



**TC08000**

*VAT – EU refund claim – Appellant established in Spain – HMRC refused claim on basis that movement of own goods from UK to Spain was a deemed supply in the UK – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/06584**

**BETWEEN**

**JOTA JOTA ALIMENTOS GLOBAL SL**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE JEANETTE ZAMAN**

**The Tribunal determined the appeal on 6 January 2021 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.**

**A hearing was not held because of the ongoing restrictions arising from the COVID-19 pandemic. The documents to which I was referred are described in the decision notice.**

## DECISION

### INTRODUCTION AND SUMMARY

1. Jota Jota Alimentos Global SL (“JJAG”) incurred UK VAT of £8,456.29 in the period 1 January to 30 September 2018 on the importation of food products and applied to HMRC’s Overseas Repayment Unit (the “ORU”) for a refund of that amount on 22 October 2018. The claim was refused in a decision of 9 May 2019 on the basis that for the period in question JJAG was deemed to have made a supply in the UK. That decision was upheld following a review and JJAG appealed to the Tribunal against that refusal of its claim for a refund.

2. JJAG’s grounds of appeal are set out in full in the Appendix, but its claim is essentially that it is established in Spain, it does not have an establishment of any form in the UK, the goods were imported into the UK from South America in transit to their ultimate destination in Spain and all supplies to customers were made in Spain. On this basis, JJAG argues that it is entitled to a refund of the UK VAT in accordance with Council Directive 2008/9/EC (the “Refund Directive”). HMRC accepts that JJAG does not have an establishment in the UK.

3. I have found that JJAG is entitled to a refund under the Refund Directive (and under the UK implementing regulations). There was no supply or deemed supply by JJAG in the UK and the conditions for a refund are satisfied.

### EVIDENCE

4. I had before me a hearing bundle of 190 pages and a bundle of authorities of 143 pages. The hearing bundle included JJAG’s Notice of Appeal to the Tribunal, HMRC’s statement of case, the correspondence between the parties and various documents provided by JJAG in support of its claim (some of which are described in more detail in the Discussion).

5. In making my decision I have had regard to all of the evidence and submissions which were before me, although I have not felt it necessary to refer to all of the arguments in full. They have all been taken into account.

### BACKGROUND

6. The background to the refund claim (and I find this as fact based on the evidence before me) is as follows.

7. JJAG’s principal place of business (“PPOB”) is Poligono III Alboraya, Carrera A La Mar 95-46120, Valencia Spain. JJAG is registered for VAT under EC VAT registration number B97772289.

8. JJAG’s business is the sale and distribution of food products.

9. JJAG does not have an establishment in the UK, and is not registered for VAT in the UK. It does however sometimes sell food products to distributors in the UK.

10. During the period of the claim in question (which was from 1 January to 30 September 2018), JJAG imported a consignment of food products from South America. Those goods had been bought by JJAG from Productora de Alimentos Naturales in Colombia and were shipped to the UK, arriving at Tilbury Docks. JJAG incurred VAT of £8,456.29 on these goods. The transport of the goods was arranged by Britain & Latin America Logistics Ltd. These goods were subsequently sent to JJAG’s PPOB, ie Valencia, Spain.

11. On 22 October 2018 JJAG claimed a refund of VAT from the ORU. That refund was presented to the Spanish tax authorities (as is the required procedure).

12. After various correspondence between HMRC and JJAG’s representative (which is considered further below), that claim was refused in a letter dated 9 May 2019, which

conclusion was upheld following a review. JJAG gave Notice of Appeal to the Tribunal on 11 October 2019.

#### **RELEVANT LEGISLATION**

13. Council Directive 2006/112/EC on the common system of VAT (the “Principal VAT Directive”) sets out the persons liable for payment of VAT to the tax authorities. Article 193 provides that VAT is payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202 thereof.

14. The Refund Directive then lays down the detailed rules for the refund of VAT to taxable persons not established in the Member State of refund but established in another Member State, the relevant articles of which are:

##### **“Article 1**

This Directive lays down the detailed rules for the refund of value added tax (VAT), provided for in Article 170 of Directive 2006/112/EC, to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3.

##### **Article 2**

For the purposes of this Directive, the following definitions shall apply:

1 “taxable person not established in the Member State of refund” means a taxable person within the meaning of Article 9(1) of Directive 2006/112/EC who is not established in the Member State of refund but established in the territory of another Member State;

2 “Member State of refund” means the Member State in which the VAT was charged to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;

3 “refund period” means the period mentioned in Article 16 covered by the refund application;

4 “refund application” means the application for refund of VAT charged in the Member State of refund to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;

5 “applicant” means the taxable person not established in the Member State of refund making the refund application.

##### **Article 3**

This Directive shall apply to any taxable person not established in the Member State of refund who meets the following conditions:

(a) during the refund period, he has not had in the Member State of refund, the seat of his economic activity, or a fixed establishment from which business transactions were effected, or, if no such seat or fixed establishment existed, his domicile or normal place of residence;

(b) during the refund period, he has not supplied any goods or services deemed to have been supplied in the Member State of refund, with the exception of the following transactions:

(i) the supply of transport services and services ancillary thereto, exempted pursuant to Articles 144, 146, 148, 149, 151, 153, 159 or 160 of Directive 2006/112/EC;

(ii) the supply of goods and services to a person who is liable for payment of VAT in accordance with Articles 194 to 197 and Article 199 of Directive 2006/112/EC.”

15. The Refund Directive then prescribes how the refund application is to be made, time limits, obligations of the Member State of establishment (to which the application is required to be sent by the applicant), the Member State of refund’s right to request additional information, the appeals process and the applicant’s right to interest (under Articles 26 and 27).

16. The provision in UK primary legislation which has implemented these rights is s39 Value Added Tax Act 1994 (“VATA 1994”) which provides:

**“39 Repayment of VAT to those in business overseas**

(1) The Commissioners may, by means of a scheme embodied in regulations, provide for the repayment, to persons to whom this section applies, of VAT on supplies to them in the United Kingdom or on the importation of goods by them from places outside the member States which would be input tax of theirs if they were taxable persons in the United Kingdom.

(2) This section—

(a) applies to persons carrying on business in another member State, and

(b) shall apply also to persons carrying on business in other countries, if, pursuant to any Community Directive, rules are adopted by the Council of the Communities about refunds of VAT to persons established elsewhere than in the member States,

but does not apply to persons carrying on business in the United Kingdom.

(3) Repayment shall be made in such cases and to such extent only, and subject to such conditions, as the scheme may prescribe (being conditions specified in the regulations or imposed by the Commissioners either generally or in particular cases); and the scheme may provide—

(za) for claims to be made in such form and manner as may be specified in the scheme or by the Commissioners in accordance with the scheme;

(a) for claims and repayments to be made only through agents in the United Kingdom;

(b) either generally or for specified purposes—

(i) for the agents to be treated under this Act as if they were taxable persons; and

(ii) for treating claims as if they were returns under this Act in respect of such period as may be prescribed and repayments as if they were repayments of input tax;

(ba) for and in connection with the payment of interest to or by the Commissioners (including in relation to the repayment of interest wrongly paid), and

(c) for generally regulating—

(i) the time by which claims must be made, and

(ii) the methods by which the amount of any repayment is to be determined and the repayment is to be made.”

17. Section 4 VATA 1994 sets out the scope of taxable supplies and provides:

**“4 Scope of VAT on taxable supplies**

(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.”

18. The UK has implemented the repayment scheme provided for by the Refund Directive in the Value Added Tax Regulations 2005 (“VAT Regulations 2005”). Defined terms are set out in regulation 173 and the conditions of the scheme are contained in regulation 173E:

**“173 Interpretation of Part XX**

(1) In this Part—

...

“claimant” means a person making a claim under this Part or a person on whose behalf such a claim is made;

“claimant's member State” means the member State in which the claimant is established;

...

“principal VAT Directive” means Council Directive 2006/112/EC;

“refund Directive” means Council Directive 2008/9/EC;

“repayment period” means a period of time falling within one of the periods described in regulation 173G;

“repayment year” means the period of 12 calendar months commencing on 1st January.

(2) For the purposes of this Part, a person (P) is treated as being established in a country if—

(a) P has there a business establishment or some other fixed establishment from which business transactions

are effected; or

(b) P's usual place of residence is there where P has no such establishment as is described in sub-paragraph

(a) above in that country or elsewhere.

(3) For the purposes of this Part—

(a) a person carrying on business through a branch or agency in any country is treated as having there an establishment from which business transactions are effected, ...

(b) “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.

(c) a reference to Article 170 of the principal VAT Directive is a reference to that Article—

(i) as amended by Article 2(3) of the Council Directive 2008/8/EC, and

- (ii) as applied in the claimant's member State;
  - (d) a reference to Article 214 of the principal VAT Directive is a reference to that Article—
  - (i) as amended by Article 2(8) of Council Directive 2008/8/EC, and
  - (ii) as applied in the claimant's member State;
  - (e) a reference to any other Article in the principal VAT Directive or to any Article in the refund Directive is a reference to such Article as applied in the claimant's member State; and
  - (f) a reference to Council Regulation (EC) No 1798/2003 is a reference to that Regulation as amended by Council Regulations (EC) No 885/2004, (EC) No 1791/2006, (EC) No 143/2008 and (EC) No 37/2009.
- ...

### **173E**

This Part applies to a person who is established in and who carries on business in a member State other than the United Kingdom for the whole of a repayment period other than a person who—

- (a) is established in the United Kingdom during any part of the repayment period;
- (b) makes supplies in the United Kingdom of goods or services during any part of the repayment period other than—
  - (i) transport of freight outside the United Kingdom or to or from a place outside the United Kingdom or services ancillary thereto,
  - (ii) services where the VAT on the supply is payable solely by the person to whom the services are supplied in accordance with the provisions of section 82 of the Act (reverse charge on supplies received from abroad), ...
  - (iii) goods where the VAT on the supply is payable solely by the person to whom they are supplied as provided for in section 9A4 (reverse charge on gas and electricity supplied by persons outside the United Kingdom) or 14 (acquisitions from persons belonging in other member States) of the Act, and
  - (iv) scheme services within paragraph 2 of Schedule 3BA to the Act supplied by a person who—
    - (a) is required to account for the VAT on those supplies on a non-UK return; and
    - (b) is not a registered person.
- (c) during any part of the repayment period, does not undertake or intend to undertake transactions in the member State where that person is established which afford that person a right of deduction in accordance with Articles 168 and 169 of the principal VAT Directive as applied in the member State where that person is established;
- (d) makes or intends to make supplies in the repayment period upon which VAT was not or would not be charged by virtue of their being within the exemption afforded to small enterprises under Articles 284, 285, 286 and 287 of the principal VAT Directive as applied in the member State in which that person is established; or

(e) makes or intends to make supplies in the repayment period which are covered by the flat-rate scheme for farmers provided for in Articles 295 to 305 of the principal VAT Directive as applied in the member State in which that person is established.”

#### **JJAG’S GROUNDS OF APPEAL**

19. JJAG’s Grounds of Appeal are set out in full in the Appendix. They are summarised below (although I have had regard to the full Grounds in reaching my decision):

- (1) JJAG’s only establishment in the EU is in Spain. It ordered goods from South America and was informed that if it wanted the goods urgently there was a shipment planned to England. The container was shipped from the port in Colombia to the UK, and then transported by road to Spain.
- (2) JJAG requested a refund of the import VAT, fulfilling all the requirements of the Refund Directive. That request was verified by the Spanish authority but HMRC’s refusal of the repayment was made dismissively.
- (3) JJAG is not established in the UK, the UK was simply the place of entry of the imported goods, which were not sold to customers in the UK. JJAG does sell (from its PPOB in Spain) to distributors in the UK.
- (4) JJAG transferred the goods from Colombia, through a UK port, to Spain, from where it sells to customers within Spain, Europe and outside the EU.

#### **HMRC’S STATEMENT OF CASE**

20. HMRC submits that the Refund Directive applies where a business is established in another Member State and incurs expenses in the UK, where they are not actually making taxable supplies or intending to make such taxable supplies in the UK.

21. JJAG’s claim was refused because the goods in question were imported into the UK, before then being moved to JJAG’s PPOB in Valencia, Spain. The “Single Market” rules in the UK state that the movement of own goods by a VAT registered business from the UK to another EU Member State constitutes a “deemed supply” for VAT purposes in the UK. Consequently, JJAG is not entitled to make a claim under the Refund Directive.

22. HMRC refer to the following provisions of their public notices in support of this position:

- (1) VAT Public Notice 723A: Refunds of VAT for EU businesses - paragraph 2.3 “Who can make the application” states:

“The applicant must be a taxable person established in a Member State other than the Member State of refund, or their authorised agent.

The applicant must meet the following conditions.

- (a) The applicant must not be registered, liable or eligible to be registered in the Member State from which they are claiming the refund.
- (b) The applicant must have no fixed establishment, seat of economic activity, place of business or other residence there.
- (c) During the refund period the applicant must not have supplied any goods or services in the Member State of refund with the exception of: (i) transport services and services ancillary thereto (ii) supplies of goods or services where VAT is payable by the person to whom the supply is made.”

(2) VAT Public Notice 725: The Single Market - section 9 on Transfer of Own Goods between Member States includes:

“9.1 Position if you transfer your own goods

A transfer of your own goods from one Member State to another within the same legal entity, for example between branches of the same company, is deemed to be a supply of goods for VAT purposes.

9.2 Is the supply liable to VAT?

The transfer of your own goods is liable to VAT in the same way as other intra-EC supplies of goods described in this notice

...

9.4 Is acquisition tax due?

You will normally be liable to account for acquisition VAT in the Member State to which the goods are transferred.”

23. JJAG does not have a business establishment in the UK, it has incurred a liability to register for VAT in the UK, by virtue of the “arrivals” and subsequent “dispatches”, for the period in question (ie the deemed supply). There has been no temporary movement of JJAG’s own goods. The goods in question arrived in the UK via Tilbury Docks, and were subsequently moved to JJAG’s PPOB i.e. Valencia, Spain.

#### **AREAS OF DISAGREEMENT**

24. When the Tribunal asked the parties about whether they agreed that the matter was suitable for determination on the papers, ie without a hearing, the parties were directed (on 15 May 2020) to provide an outline of the factual assertions made by the other party which they did not accept.

25. On behalf of JJAG it was stated that they do not accept:

(1) the statement of Officer Sancaster in the decision of 9 May 2019 that the goods imported by JJAG were sold by JJAG from the UK, which requires that JJAG must register in the UK for the purposes of those sales; and

(2) the statement of Ms Hanrahan in the review conclusion letter of 12 September 2019 that JJAG is registered in the UK, as a company that operates from that country. JJAG does not file taxes as such in the UK nor has it been required to do so by the competent authorities.

26. HMRC recited some of the background and added that do not accept that JJAG is entitled to make a claim under the Refund Directive, as for the VAT period in question a deemed supply was made in the United Kingdom.

27. I have borne these matters in mind throughout in reaching my decision. However, it is clear that HMRC does not dispute JJAG’s statement that it does not have an establishment in the UK. I have therefore not focused on JJAG’s arguments to this effect in setting out my reasoning.

#### **DISCUSSION**

28. JJAG has made a claim for the refund of VAT which was accounted for on the import of goods into the UK in the period 1 January 2018 to 30 September 2018. The burden of establishing that it satisfies the requirements for such a refund is on JJAG. The standard of proof is the balance of probabilities.



29. Article 3 of the Refund Directive sets out the conditions for a refund to be made. It was common ground that JJAG did not have the seat of its economic activity or a fixed establishment from which business transactions were effected in the UK (within Article 3(a)). Instead, HMRC are relying on the requirement in Article 3(b) (that JJAG has not supplied any goods or services deemed to have been supplied in the Member State of refund, with the exception of specified transactions), arguing that this is not met as JJAG has supplied goods deemed to have been supplied in the UK (the stated exceptions to which, HMRC submit, are not met). This requirement has been implemented in the UK in regulation 173E(b) of the VAT Regulations 2005.

30. The goods were transported from South America to the UK and then to Spain. The question is thus whether the transfer of the goods from the UK to Spain was a deemed supply of the goods in the UK. In the initial correspondence between the parties following submission of the refund claim, HMRC was essentially seeking information to enable it to understand why these goods entered the UK, who they belonged to and how sales to customers were arranged.

31. On 1 February 2019 Jonny Todd of the ORU emailed JJAG's representative (Toni Podadera) and asked a set of questions to progress the claim. On 13 February 2019 JJAG replied to these questions, and the questions and answers are shown below:

**“JOTA JOTA ALIMENTOS GLOBAL SL**

Can you please explain the exact nature of your business activities in Spain?

*Sale and distribution of food products*

Can you please explain the exact nature of your business activities in the UK?

*On the one hand, we sell food products to distributors in the United Kingdom.*

*On the other hand, we import food products from South America through the United Kingdom*

During the period of time covered by your claim, what business were you undertaking in the UK?

*Importing food products from South America through the United Kingdom and our sales management from Spain to the United Kingdom*

Do you have a customer in the UK to who you provide goods or services?

*Yes, sale of food products*

° If so, what is your customers name and UK VAT registration number?

*...[List of nine customers with UK VAT numbers]*

What exactly do you provide to your customer/s?

*Food products*

How do you account for any VAT due on the supply you make to your customers? Do you use the reverse charge mechanism?

*The VAT of invoices issued to customers in the United Kingdom is €0 and declared in INTRASTAT*

Do you have any office or other place of fixed establishment in the UK?

*We do not have an office in the UK*

**Invoice from PANA PRODUCTORA DE ALIMENTOS NATURALES**

What exactly did you receive?

*Food products*

What was the business purpose for acquiring these items?

*Sale and distribution in Spain and Europe*”

32. On 20 February 2019 Officer Samantha Sancaster emailed JJAG and stated:

“From what you have provided I believe you are making taxable supplies in the UK. This is because you are importing goods into the UK and then selling the goods on from the UK. Therefore this would require you to register for VAT in the UK.

To clarify your position, please can you provide a diagram of the chain of supply from start to finish. If you disagree with my understanding, please can you give an explanation as to why you believe you are not making taxable supplies in the UK.”

33. The response from JJAG on 28 February 2019 was that JJAG “sells only from Valencia”, it imports food products from South American countries through the UK with the final destination being Valencia and “all the sale of products is made from Spain”. No additional material was attached to this email.

34. On 8 April 2019 Officer Sancaster asked:

- “Please provide evidence of the sale taking place in Valencia
- Who arranges the transport for the food from South America to the UK?
- Who arranges the transport for the food from the UK to Valencia Spain?
- When do you take ownership of the goods?”

35. In response, on 18 April 2019 JJAG provided sample sales invoices from customers in Spain, stated that the transport was organised by Britain & Latin America Logistics Ltd (attaching a screenshot of the invoice for the transport of goods from Cartagena to Valencia via England, and stating that the goods arrived at JJAG on 20 September 2018 (attaching the transport delivery CMR)).

36. On 9 May 2019 the refund claim was refused because “you appear to be making supplies in the UK. You are importing goods into the UK and then selling the goods on from the UK...When a taxable person and/or business is making, or intends to make, any taxable supplies in the UK, they cannot apply for a refund under the EC refund scheme.”

37. JJAG responded (in a communication that was treated as a request for a review of the decision) on 21 June 2019. (This referred to the decision as having been received on 24 May 2019 and HMRC have not taken any point that this letter was out of time.) That communication included:

- (1) JJAG does not have any branch in the UK;
- (2) the goods left the UK on 17 September and were delivered to JJAG’s PPOB (referring to the CMR); and
- (3) although JJAG can sell goods to customers in the UK, these are sent from JJAG’s facilities in Spain.

38. In the review conclusion letter of 11 September 2019 Ms Hanrahan stated:

(1) You do not need to have a permanent establishment in the UK to make taxable supplies in the UK, and it is also not only the sales within the UK that the decision is based upon. Goods that are sent back out from the UK to customers within the EU will form part of JJAG's taxable supplies. She referred to the fact that each time the goods have been imported JJAG has moved the goods to the EU from where they have sold the goods. They have moved their own goods to Spain, and "Under the Single Market rules in the UK the movement of own goods by a VAT registered business from the UK to another EU Member State constitutes a deemed supply in the UK."

(2) The exceptions in Article 3(b)(ii) of the Refund Directive do not apply.

(3) Accordingly, JJAG is not entitled to a refund under the Refund Directive.

39. JJAG then appealed to the Tribunal. The Grounds of Appeal are set out in the Appendix and summarised above. One point made therein is that JJAG ordered the goods from the seller in Colombia and was told by that company that if they wanted to receive the order quickly, there was a shipment planned to England in a few days. JJAG agreed that the goods should be shipped in this way, and would then be transported by road to Spain.

40. Having reviewed the correspondence and the explanations provided in response to questions, it is apparent that JJAG had acknowledged that it sells to customers in the UK but didn't provide full answers to questions as to how these sales are conducted and instead emphasised that JJAG had no establishment in the UK. The explanation that the goods were shipped from South America to the UK as this was the fastest route was only put forward in the Grounds of Appeal.

41. The most telling argument raised by JJAG is actually set out as one of its grounds of appeal, which is to explain that JJAG was buying goods from South America, and was informed that the next shipment to Europe would be to the UK (not Spain) and decided that the goods should travel that route. HMRC have not challenged this factual explanation, either in their statement of case or when directed by the Tribunal to provide an outline of the factual assertions made by the other party with which they disagreed. I have assessed the evidence before me in the light of the explanations which have been provided.

42. The evidence before me included:

(1) A "Non-Negotiable Waybill" from the Maersk Line, showing the Shipper as Productora de Alimentos Naturales in Columbia, the consignee as JJAG at its PPOB, with a port of loading as Colombia and port of discharge as Tilbury, for the shipment of "1 Container Said to Contain 20 PALLETs". The party to be notified is named as Britain & Latin America Logistics Ltd (with an address in London). There are two dates, which appear to show shipped on board 20 August 2018 and that the waybill was issued on 22 August 2018

(2) An Import Entry Acceptance Advice, timed at 23.21 on 7 September 2018, showing the arrival of goods for JJAG as Consignee, stating that there were "Total Packages 20"

(3) A "Clearance Advice Report" issued at 13.24 on 9 September 2018 showing that the goods had arrived on the Polar Brasil, and the agent is Samphire Cargo Ltd

(4) A "Notification of Unit Release" timed at 13.24 on 9 September 2018

(5) Invoice from Britain & Latin America Logistics to JJAG dated 29 August 2018 for £1,990, which describes the services invoiced as "40HC Container, CARTAGENA (CTG) – VALENCIA (ESPANA) via INGLATERRA"

(6) A “CMR Documento de Control” showing the sender as Denholm Handling Ltd (with an address in Tilbury, Essex), consignee as JJAG, place of delivery as JJAG’s PPOB and a date of 17 September 2018. The description of the goods is 20 pallets of food.

43. On the basis of all of the evidence before me, I find that all of the goods in respect of which a refund of VAT is claimed were shipped from South America to the UK and then transported to JJAG’s PPOB in Spain. The transport of these goods was arranged by Britain & Latin America Logistics Ltd, and the transport arranged was for the goods to be sent from Colombia to Spain, with the importation into the UK and subsequent despatch from the UK being no more than part of the transit arrangements in order to ensure fast delivery to JJAG in Spain in the light of available shipping routes. I note that the goods were delivered to Tilbury Docks with the party being notified named as the transporter, and another transporter then being named on the despatch documents – this is consistent with transit arrangements. I accept JJAG’s explanation that any arrangements for the supply of these goods to customers (whether in Spain, the UK or elsewhere) were made by JJAG in Spain.

44. In consequence, I have concluded that JJAG did not supply any goods or services deemed to have been supplied in the UK in the refund period and is therefore entitled to a refund of the VAT under the Refund Directive.

45. Article 26 of the Refund Directive provides that interest shall be due to an applicant on the amount of the refund to be paid if the refund is paid after the last date of payment pursuant to Article 22(1). That will be the case here. However, whilst s83(1) (ha) VATA 1994 provides that an appeal lies to the Tribunal with respect to any decision of HMRC to refuse to make a repayment under a scheme under s39 VATA 1994, that right of appeal does not encompass any claim to interest in respect of late payment.

**DISPENSATION**

46. JJAG’s appeal is allowed and HMRC shall repay the VAT claimed of £8,456.29.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

47. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JEANETTE ZAMAN**

**TRIBUNAL JUDGE**

**RELEASE DATE: 22 JANUARY 2021**

## Appendix

### Appellant's Grounds of Appeal

1. **FIRST:** The Jota Jota Alimentos Global, S L Entity, established in Spain, with its registered office, and tax office in Spain, and with a single point of activity throughout the European Union, located in Spain, the province of Valencia, municipality of Alboraya, Camino al Mar, N95, orders merchandise from the Company called Natural Food Producer, located in Colombia, City of Santiago de Cali. From this Company you are informed that if you want to receive the order quickly you have planned a shipment in a few days but with destination to England, not Spain, and before the urgency of said merchandise, it is agreed that the container will be shipped on said ship that departs from the port of Cartagena de Indicas in Colombia, bound for Spain (Valencia), via England boat trip from Cartagena de Indicas to England, and from this port to Spain to the base of the Company Jota Jota Alimentos Global SL, in road transport as evidenced by Invoice: INV426088-2, dated 08/09/2018; issued by the Company Britain Latin America, based in the United Kingdom.

2. **SECOND:** Based on the aforementioned economic transaction, Jota Jota Alimentos Global SL paid in the United Kingdom the Value Added Tax, hereinafter VAT corresponding to said import, as the port of entry into the European Union is one of those of said country (Tilbury). And according to the provisions of Council Directive 2008/9/EC of 12th February 2008, laying down implementing provisions regarding the return of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of return, but established in another Member State, on October 22, 2018, before the State Agency of the Tax Administration of Spain, hereinafter AEAT, Jota, Jota Alimentos Global SL country in which the Company is constituted of Spanish Nationality, and where it has its only activity base, as well as its financial domicile, and identification for VAT purposes, submits a request {model 360} for refund of said Tax, as far as concerning the import identified when all requirements set by said Directive to obtain the return of the aforementioned tax are met, the requested amount being equal to £8,456.29. The request referred to in the previous paragraph was processed by the competent Administration in that matter in Spain, and verified by it, that the recurring entity met the requirement set forth in Council Directive 2008/9/EC, of February 12 of 2008, it sent the request to the competent body in said matter in the United Kingdom to issue a resolution on it. Resolution was issued in a dismissive sense towards the Appellant, presenting this appeal against said dismissal in June 2019, the same being dismissed according to a resolution dated September 12 2019, received on September 16, 2019.

3. **THIRD:** The Directive cited in the previous paragraph, and of mandatory compliance by the member states, in its article 3, sets the requirements to qualify for the refund if VAT quotas supported in the European Union Countries, hereinafter the EU, where companies are not located, if in other countries while in the EU, establishing the following requirements: 1. That the taxpayer requesting the refund is not established in the Member State in which he has supported the VAT quotas, and to which he asks for his refund. Jota Jota Alimentos Global SL is not established in the United Kingdom, Jota Jota Alimentos made a timely importation of a third country (Colombia exactly), with the United Kingdom simply being the place of entry of the imported goods, which were not sold to subjects established in the United Kingdom. If not fully transported the contents of the container referred to the import to Spain, specifically Valencia province where Jota Jota Alimentos Global SL is established as a company for VAT purposes. In fact, if Jota Jota Alimentos Global, SL were established in the United Kingdom, it should submit declarations of VAT regarding sales that could be

made in the country, which does not happen; unless there is evidence that the Administration that denies the return can provide, and that it has not contributed nor cited in its resolutions.

2. That who urges the VAT refund within the period referred to in the return period, has not had in the United Kingdom in this particular case, as a country that has to return the amount of VAT requested any headquarters of its economic activity, or a permanent establishment from which it has carried out economic operations; or its habitual domicile or residence. Jota Jota Alimentos Global SL, unless there is evidence that the competent administration can provide to return the amount requested in the United Kingdom, nor has it had or has its registered office, habitual residence, or permanent/non-permanent establishment from which it makes its economic activity, therefore Jota Jota Alimentos, contrary to what is claimed by the Administration that denies the return, meets this requirement of the Directive, and therefore it is appropriate to grant the refund of the requested amount for VAT supported by importation in the United Kingdom.

3. That during the period to which the return refers Jota Jota Alimentos Global SL, has not delivered goods that are considered delivered in a Member State of return, United Kingdom in this case, except if it refers to intra-community operations amongst others. In other words, the norm does not allow the return request of the appellant sells from the United Kingdom to the United Kingdom, something that has not happened, not in the return period, if not since the Appellant's existence in 2006 to date, which makes perfect sense. Since the Appellant should in this case not be given (it is worth insisting on this aspect to be considered essential), to be registered in the administrative records of the United Kingdom as a taxable person for VAT, would file returns, and would be practiced the deduction used in that act. However, this limitation as exceptions, among which you find deliveries (for Jota Jota Alimentos Global SL), and acquisitions (customers located in the United Kingdom and reselling purchased products), intra-community. In other words, if you have the right to obtain the return by Jota Jota Alimentos Global SL, referring to this specific importation, and others that you can do in the future, as long as of today, the appellant is limited selling located companies to clients in the United Kingdom (intra community deliveries-acquisitions). In summary, Jota Jota Alimentos Global SL does not sell products imported in the United Kingdom to customers located in the United Kingdom, from the United Kingdom with or without permanent establishment. Jota Jota Alimentos Global SL it makes timely business of intra-community deliveries for it, and intra-community acquisitions for customers re-selling companies located in the United Kingdom, which is totally valid as regards the Directive cited to obtain the VAT refund for the import referred to in this Administrative file.

4. FOUR – Article 5 of Directive 2008/9/EC, establishes an obligation of the Member States, in this case the United Kingdom, to return to the tax-payers, among other amounts, the VAT quotas supported in their country, to taxable persons established not in that country, but in another Member State, in this specific case of the appellant Spain, for the imports made in the United Kingdom in the present case, when said article refers to articles 9, 168 e) and 169 of Directive 2006/112/EC.

5. FIFTH – Article 14/2 of Directive 2008/9/EC, says that the request can refer to import documents made in the country of application, in this case the United Kingdom therefore this requirement is met. The resolution that is appealed by the present, in addition to all the above that is applicable, says the following: On May 9, 2019, the official Sancaster rejects the claim alleging that the goods imported by Jota Jota Alimentos Global, SL and from which the refund of the import VAT is urged based on Directive 2008/9/CE, they are sold by the Appellant herself from the United Kingdom, which required that she must register in that country for the purposes of these Sales. With the greatest respect for Ms. Sancaster, that statement is completely free, because it does not provide any evidence, and does not carry out any recriminatory activity to the appellant. Well, if true, the following circumstances should

occur: A) First provide the officer who makes such a claim, when, as to whom and who has sold the appellant from the United Kingdom both inside and to clients outside said territory. There is no proof in the resolution regarding this. Or follow any hint. B) The Tax Administration of the United Kingdom should have made a request to the appellant to make its registration in the VAT register in the United Kingdom, and declare and pay said tax for the operations that Mr Sancaster makes the appellant from the United Kingdom itself, a fact that is also not accredited in the resolution, nor what it can do in the absence of such operations. C) That a company with: registered office, tax, residence and for VAT purpose located in Spain, carry out an import via the United Kingdom, being accredited that said merchandise was moved from the United Kingdom to Spain, is a full-fledged import, not a sale of Jota Jota Alimentos Global, SL, from the United Kingdom to Spain as stated in the resolution for the appeal that is appealed by this. In fact, Directive 2008/9/EC itself refers to imports, clearly referring to VAT paid by a company located in a Member State, to another Member State in which said company is not located, good entering the area of the European Union by said Member States, and transferring it to the Member State of the importer, the amount paid for VAT in the Member State where it was paid, provided that the company that urges the refund, is a taxable person of VAT in the Member State where he has his residence, and also makes deliveries of subject and non-exempt goods, and generates the right to deduction. Which has already been verified by the Tax Administration of Spain, and that is why I transfer the request to the competent authorities in that matter in the United Kingdom. The Official Sharon affirms, in her resolution of September 12, 2019, that Jota Jota Alimentos Global, SL, is registered in the United Kingdom, which is not recorded in this part, nor provides any document or data that thus prove it, not being obliged to do so by not exercising any economic activity and also states that not only does the obligation to register for VAT purposes in the United Kingdom affect domestic sales, but also the goods that are sent from the United Kingdom to customers within the EU. Jota Jota Alimentos Global, SL, as already said, has not made internal sales in the United Kingdom, nor has it sent merchandise from the United Kingdom to customers located in other EU countries, Jota Jota Alimentos Global, SL, is it has limited to transfer its merchandise imported from Colombia through a port of England to Spain, where it has its headquarters and activity and from where it sells to customers within Spain, Europe and outside the EU, in fact Jota Jota Alimentos Global, SL, if you are selling from the United Kingdom to EU customers, you should submit a model of an informative declaration of intra-community deliveries and it does not, nor has it been required by the competent Administration in that area in the United Kingdom.

6. SIX – Directive 2008/9/EC, sets as possible, that a company located in an EU member country, import (between goods from third countries outside the EU in that EU territory) through the customs of another EU member country other than that of the establishment, it is not necessary to register in said country for VAT purposes, as it does not carry out internal or external operations, with or without permanent establishment in the said country of entry through customs, being able to perform. This procedure in two ways: 10 – Appoint a tax representative in this case in the United Kingdom, who would be the one who would actually carry out the importation, and would bear the VAT of the same, and may then request the relevant return and send the merchandise to Spain to the appellant, as which would be an intra-community operation (delivery of the tax representative in the United Kingdom, and acquisition for the appellant in Spain). In this case, the appellant in Spain must pay the VAT. 20. Pay the tax at the customs officer in England in this case, transfer the merchandise from the United Kingdom to Spain, not to sell it to customers outside the United Kingdom, and request the return based on Directive 2008/9/EC of said VAT tax paid. The appellant opted for this second option, being entitled to do so, based on said mandatory Directive for the Member States, and without any obligation to register in the United Kingdom by the

appellant for VAT purposes, or to request such return by the tax system of the United Kingdom itself. The identification of the appellant with the Spanish VAT register ESB97772289 is included in all the documentation, the United Kingdom authorities accepting said importation and without being required to register for VAT purposes in the United Kingdom at any time. Therefore, it is no possible to rely on this reason, to deny the request for return requested and which is appealed by this.