politicians had advice from the Attorney General that the practice was unlawful...”

116. Here Mr Johnston is clearly purporting to give evidence of advice the Attorney General gave to TCD and certain politicians. The Tribunal is not able to accept evidence of this type, in this manner. If the Collector wished to put in evidence to support this claim, she ought to have put in an affidavit or witness statement from the appropriate witness who ought to have been made available for cross-examination.

117. As to the unlawful practices, Mr Johnston also stated (transcript page 207-208) as follows:

“... I understand Dove and Butterfly or Lee’s position with respect to this, nobody wants to be the person who feels like they’ve been treated differently than everybody else. But there is a countervailing principle. It is when the laws have been exercised in a particular way unlawfully, and no one knew it had been exercised unlawfully. But once you come to – I can’t do it... Somebody’s got to be the beginning of the brand new approach and this touches on this very beginning... Your general expectation... The two cases that I showed you... say in a nutshell you can’t have a legitimate expectation...”

... the collector is charged with the responsibility of applying the Customs Tariff Act as best she can, and sometimes that means looking into what TCD is doing and if you realize TCD has been misapplying or mischaracterizing cars because they can't tell me as the Collector how to assign my end use relief. I can deny a vehicle even if the TCD say it's an L, LP or whatever, or if I know that vehicle cannot be put to that use lawfully. This is essentially the principle. I understand. I don't think anybody can doubt. Listen, *there have been a whole series of unlawful actions*. And Miss Lee is properly aggrieved that it ends with her.”

(emphasis added)

118. On two occasions during his submissions, Mr Johnston referred to there being hundreds of cars on the road unlawfully. At page 153 of the transcript he says:
“... And maybe that, and maybe because they thought that they solved that problem, there was a practice that built up. But that practice was probably unlawful. The Crown is not hiding from that. We’re saying there’s that there are multiple vehicles on the road that shouldn’t be on the road. Probably shouldn’t be registered, and that TCD has been doing it. ...
... The Crown is not going to want to expose the fact that there are hundreds of cars in the room (sic) that probably are not lawfully on the road, but actually the Customs Department did not give me that instruction to hide. They told me, make it clear.”
119. When he was asked by the Chairman if all the vehicles licensed similarly to the Appellants were licensed unlawfully, he responded “yes” (page 154 of the transcript).
120. Mr Johnston then went on to say (page 169):
“That's exactly what they attempted to do. They recognize the inference ... is clear from the evidence that somebody recognized that there was hundreds of vehicles on the road, which might be on the road unlawfully. Don't want to face the music, have a person who's at their throat saying ... I want the same as everybody else ... and decided the easiest way out of this conundrum is to give them a certain type of license. A truck license...”

... Which they're not allowed to do under the act. And which amounts to under the Customs Tariff Act... Duty avoidance. I'm coming to that.”

121. In making this oral submission, Mr Johnston, again wrongfully, purported to give evidence:

- a. Of the fact that TCD and the Collector consider that they all previously made a mistake as to how they interpreted the law;
- b. The Collector now sees the law correctly, but that TCD continue to see the law incorrectly or to ignore it;
- c. That all the other cars licensed in this way have been so-licensed unlawfully.

122. Later he said, of Ms Lee lobbying politicians (transcript page 209):

“... And that pressure- Public interference is, that that pressure led to TCD, giving her a license she was not entitled to ... what was designed to allow her to use the vehicle unlawfully and to get the lower tax rate. The Customs Tariffs Act 5 Sub 5 expressly directs the collector to refuse end use relief if there's any duty avoidance arrangements.”

123. At the earlier Directions Hearing on 1 July 2025, Mr Johnston had submitted to the Tribunal (transcript page 22):

“Part of the complication in all of this is that in the Appellant’s head the relationship between the collector of customs and the Minister of Transport. What the Minister of Transport does and how the Minister of Transport decides to administer the Motor Car Act, has nothing to do with the [unintelligible]. If the Transport Department misclassifies a car or applies the Motor Car Act in a weird way, it could lead to these situations of unfairness, and that's what's happened. Here a car vehicle which should neither have been classified as an LPV or an IPV has been classified as one by the Minister of Transport and allowed to import that vehicle when the ministers weren't...”

And then:

“... I'm going a little bit further than mistake. I'm saying that if the tribunal was to sit and hear proper evidence or receive evidence of this transaction, they will see from the appellant’s end, from Mr. Burgess’s end, from the Minister of Transport’s end, that *there was almost a deliberate misclassification of this*

vehicle which leads to the spiral that took place. When they got to the dock, they applied the duty rate that was appropriate to a Mercedes 2015. In fact, the vehicle should never have come to our dock because it's a second hand vehicle and by section 15. 6 on the Motor Car Act. So there's more to the story than the tribunal appreciates and the reason why I'm so vociferous about some of that today is *because there is a bit of a context to this that once we get into it, there's no real turning back from. There is more to this than meets the eye.*" (emphasis added)

124. It might have been helpful to the Tribunal, if there was evidence from the Attorney General on behalf of the Collector (and the Transport Control Department) as to the meaning of the different type of licenses. The Collector called no evidence at all and instead her counsel made some submissions, which were impossible to accept without evidence, of corruption at TCD and unlawful decisions made solely on that basis.
125. However, the Tribunal must proceed on the basis of the evidence before it and perhaps further evidence was not necessary for the Tribunal to decide the issue of reasonableness, on a narrow basis.
 - a. We did have before the Tribunal the TCD list of all licence fees showing that L and LPs paid the same annual licence fee and showing no separate fee for LPVs, suggesting that these fell within the L and LP category.
 - b. The Act itself contained no reference to LPV, only to LP (Light Private Truck), which suggests that the term LPV is a sub-set of LP (or L), and which could be used as motor cars. Absent any evidence on point and finding no better explanation, that was the conclusion the Tribunal reached.

Conclusion

126. The Appellant's case was that other businesses which owned a vehicle similar to hers, which were licensed by TCD in a manner similar to hers, paid the lower rate of customs duty, namely 35%, as opposed to what she was required to pay (75% on the first \$10,000 and 150% amounts in excess of \$10,000). Further, that the Appellant had a legitimate expectation to be treated, lawfully and fairly as others were treated.
127. The Tribunal finds in favour of the Appellant and her appeal is allowed.

128. The Collector should assess the tax due on the basis of the 35% rate of duty. The amount paid in excess should be repaid to the Appellant forthwith.
129. Costs: The Tribunal makes an order nisi that, subject to any formal application to the Tribunal within 14 days, the Respondent should pay the Appellant's legal costs, to be taxed if not agreed.

Rod S. Attride-Stirling (Chairman)



Jeff Conyers

Shannon Dyer

