Registrar of Vehicles v Komoco Motors Pte Ltd
[2008] SGCA 19

Case Number : CA 74/2007

Decision Date : 08 May 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Sundaresh Menon, Simon Goh, Baldev Singh and Paul Tan (Rajah & Tann) for the appellant; Harry Elias SC, Philip Fong, Navin Joseph Lobo and Sharmini Selvaratnam (Harry Elias Partnership) for the respondent

Parties : Registrar of Vehicles — Komoco Motors Pte Ltd

Administrative Law – Judicial review – Fettering of discretion and abrogation of power – Registrar of Vehicles having power to determine value of vehicle for purposes of levying additional registration fee – Registrar having practice of adopting Customs' valuation of open market value of vehicle as its "value" – Whether Registrar was entitled to rely on Customs' valuation of OMV to compute ARF payable – Whether Registrar failing to exercise power vested in her – Whether Registrar failing to give genuine consideration to car importer's representations – Rule 7(3) Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, R 5, 2004 Rev Ed)

8 May 2008

Chan Sek Keong CJ (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by the Registrar of Vehicles ("the Registrar") against the decision of the judge in the court below ("the Judge") granting the prerogative orders of *certiorari* and *mandamus* against the Registrar on the application of Komoco Motors Pte Ltd ("Komoco") (see *Komoco Motors Pte Ltd v Registrar of Vehicles* [2007] 4 SLR 145) ("the GD")).

2 The Judge found that the Registrar had failed to exercise her discretionary power under r 7(3) of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, R 5, 2004 Rev Ed) ("the Rules") to determine the value of 17,448 motor vehicles imported by Komoco ("the Cars") for the purposes of calculating the additional registration fee ("ARF") payable on those vehicles.

3 We allowed the appeal at the conclusion of the hearing of the appeal, and now give the reasons for our decision. For convenience, in these grounds of decision, the expression "the Registrar" will include, where the context requires, any predecessor of the Registrar, and the term "she" will include "he" (and *vice versa*) with regard to the gender of the Registrar.

Legal context

4 The relevant legal context of this case covers a period of about 40 years. Since the 1960s, the Government, under what we shall refer to as "the ARF Scheme", has imposed an ARF on each motor vehicle imported into Singapore over and above other duties, such as excise duties, payable on the vehicle. Under r 7(1) of the Rules, the ARF is fixed at a specified percentage of the value of the motor vehicle in question; the applicable percentage is prescribed from time to time under Pt II of the First Schedule to the Rules. The power to determine the value of a motor vehicle for the purposes of ascertaining the ARF payable is vested in the Registrar under r 7(3) of the Rules, which states that:

> [T]he value of a motor vehicle shall be determined by the Registrar after making such enquiries, if any, as he thinks fit and the decision of the Registrar shall be final.

The "value" of a motor vehicle in relation to the computation of the ARF is not statutorily defined. Before 1968, this value was based on what was known as the "CIF value" of a motor vehicle, *ie*, the value of the vehicle in question as calculated on a cargo, insurance and freight basis. This meant that each time before the Registrar imposed the ARF on a motor vehicle, she had to first determine its CIF value in the manner set out in the then equivalent of r 7(3) of the Rules, *ie*, after making such inquiries, if any, as she thought fit.

5 In 1968, the Government decided to change this policy. The then Minister for Finance, Dr Goh Keng Swee, announced a new policy ("the 1968 Policy Directive") on how the value of a motor vehicle should be computed for the purposes of assessing its ARF (see *Singapore Parliamentary Debates, Official Report* (3 December 1968) vol 28 at cols 56–57). He said that the assessment of the ARF would in future be based on the open market value ("OMV") of the vehicle in question, and noted that "[t]he new basis of assessment [was] in line with the practice in Malaysia and in the Customs Department" (*id* at col 57).

6 The introduction of the 1968 Policy Directive enabled the Registrar, in the exercise of her power under the then equivalent of r 7(3) of the Rules, to henceforth calculate the ARF payable on a motor vehicle based on its OMV as determined by the Singapore Customs ("Customs"). The OMV of a motor vehicle has always been determined (for the purposes of imposing, *inter alia*, excise duties) by Customs pursuant to regulations made under the Customs Act (Cap 70, 2004 Rev Ed) ("the Act") and its predecessor statutes. No legal issue appears to have arisen (at least not until the present appeal was filed) with regard to the legality, propriety or reasonableness of the 1968 Policy Directive as well as the Registrar's practice (which the Judge referred to as "policy" at, *inter alia*, [24]–[30] of the GD) of determining the value of a motor vehicle, when computing the ARF payable, based on that vehicle's OMV as determined by Customs ("Customs' OMV"). Indeed, it is common ground between Komoco and the Registrar that the motor vehicle industry in Singapore has accepted this methodology without protest for the last 40 years. No importer of motor vehicles has thought fit to protest against or challenge the legality, propriety or reasonableness of this method of assessing a motor vehicle's value on the ground that the Registrar, in adopting it, was acting in breach of r 7(3) of the Rules. Similarly, we have not been informed that any motor vehicle trader has ever challenged the propriety of this method of ascertaining a motor vehicle's value on the ground that the trader has no opportunity to be heard or to make representations on the Customs' OMV of the motor vehicle concerned (which would also be the value of that vehicle for the purposes of the ARF Scheme). In the circumstances, it can be said that there exists, in effect, a convention with regard to the way in which the ARF is calculated in that the Registrar may use the Customs' OMV of a motor vehicle as the proper basis for computing the applicable ARF. For convenience, we shall refer to this practice of the Registrar as "the Administrative Convention".

7 In our view, there is little doubt that, in the context of public administration, the Administrative Convention was and is the most efficient way to administer the ARF scheme. It has all the attributes of good public administration in that it is cost-effective, objective, open and transparent to all traders and importers of motor vehicles. The determination of a motor vehicle's OMV, whether for the purposes of levying excise duty or the ARF, is done only once and with finality by Customs at the point of entry of each vehicle into Singapore. Any importer who is aggrieved with Customs' determination may object to it by making an application to the Director-General of Customs ("the DG") (see s 22B(1) of the Act). If the importer is dissatisfied with the DG's decision, it may appeal to the High Court against that decision (see s 22B(5) of the Act). What we have here is a legal framework for determining a motor vehicle's OMV which is not only completely open, transparent,

predictable and fair to all importers and traders of motor vehicles, but also subject to judicial scrutiny. As we have said earlier, the arrangement has all the attributes of good public administration.

8 It is also common knowledge in the motor vehicle industry (and thus known to Komoco as well) that prior to 1 April 2003 (which is the material period in this appeal), the OMV of a motor vehicle generally comprised the following components (as calculated at the material time) under the Brussels' Definition of Value:

(a) the *transaction value*, which was the price paid or payable for a motor vehicle by a buyer to a supplier based on the vehicle's CIF value;

(b) the *handling charge*, which was the handling expense for transferring a motor vehicle which arrived by air or by sea from the conveyance carrier onto land (handling charges were imputed as 1% of the vehicle's CIF value); and

(c) the *agency uplift*, which consisted of expenses for advertising, promotions and warranties, as well as showroom and warehousing costs (generally, the agency uplift in respect of a motor vehicle was estimated by Customs to be a percentage of the vehicle's invoice price ("uplift percentage"), which percentage was fixed for certain periods of time and generally reviewed on an annual basis).

9 The ARF Scheme works on the basis of voluntary disclosure in that the OMV of a motor vehicle is calculated based on information which the importer is required to provide to Customs via a declaration of fact ("DOF"). However, Customs conducts periodic checks, known in the industry as "post-clearance audits", on the accounts and ledgers of motor vehicle importers to verify the accuracy of the information and figures provided in their DOFs. If Customs decides after a post-clearance audit that the OMV of a motor vehicle should be increased, Customs will inform the importer concerned and ask for payment of the additional excise duty and goods and services tax ("GST") payable as a result of the original under-valuation of that vehicle's OMV. Customs will also inform the Registrar of the revised OMV, and the Registrar, after checking and verifying the vehicle concerned, will use the revised OMV to compute the new ARF applicable. This practice is known to all established importers of motor vehicles, including Komoco.

10 This appeal has arisen because Komoco objected to Customs' revised valuation, following a post-clearance audit, of the OMVs of 17,449 cars which it had imported between 13 November 1999 and 31 March 2003 ("the 17,449 cars"), but at the same time decided to pay – under protest – the additional amount of excise duty and GST as well as the composition penalty demanded by Customs (collectively referred to as "the Composition Sum") after the latter offered to compound the offence under s 128 of the Act of under-declaring a motor vehicle's OMV. Komoco did not appeal to the High Court against the revised Customs' OMVs of the 17,449 cars and did not defend the charge of under-valuation in court. It would appear that Komoco decided on these steps with a view to re-opening the alleged under-valuation of the 17,449 cars with the Registrar, who, it must have known, would simply use the revised Customs' OMVs of those cars to calculate and collect the additional ARF payable. Komoco did indeed re-open this issue subsequently when it objected to the Registrar's demand for payment of additional ARF in respect of the Cars. (This was also the first time that the Administrative Convention was being challenged since the implementation of the 1968 Policy Directive.) When the Registrar refused to budge, Komoco immediately applied to the court, via Originating Summons No 86 of 2005 ("OS 86/2005"), for leave to commence judicial review proceedings in respect of the Registrar's decision, contending that there had been a breach of natural justice in that it had not been given the opportunity to be heard *vis-à-vis* its objections to the valuation of the Cars.

11 It will be immediately appreciated that if Komoco's position on the law is correct, *ie*, if Komoco were indeed entitled (on the facts of this case) to re-open the issue of the OMVs of the Cars *vis-à-vis* the Registrar, it would undermine the Administrative Convention by forcing the Registrar to recompute the OMV of a motor vehicle (and, thus, its "value" for the purposes of Pt II of the First Schedule to the Rules) all over again each time an objection is raised to that vehicle's Customs' OMV. It would also mean that every motor vehicle dealer or importer who disagrees with Customs' determination of a motor vehicle's OMV can settle the matter with Customs first (by paying, under protest, excise duty and GST based on the Customs' OMV of the vehicle) and then try to prove to the Registrar, at the stage when the ARF is being assessed, why Customs was wrong in its computation of the OMV. This can only put the Registrar in a no-win position, as we will explain later (see [72] below), and simply shows that a rigid adherence to the rules of natural justice in the circumstances of this case can result in wasteful consumption of public resources and less efficient public administration.

12 Surprisingly, in the present case, the Registrar did not stand by the Administrative Convention and did not attempt to justify the legality of this convention by referring to r 7(3) of the Rules, which only required her *to make such inquiries, if any, as she thought fit*. Instead, the Registrar agreed to give Komoco "a fair, reasonable and just hearing"[note: 1] on whether or not any further ARF had to be paid in respect of the Cars. After the Registrar heard Komoco on the issue and affirmed her original decision that the "value[s]" of these vehicles for the purposes of Pt II of the First Schedule to the Rules was their revised Customs' OMVs and that, accordingly, additional ARF did have to be paid, Komoco applied afresh (via Originating Summons No 1599 of 2006 ("OS 1599/2006"), the action which gave rise to this appeal) for leave to seek judicial review of the Registrar's decision on the ground, *inter alia*, that she had slavishly adopted the revised Customs' OMVs of the Cars as their values in computing the ARF payable and had thereby fettered her own discretion under r 7(3) of the Rules to independently determine the values of these vehicles and/or had abrogated such discretion to Customs. We found, on the evidence, that this was *not* the case. Before explaining the reasons for our decision, we will first set out the chronology of the material events.

Chronology of events

13 In 2001, Customs conducted a post-clearance audit on Komoco. The audit initially focused on whether the import values of the 17,449 cars had been under-declared. Subsequently, the focus shifted to the components of the agency uplift, which is itself a component of a motor vehicle's OMV (see [8] above). Komoco engaged tax experts from M/s Ernst & Young ("EY") to provide technical advice and assistance in relation to the post-clearance audit. In August 2004, Customs informed Komoco that it considered that Komoco had made incorrect OMV declarations in respect of the 17,449 cars contrary to s 128 of the Act. Customs made an offer ("the Offer of Composition") to compound the offence on payment by Komoco of the Composition Sum.

14 Over the next few months, several exchanges of correspondence and various meetings took place between Komoco and Customs. The crux of these discussions revolved around the calculation of the uplift percentages applicable to the 17,449 cars. Customs had revised the uplift percentages upwards, resulting in an increase in the OMVs of these cars. Komoco strongly objected to such revision. It submitted reports by its auditors, M/s Deloitte & Touche ("DT"), and by EY (which we will refer to as "the DT Report" and "the EY Report" respectively) to Customs for the latter's consideration. On 22 September 2004, Komoco offered to meet the Offer of Composition on a without prejudice basis and on, *inter alia*, the following conditions:

(a) there would be no admission by Komoco of any wrongdoing;

(b) the acceptance by Komoco of the Offer of Composition was not to be construed as an admission to either Customs or any other party;

(c) there would be no revision in Customs' uplift percentages for the years 1999 to 2003; and

(d) there would be no attribution of the sums paid to any number of cars.

15 On 29 September 2004, Customs informed Komoco that it could not accede to the latter's request to settle the matter on these conditions. Eventually, after a further exchange of correspondence, Customs gave Komoco a final notice dated 29 October 2004 that legal action would be taken against the latter if the Offer of Composition was not accepted by 1 November 2004. To avoid prosecution by Customs, Komoco accepted the Offer of Composition on 1 November 2004, but with a unilaterally imposed condition that "[its] payment of the [C]omposition [S]um [would] not constitute any admission on [its] part as to the new values of uplift provided by [Customs]"[note: 2].

16 Subsequently, in accordance with its standard practice, Customs informed the Registrar of Komoco's under-declaration of the OMVs of the 17,449 cars. The Registrar then carried out her own checks and computations in respect of the 17,449 cars by retrieving the records of the said vehicles, and discovered that one of them had yet to be registered. As a result, the Registrar subsequently found that there had been a shortfall in ARF payments only in relation to the Cars.

17 On 8 December 2004, the Registrar wrote to Komoco in respect of the underpayment and requested payment of $7,394,967, of which $7,028,559 constituted the shortfall in ARF payments and $366,408 constituted fees (at $21 per vehicle) for amending the Registrar's records with respect to the Cars ("amendment fees"). Komoco replied on 10 December 2004 denying that it had under-declared the OMVs of the Cars and stating that it had "consistently objected"[note: 3] to Customs' revaluation of the uplift percentages of the Cars both "in principle and quantum"[note: 4]. Komoco asked for time to make representations, and expressed its hope of scheduling a meeting with the Registrar to present and discuss the same. The Registrar replied on 20 December 2004 maintaining her position on the ground that the additional ARF payable on the Cars had been computed based on their revised Customs' OMVs, and gave Komoco until 29 December 2004 to pay the $7,349,967 demanded. As the Registrar's letter of 20 December 2004 ("the 20 December 2004 Letter") was an important item of evidence which the Judge relied on in holding that the Registrar had abrogated to Customs her statutory power to determine the values of the Cars, we set out below the relevant terms of that letter:

> Nonetheless, … Customs has informed the [Registrar] of the revised OMVs of the said cars [*ie*, the Cars]. Since the ARF of a car is computed based on the OMVs [*sic*] as assessed by … Customs, we have accordingly recomputed the ARF of the said cars based on the revised OMVs provided by … Customs, and note that there is a shortfall of $7,028,559. Subject to further advice from … Customs, [the Registrar] will have to collect the $7,028,559 together with an amendment fee of $366,408, i.e. total amount due to [the Registrar] is $7,394,967.

18 On 24 January 2005, Komoco filed OS 86/2005 seeking leave to apply for judicial review of the Registrar's decision. Subsequently, the parties did not proceed with OS 86/2005 as they reached an agreement in October 2005 that the Registrar would give Komoco "a fair, reasonable and just hearing"[note: 5] to consider Komoco's representations on whether any additional ARF should be paid in respect of the Cars, and, if so, the quantum to be paid. The Registrar also undertook to "[consider] fairly any documentation submitted"[note: 6] by Komoco. (For convenience, this agreement is hereinafter referred to as "the Settlement Agreement".) Pursuant to the Settlement

Agreement, OS 86/2005 was adjourned *sine die* with each party having liberty to apply for the action to be restored for hearing.

19 On 10 March 2006, a meeting was arranged between Komoco and the Registrar ("the March 2006 Meeting"). At this meeting, Komoco and its consultants presented their evidence and arguments to the Registrar, who, in turn, raised a number of queries. The meeting lasted about two hours. The Registrar ended the meeting by assuring Komoco that she would study its representations in detail and would contact it *if further information or clarification were required*.

20 On 18 May 2006, the Registrar met with Komoco again. At this meeting ("the May 2006 Meeting"), the Registrar informed Komoco that she had considered the representations made by the latter at the March 2006 Meeting and had decided that the values of the Cars for the purposes of assessing the ARF payable would be the revised Customs' OMVs of those vehicles. She then handed to Komoco a letter of the same date informing the latter that the additional ARF payable was $7,028,559, with amendment fees of $366,408, making a total of $7,394,967. Komoco responded that it had not under-declared the OMVs of the Cars, and that "it was … the interpretation of its accounts by … Customs that had resulted in the latter imposing a further uplift upon an uplift"[note: 7]. The Registrar reiterated the 1968 Policy Directive as to how a motor vehicle's value should be determined for the purposes of assessing the ARF due (*viz*, based on the vehicle's OMV), but indicated that the amendment fees of $366,408 could be negotiated. The meeting ended on that note.

21 Komoco, being dissatisfied with the Registrar's decision, filed OS 1599/2006 on 17 August 2006 seeking leave to commence new judicial review proceedings. Leave of court was granted on 19 September 2006, and the substantive judicial review application (*ie*, Summons No 4519 of 2006 ("SUM 4519/2006")) was fixed for hearing on 9 November 2006. OS 86/2005 was also restored for hearing on the same date. However, OS 86/2005 was not eventually heard as the Judge decided that that dispute had been resolved by the Settlement Agreement and had accordingly lapsed (see the GD at [16]). This ruling was not challenged by either party, and, accordingly, the decision of the Registrar that was sought to be impugned via SUM 4519/2006 was that made on 18 May 2006 and not the prior decision of December 2004.

Komoco's arguments in the court below and the Judge's decision

22 Komoco's arguments on the facts and the law in the court below, as set out in the GD at [18], were as follows:

> Komoco … contended that the decision made by the Registrar in determining the OMVs of the [Cars] was illegal and/or irrational and/or unreasonable and/or procedurally improper and/or an improper fetter on the proper exercise of the said discretion. The grounds of this contention were as follows:
>
> (a) By accepting, without question, Customs' assessment of the value[s] of the Cars for use in computation of the ARF, the Registrar had:
>
> (i) failed to give effect to r 7(3) [of the Rules] which allowed her to exercise her discretion independently of any assessment of the value[s] of the Cars by Customs and/or had fettered her own discretion contrary to r 7(3); or
>
> (ii) improperly abrogated her powers to Customs; or
>
> (iii) failed to satisfy herself that the assessment of the value[s] of the Cars by

Customs was correct, *ie*, whether there was any basis for the allegation of under-declaration and the method which Customs adopted to compute the alleged under-declaration; or

(iv) failed or failed to adequately carry out her own assessment and/or exercise her discretion in respect of the objections raised by Komoco to Customs' allegations of under-declaration.

(b) By failing to allow Komoco a reasonable opportunity to be heard and/or to be heard adequately on the objections raised by Komoco with the Registrar's representatives, the Registrar [had] failed in her duty to act fairly and reasonably to Komoco in respect of the objections it had raised to Customs' allegations of under-declaration.

(c) By breaching the terms of the [S]ettlement [A]greement, the Registrar [had] failed in her duty to act fairly and reasonably with respect to Komoco's right to a fair, reasonable and just hearing to consider its position on whether there should be any imposition of additional ARF, and, if so, the quantum of the same.

(d) The Registrar [had] failed to take into account the objections raised and/or [the] representations made by Komoco to Customs' allegation of under-declaration in making her assessment and/or in exercising her discretion in determining whether there was any basis for the allegation of under-declaration and the method of computation by Customs of the alleged under-declaration. This was because:

(i) The Registrar [had] relied on Customs' valuation of the OMV.

(ii) The Registrar [had] not consider[ed] two reports submitted by Komoco [*ie*, the DT Report and the EY Report] or the presentation by [EY at the March 2006 Meeting] and there [was] no documentary evidence to show otherwise.

(iii) The Registrar [had] not [paid] regard to the items included in the uplift computations in her valuation of the OMV.

(iv) The Registrar [had] furnished no reason for the rejection of the representations made by Komoco.

23 The Judge found as a fact that the Registrar had slavishly used the revised Customs' OMVs of the Cars to compute the ARF payable and, for that reason, accepted Komoco's argument that the Registrar, in adhering rigidly to the Administrative Convention, had thereby fettered her discretion under r 7(3) of the Rules to determine the values of the Cars (see the GD at [52]). The Judge also held that the Registrar had abrogated that discretion to Customs as the 20 December 2004 Letter (see [17] above) indicated that the Registrar had vested "absolute trust" (see the GD at [66]) in Customs' valuation of motor vehicles' OMVs and there was no evidence of any change in the Registrar's attitude *vis-à-vis* Customs' OMV figures after 20 December 2004.

24 On the law, the Judge applied her previous decision in *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 2 SLR 584 ("*Lines*") and subjected the Administrative Convention to the requirement that it must be "not unreasonable in the special sense given to the term in *Associated Provincial Picture Houses[, Limited] v Wednesbury Corporation* [1948] 1 KB [223]" (see the quotation from *Lines* (at [78]) set out at [21] of the GD). The Judge held that the Administrative Convention was perfectly valid as it was reasonable and well-publicised, and had been

made known to the parties affected, including Komoco (see the GD at [29] and [31]). However, the Judge also emphasised that in applying the Administrative Convention, the Registrar must not fetter her discretion "in the future" (see the quotation from *Lines* (at [78]) reproduced at [21] of the GD) and must be "prepared to hear out individual cases or … [be] prepared to deal with *exceptional cases*" [emphasis added] (*Lines* at [78], quoted at [21] of the GD). This statement of the law was accepted by both parties.

25 Applying the law to the facts, the Judge found on the evidence that Komoco's complaint that it had not been given an adequate hearing at the March 2006 Meeting was not substantiated (see the GD at [40]). However, she also found that the Registrar *appeared* not to have given genuine consideration to Komoco's representations as she had gone into the March 2006 Meeting and the May 2006 Meeting (collectively referred to as "the March and May 2006 Meetings") with a frame of mind predisposed to maintaining her existing policy of adhering to the Administrative Convention (*id* at [51]). Accordingly, the Judge held that the Registrar had closed her mind to Komoco's representations and had thereby fettered her discretion under r 7(3) of the Rules, thus rendering her decision of 18 May 2006 invalid (*id* at [52]).

2 6 The considerations that led the Judge to make the above findings of fact were as follows:

(a) Although the Registrar had deposed that after the March 2006 Meeting (specifically, during the period from 16 March 2006 to 5 April 2006), she had had several internal discussions with her senior officers during which she had reviewed the points made and the materials submitted by Komoco and EY at that meeting, she had not provided any documentary evidence to support her claim or any details of the alleged discussions (see the GD at [42]–[44]). In the absence of such materials and in view of the Registrar's own evidence, the inference to be drawn was that the Registrar had been "strongly influenced at all times by the fact that her adoption of Customs' OMV valuations was due to various policy reasons" (*id* at [46]). This inference was (in the Judge's view) supported by the minutes of the March and May 2006 Meetings, which disclosed no reason for the Registrar's rejection of Komoco's arguments other than the Registrar's explanation that it was a "policy decision" (*ibid*, quoting from para 2.7 of the minutes of the March 2006 Meeting) to treat the OMV of a motor vehicle as its value for the purposes of computing the ARF payable (see the GD at [46]–[48]).

(b) In her affidavit dated 23 October 2006 ("the Registrar's Affidavit"), the Registrar had given four reasons for rejecting Komoco's representations, namely (*id* at [48]):

(i) the guidelines on how DOFs should be completed ("the Explanatory Guide") were clear as to which expenses ought to be declared in DOFs;

(ii) Customs had carried out its post-clearance audit of Komoco over a period of two years, and had spent a long time as well as substantial resources on the exercise;

(iii) Customs had extended the deadline for Komoco to accept the Offer of Composition four times so as to enable the latter to make representations, review Customs' revised OMV figures and meet with Customs on the issue; and

(iv) Komoco had accepted the Offer of Composition and had not appealed against Customs' revised OMVs as it could have done under the Act.

Of these reasons, the last three were (in the Judge's view) irrelevant as they did not deal with

whether Customs' revised valuation of the Cars' OMVs was correct. Only the first reason was relevant, but it was not stated in the minutes of the March and May 2006 Meetings and the Registrar did not assert that at the May 2006 Meeting, this particular reason had been disclosed to Komoco. As such, the Registrar's explanation that the Explanatory Guide was sufficiently clear "appear[ed] to be an afterthought" (*ibid*).

(c) The Registrar had not responded to Komoco's argument that she had completely misunderstood or ignored Komoco's representations that the revised uplift percentages imposed by Customs for the relevant periods were too high (see the GD at [49]).

2 7 Consequently, the Judge held that the Registrar had unlawfully fettered the discretion given to her under r 7(3) of the Rules by her "unwavering adherence to the policy of adopting Customs' valuation of the OMVs as [the] basis for assessing the ARF payable by Komoco" (*id* at [72]) on the Cars.

28 In relation to the question of whether the Registrar had abrogated the above discretion to Customs, the Judge, as we mentioned earlier (at [23] above), found that the 20 December 2004 Letter (see [17] above) showed that the Registrar had "invested absolute trust … in Customs, to the extent that even her review [as to whether Komoco did indeed have to pay the additional ARF on the Cars] was conditional on further advice from Customs" (see the GD at [66]). The Judge was of the view that this showed that the Registrar had abrogated to Customs her discretion under r 7(3) of the Rules as early as 20 December 2004; the Judge went on to hold that since there was no evidence of any change in the Registrar's attitude thereafter, an abrogation of power had similarly occurred when the Registrar made her decision of 18 May 2006 (*ibid*). Dissatisfied with the decision of the Judge, the Registrar filed the present appeal.

The legal status of the 1968 Policy Directive and the Administrative Convention

29 Before we consider the Registrar's grounds of appeal, it will be helpful to clarify the legal status of the 1968 Policy Directive and the Administrative Convention (which the Judge held was fair and reasonable, provided it was not rigidly adhered to in exceptional cases (see [24] above)). As we mentioned above (at [5]), the 1968 Policy Directive introduced a new basis for assessing a motor vehicle's ARF, *viz*, by computing the ARF of a vehicle based on its OMV. The legality, propriety and reasonableness of the 1968 Policy Directive, in terms of administrative law principles, have not been questioned and are not in doubt. More than that, however, the 1968 Policy Directive enabled the Registrar to exercise her power under r 7(3) of the Rules to determine the value of a vehicle for the purposes of the ARF Scheme by reference to the vehicle's *Customs'* OMV (see [6] above). Again, the legality, propriety and reasonableness of the Administrative Convention have hitherto not been questioned – at least not until Komoco's application for judicial review in SUM 4519/2006 was filed. In setting aside the Registrar's decision of 18 May 2006, the Judge effectively held that Komoco's case was an exceptional one which warranted a departure from the Administrative Convention. However, the issue of why Komoco's situation should be considered exceptional was never discussed or explored by the Judge or by counsel. The only exceptional fact in this case was Komoco's payment of the Composition Sum under protest, but we did not think this could constitute an exceptional factor as, if such payment were accepted as a basis for making an exception to the Administrative Convention, it would destroy this convention.

30 In this connection, we should place in context the decision of the Judge in *Lines* ([24] *supra*), where she held that an administrative agency, in exercising a statutory discretion conferred on it, could not take instructions from another statutory agency. In that case, a challenge was made to the legality of guidelines issued by the Port of Singapore Authority ("PSA") to regulate and monitor

casino activities on board cruise vessels. The guidelines included a provision ("condition (iv)") in the following terms (*Lines* at [98]):

> The [PSA] will refuse allocation of berth to a vessel if the Gambling Suppression Branch, CID and [the] Singapore Tourist Promotion Board so … determine that such action is necessary.

The Judge accepted (*id* at [99]) that condition (iv) was invalid as it appeared to direct PSA to take orders from either the Gambling Suppression Branch of the Singapore Police Force's Criminal Investigation Department or the Singapore Tourist Promotion Board, and thus fettered the proper exercise of PSA's discretion to, *inter alia*, control the use of berths at the Singapore Cruise Centre. However, the Judge found, on the facts, that PSA had made its own decision to deny a particular vessel a berth at the Singapore Cruise Centre and had not simply relied on condition (iv) as a basis for denying that vessel berthing space. In the circumstances, notwithstanding the invalidity of condition (iv), PSA's decision *vis-à-vis* the vessel was valid (*id* at [100] and [118]).

31 The general principle that an administrative agency must not fetter its own power or abrogate it to another administrative agency is unexceptional as a violation of this principle would amount to a failure by the former to exercise the power vested in it. However, it can be seen immediately that the factual context that gave rise to the legal issues in *Lines* was quite different from that in the present case. Here, in deciding to adopt the Customs' OMV of a motor vehicle as its "value" for the purposes of the ARF Scheme, the Registrar was not taking instructions from Customs. Instead, the Registrar made this decision in the exercise of her power under r 7(3) of the Rules and for practical reasons, including the following:

> (a) Customs had more data, information and resources to determine the OMVs of motor vehicles than the Registrar, and thus, Customs' determination of motor vehicles' OMVs would be more reliable than the Registrar's determination of the same; and
>
> (b) in any case, an aggrieved importer had the right to object to and be heard on Customs' determination of a vehicle's OMV and also to appeal to the court against such determination (see ss 22B(1) and 22B(5) of the Act).

Furthermore, in *Lines*, in determining whether a vessel should be given berthing space, PSA had to exercise its judgment as to how to weigh up the various relevant factors to be considered. It was in this regard that PSA had to exercise its discretion itself, and not merely take instructions from other statutory agencies (*viz*, the Criminal Investigation Department and the Singapore Tourist Promotion Board). In contrast, in the present context, once the Registrar decided, pursuant to r 7(3) of the Rules, to adopt the Customs' OMV of a motor vehicle as its "value" for the purposes of the ARF Scheme, no further exercise of judgment was required of the Registrar. The calculation of the ARF payable thereafter simply entailed applying the percentage prescribed in Pt II of the First Schedule to the Rules to the Customs' OMV of the vehicle concerned. This arithmetical exercise did not – and could not possibly – involve the taking of instructions by the Registrar from another statutory agency (*viz*, Customs). For this reason, the legal principle laid down in *Lines*, although correct in law, was inapplicable to the factual context of this appeal.

The issues on appeal

32 In our view, the critical issues in this appeal were:

> (a) whether, in view of the Administrative Convention, the Registrar had to give Komoco a hearing in relation to the valuation of the Cars ("issue (a)"); and

(b) if Komoco was entitled to such a hearing, whether this right had been satisfied by the meetings which took place and the correspondence exchanged between the Registrar and Komoco ("issue (b)").

Since the Registrar conceded that Komoco had a right to be heard on the valuation of the Cars, issue (a) did not arise for this court's determination. We were concerned only with issue (b), in particular, the Judge's finding that the Registrar had not given genuine consideration to Komoco's representations (which amounted to a finding that the hearing afforded to Komoco had not been a fair one), and that the Registrar had fettered her discretion under r 7(3) of the Rules or had abrogated such discretion to Customs by adhering strictly to the Administrative Convention. We now consider the parties' arguments on issue (b).

The Registrar's arguments on appeal

33 The arguments of the Registrar on issue (b) may be summarised as follows:

(a) Although the Registrar had agreed, under the Settlement Agreement, to give Komoco a "fair, reasonable and just hearing"[note: 8], that did not entitle Komoco to a *de novo* or an independent determination of the Cars' values for the purposes of computing the ARF payable. Komoco's rights under the Settlement Agreement were no different from its right to a fair hearing under common law.

(b) On the evidence, the Registrar had given Komoco a just, fair and reasonable hearing in that she had examined and discussed Komoco's representations with her officers after the March 2006 Meeting and had found nothing new which had not been considered by Customs. Further, the Registrar had stated on affidavit that she had given consideration to Komoco's representations, and, in the absence of any evidence to the contrary, her sworn evidence ought to prevail (citing *Regina v Amber Valley District Council, ex parte Jackson* [1985] 1 WLR 298 ("*Amber Valley*") and *Re Murphy* [2004] NIQB 85).

(c) In considering Komoco's representations, the Registrar was entitled to have regard to the Administrative Convention and to even be predisposed to adhere to that convention so long as: (i) her decision to do so was not biased, and (ii) she was willing to consider making an exception to the Administrative Convention where the circumstances warranted it. Such an approach did not constitute a fetter on the Registrar's discretion (citing *The King v Port of London Authority, ex parte Kynoch, Limited* [1919] 1 KB 176 and *Creednz Inc v Governor-General* [1981] 1 NZLR 172).

(d) The Judge was also wrong in holding that the 20 December 2004 Letter, in which the Registrar stated that she would have to collect the additional ARF due in respect of the Cars unless there was "further advice from … Customs", reflected an abrogation of her discretion to Customs, and that the Registrar had likewise abrogated such discretion to Customs when she made her decision of 18 May 2006 as she had not changed her attitude after 20 December 2004. This statement in the 20 December 2004 Letter was not objectionable as it was merely a reiteration of the Administrative Convention, and, in any case, seeking advice was not an unlawful abrogation of discretion (citing *Lines* ([24] *supra*) and *H Lavender and Son Ltd v Minister of Housing and Local Government* [1970] 1 WLR 1231). Moreover, by insisting that there must be a change of attitude by the Registrar, the Judge had effectively held that the Registrar must depart from the Administrative Convention.

Komoco's arguments on appeal

34 Counsel for Komoco, on the other hand, contended that the Judge's finding that the Registrar had fettered the discretion conferred on her by r 7(3) of the Rules and had not given genuine consideration to Komoco's representations was correct for the following reasons:

(a) The circumstances of Komoco's case required the Registrar to reconsider Komoco's representations and independently determine the values of the Cars instead of merely applying the Administrative Convention and taking the revised Customs' OMVs of the Cars to be their values in assessing the ARF payable.

(b) The Registrar had given no regard to the following factors which (so Komoco contended) justified a departure from the Administrative Convention:

(i) the consistent objections by Komoco to Customs' revised OMV figures and its payment of the Composition Sum under protest;

(ii) the DT Report and the EY Report, which showed that the uplift percentages originally applied by Customs *vis-à-vis* the Cars were already excessive and that no further increase in these percentages was necessary; and

(iii) a detailed analysis of the computation of the agency uplift component of the Cars' OMVs which was produced before the Registrar but not before Customs, and which indicated that there was new and additional information that the Registrar ought to have considered – but failed to.

As such, the Judge correctly found that the evidence as a whole, including in particular the minutes of the March and May 2006 Meetings, demonstrated that the Registrar had not given genuine consideration to the contentions raised by Komoco.

(c) The Registrar's conduct clearly showed that she had no intention of considering Komoco's case afresh as:

(i) despite Komoco offering the Registrar access to all its accounting documents, the latter did not bother to examine those records;

(ii) the Registrar did not seek the assistance of external auditors in determining the values of the Cars even though the computation of motor vehicles' OMVs (and, thus, their values for the purposes of Pt II of the First Schedule to the Rules) was a complex task and required significant accounting input, as was clearly shown by the fact that Komoco had itself engaged two separate auditors (namely, DT and EY) to assist it in ascertaining the accuracy of Customs' revised agency uplift figures; and

(iii) the Registrar did not give any other reasons apart from her adherence to the Administrative Convention in arriving at her decision of 18 May 2006 to impose the additional ARF on the Cars.

Komoco also argued that the Judge rightly held that the Registrar had abrogated to Customs her discretionary power under r 7(3) of the Rules (see further [56] below).

Our decision

Whether the Registrar gave genuine consideration to Komoco's representations

35 We found that there was ample evidence to show that the Registrar had given genuine consideration to the representations of Komoco. As we noted earlier (at [26] above; see also [48] of the GD), the Registrar's Affidavit set out the following reasons for rejecting Komoco's representations:

(a) the Explanatory Guide was clear as to which expenses ought to be declared in DOFs;

(b) Customs had carried out its post-clearance audit on Komoco over a two-year period, and had thus spent a long time and substantial resources on this exercise;

(c) Customs had extended the deadline for Komoco to accept the Offer of Composition four times so as to enable the latter to make further representations, review Customs' OMV computations and meet with Customs on the issue; and

(d) Komoco had accepted the Offer of Composition and had not appealed against the revised Customs' OMVs of the Cars as it could have done under the Act.

36 As we also mentioned earlier (at [26] above), the Judge took the view that the reasons listed in (b)–(d) of the above paragraph did not deal with the key issue, which was whether the revised Customs' OMVs of the Cars were correct. She therefore held that these three reasons were "irrelevant" (see the GD at [48]) and did not "[meet] Komoco's contentions directly" (*ibid*). With respect, we disagreed with this conclusion. In our view, the Registrar's findings that were implicit in the reasons set out in the preceding paragraph were as follows:

(a) since Customs had taken two years to revise the OMVs of the Cars, the Registrar was entitled to take the view that the revised OMV figures were *prima facie* correct, unless shown to be incorrect;

(b) Komoco could have appealed against the revised Customs' OMVs of the Cars, but chose not to do so – this supported the inference that Customs' valuation was correct;

(c) Komoco had accepted the Offer of Composition (albeit under protest) after making representations to Customs – again, this showed that Customs' revised OMV figures were *prima facie* correct; and

(d) since the Explanatory Guide was clear as to which expenses ought to be declared in DOFs, there was no merit in Komoco's contention that the Explanatory Guide was unclear.

37 We should add that the Registrar had explained that in determining whether there was anything wrong with the revised Customs' OMVs of the Cars, she had considered whether Komoco's new materials and/or arguments were sufficient to justify a departure from the Administrative Convention, which had been in place for about 40 years. She had deposed that she had undoubtedly been concerned with whether Customs' revised OMV figures were correct and, at the same time, had been equally concerned to find out whether there were sufficient reasons for her to decide not to follow the Administrative Convention. Unfortunately, the Judge did not believe the Registrar because the Judge was of the view that everything which the latter had said in the Registrar's Affidavit on how she had concluded that the revised Customs' OMVs of the Cars were correct converged on one factor only, *ie*, her policy of adhering to the Administrative Convention, which in turn explained why she had agreed with Customs' revised OMV figures for the Cars.

38 Having considered the Registrar's Affidavit, we were of the view that the Judge was wrong not to believe that the Registrar had genuinely considered Komoco's representations for two

reasons. First, the Registrar had given sworn evidence as to the matters which she had considered in deciding to reject Komoco's representations; if Komoco did not accept her sworn evidence, it should have applied to cross-examine her. In the absence of cross-examination, the only justification for not believing a sworn statement, especially one from a state official performing an administrative function, is if documentary or other oral evidence is adduced to disprove it. As there was no such proof to the contrary in the present case, there was no basis in law to reject the Registrar's evidence on oath as to the actions which she took after the March 2006 Meeting and the factors which she considered in arriving at her decision of 18 May 2006 (see *Amber Valley* ([33] *supra*) and *Re Murphy* (*ibid*)). Second, in view of the reasons given by the Registrar for rejecting Komoco's representations and the materials which she considered in the course of coming to this conclusion, we found that there was simply no merit in the contention by Komoco that the Registrar had not given genuine consideration to its representations. This can be seen from our analysis as set out in the following paragraphs.

3 9 The main thrust of Komoco's representations before the Registrar was that the revised Customs' OMVs of the Cars were incorrect. In essence, Komoco objected to the ambiguous nature of the Explanatory Guide, which, it contended, was the root cause of the inflated uplift percentages by Customs. The Registrar's reasons for rejecting these complaints can be categorised into two main areas: first, the clarity of the Explanatory Guide; and, second, Komoco's conduct before Customs.

The clarity of the Explanatory Guide

40 As we stated earlier (see [26] and [35] above), one of the reasons which the Registrar gave for rejecting Komoco's representations was that the Explanatory Guide clearly stated which expenses should be included in DOFs. The Judge dismissed this reason as "an afterthought" (see the GD at [48]) on the ground that it did not appear to have been disclosed to Komoco at either the March 2006 Meeting or the May 2006 Meeting. However, it seemed to us that the clarity of the Explanatory Guide was a key issue which was specifically discussed at the March 2006 Meeting. For instance, in the Registrar's Affidavit, the Registrar stated that at the March 2006 Meeting, EY (the tax experts engaged by Komoco) had referred to the Explanatory Guide and had emphasised that:[note: 9]

> … Customs' definition of the four categories of expenses required to be included in the Declaration of Facts ('DOF') submission was not clear and examples were cited and discussed as evidence of ambiguity of definition …

The Registrar had posed a few questions to Komoco and EY during the latter's presentation. Specifically, Komoco had been requested to elaborate further on some examples of expenses which Customs had viewed as having been unreasonably excluded from the DOFs submitted by Komoco, which view Komoco disagreed with. Similarly, the representative of Komoco who attended the March 2006 Meeting, one Mr Teo Hock Seng, who was the managing director of Komoco, averred as follows in his affidavit dated 1 November 2006 (in response to the Registrar's assertion that Komoco had wrongly stated that the Registrar had acknowledged the alleged ambiguity of the Explanatory Guide at that meeting):[note: 10]

> [Komoco] only sought to assert that [the Registrar] understood [EY's] representatives' explanation on the various ambiguities in relation to the determination of expenditure and not that [the Registrar] had accepted the same.

There was therefore no doubt in our minds that even though the Registrar's view that the Explanatory Guide was sufficiently clear might not have been put across specifically to Komoco at either the March 2006 Meeting or the May 2006 Meeting, the *issue* of the ambiguity of these guidelines *had*

been fully addressed by both parties during the March 2006 Meeting.

4 1 Further, the Registrar gave details of several internal discussions which she had held with her senior officers after the March 2006 Meeting. She stated that after she and her staff had reviewed a copy of the DOF issued by Customs as well as the Explanatory Guide, she had reached the following conclusions:[note: 11]

> It is clear to me that [Komoco's] allegations that the guidelines in the … Explanatory Guide are unclear are unfounded. For example, in their presentation at the [March 2006 Meeting], one of the disputed components for [Komoco's] advertising and promotion expenses [was] the sponsorship of sports or charity events. On a plain reading of paragraph (b) of the … Explanatory Guide it is clear that '*all expenditure incurred directly or indirectly in the promotion/advertising of the dutiable motor vehicles/motorcycles, excluding commercial vehicles, [has] to be included. Expenditure is considered promotional in nature if the name, logo or trademark of the [motor vehicle]/motorcycle is used.*' … It is clear to me that despite the clear wording in the … Explanatory Guide, [Komoco] did not accurately declare its expenditure in relation to such events. [emphasis in original]

4 2 We found it significant that Komoco did not challenge this portion of the Registrar's Affidavit. To the extent that the Judge found that "there was no indication in [the Registrar's Affidavit] that during the internal meetings time had been spent considering the clarity and relevance of the statements in the [E]xplanatory [G]uide" (see the GD at [48]) and then went on to conclude that this reason for rejecting Komoco's representations (*viz*, the clarity of the Explanatory Guide) therefore "appear[ed] to be an afterthought" (*ibid*), we were of the view that the Judge was, with respect, mistaken. In the circumstances, we did not consider this reason to be an afterthought on the Registrar's part; in fact, we found quite the opposite, since the Registrar had clearly given evidence to the contrary which was unchallenged by Komoco.

Komoco's conduct before Customs

43 We earlier noted (at [26] and [35] above) that the Registrar had additionally found the following facts to be material considerations in her decision:

(a) Customs had spent a long time and substantial resources on the post-clearance audit of Komoco's records;

(b) Customs had not summarily dismissed Komoco's representations, but had instead extended the time frame for Komoco to accept the Offer of Composition four times so as to enable the latter to make *further* representations, review Customs' OMV computations and engage in meetings with Customs – this was done with the aim of giving Komoco the full opportunity to persuade Customs to reconsider its decision to revise the Cars' OMVs; and

(c) after all the opportunities given to Komoco, when Komoco failed to persuade Customs to change its decision, Komoco chose not to appeal against Customs' decision to the High Court as it could have done under the Act.

In our view, these factors were relevant to the Registrar's assessment as to whether or not she should depart from the revised Customs' OMVs of the Cars in computing the ARF payable. Komoco had already canvassed its case fully before Customs, and its failure to bring its case to a court of law must mean either that it was not confident of success or that there was nothing new that Komoco had not already presented to Customs. The reasons given by the Registrar therefore related to why

she was not prepared to doubt Customs' revised OMV assessment. There was nothing illogical in the Registrar's reasoning that since, after extensive discussion and investigation, Customs had nevertheless maintained its position, Komoco had to make out a very strong and convincing case (for example, by adducing new information that was not before Customs) before a departure from the Administrative Convention could be justified. Indeed, given the fact that Customs' established mechanism for conducting investigations into the accuracy of information provided in DOFs was one reason why the Administrative Convention was reasonable and valid (see [31] above), there was nothing wrong with the Registrar's decision not to disregard that convention.

44 In this respect, we should stress the significance of both Komoco's decision not to challenge Customs' revised OMV figures by appealing to the High Court and Komoco's acceptance of the Offer of Composition. The evidence showed that Komoco had tried its utmost to persuade Customs to accept its (Komoco's) conditions for accepting the Offer of Composition. In its letter dated 22 September 2004, Komoco stated that it was prepared to make full payment of the Composition Sum, but on, *inter alia*, the following terms (see also [14] above):

> a. There [would be] no admission of any wrongdoing;
>
> b. The acceptance of the … Offer of Composition [was] not to be construed as any admission either to [Customs] or [to] any other party whatsoever;
>
> c . *There [would be] no revision in [Customs'] Uplift percentages for the years 1999 to 2003*;
>
> d. There [would be] no attribution of the sums paid to any number of cars …
>
> [emphasis added]

Customs replied on 29 September 2004 rejecting settlement on such conditions. On 11 October 2004, Komoco made another attempt to persuade Customs to accept its terms and proposed to pay the Composition Sum in full, "*save that the uplift component … of that sum be reduced*, *with a corresponding increase in the composition fine*" [emphasis added]. This was, clearly, an attempt by Komoco to reduce the revised OMVs of the Cars, and, thus, its liability for additional ARF payments which it knew would be forthcoming by reason of Customs' practice of informing the Registrar whenever the OMV of a motor vehicle was revised, coupled with the consequential action which the Registrar would take thereafter (see [9] above).

45 Counsel for Komoco pointed out, correctly, that the acceptance by an alleged offender of an offer of composition did not amount to an admission of guilt (see *Re Lim Chor Pee* [1990] SLR 809). Certainly, neither the Registrar nor the court could hold that Komoco had, either in law or in fact, admitted that the revised Customs' OMVs of the Cars were correct. Still, Komoco's acceptance of the Offer of Composition could not be ignored as if it had no evidentiary value at all to the Registrar in her determination of the Cars' values for the purposes of recomputing the ARF payable following Customs' revision of the Cars' OMVs. In our view, the Registrar was entitled to treat Komoco's acceptance of the Offer of Composition as *prima facie* evidence that Customs' revised OMV figures were correct, unless Komoco produced evidence to show why these figures were wrong. This approach would preserve the integrity of the Administrative Convention. Just as the importer of a motor vehicle is entitled to rely on the Customs' OMV of the vehicle as the basis upon which the Registrar will compute the ARF payable on that vehicle, the same must also be true *vis-à-vis* the Registrar – the Registrar is likewise entitled to regard the Customs' OMV of a vehicle as its "value" for the purposes of Pt II of the First Schedule to the Rules. In our view, it was reasonable for the

Registrar to assess the cogency and weight of Komoco's representations within this decisional framework.

46 In summary, we were unable to agree with the Judge's finding that the reasons given in the Registrar's Affidavit for rejecting Komoco's representations were either irrelevant or afterthoughts. Crucially, the issue before the Registrar was not only whether the revised Customs' OMVs of the Cars were, from her perspective, correct; the Registrar was also concerned with whether she should depart from the Administrative Convention, having regard to the conduct of Komoco before Customs and the evidence that had been presented to her as the basis for impugning the revised Customs' OMVs of the Cars. It was in this context that the reasons given by the Registrar for rejecting Komoco's representations were relevant. Additionally, the Registrar had applied her mind during the March 2006 Meeting (at the very least) and in her subsequent internal meetings with her staff to Komoco's complaint about the ambiguity of the Explanatory Guide.

The EY Report and the DT Report

47 We must also draw attention to the EY Report and the DT Report since Komoco complained that the main thrust of that part of its representations which was based on these reports had been completely misunderstood or ignored by the Registrar. Komoco said that these reports conclusively showed that the revised uplift percentages applied by Customs were unreasonably high. It argued that if the Registrar had given proper consideration to the affidavit of Adrian Ball (a partner of EY) dated 5 April 2005 which exhibited the EY Report, it would have been clear that Customs' uplift percentages were unreasonable. In relation to this argument, the Judge found (at [49] of the GD) that:

> The Registrar did not respond to [Komoco's] argument. Whilst she claimed that she had considered Adrian Ball's affidavit, she made no comment on its contents as might have been expected.

In essence, the Judge drew an adverse inference against the Registrar – namely, that she had not given proper consideration to the EY Report – because the latter had failed to comment on the contents of that report.

48 The EY Report had been prepared in order to lend support to Komoco's contention that the Explanatory Guide was ambiguous and that Komoco had not under-declared the OMVs of the Cars. We were of the view that there was nothing in this report which would justify the Registrar departing from the Administrative Convention and disregarding Customs' revised OMV valuation of the Cars for the following reasons.

49 Firstly, the EY Report was inherently speculative. At paras 1.3–1.6 of the EY Report under the heading "Introduction", the authors made several observations which qualified their analysis to a large extent:

> 1.3 The available documents and records for review were obtained from the accounting records and employees of Komoco. We are informed that the same information and records were available for scrutiny by Komoco's external auditors as well as … Customs. *We did not obtain written representations confirming the accuracy of such data from Komoco.*
>
> 1.4 *It is stressed that the analysis is limited to our understanding of Komoco's operations as contained in this report, the documents reviewed as indicated in Appendix 1 and from discussions with employees of Komoco*. …

1.5 It should be noted that EY was involved in discussions with … Customs in 2004 over the computation of the Komoco 'uplift' and the subsequent composition of assessed duties. The recalculations [of, *inter alia*, the agency uplift figures for the Cars] in this Report are, to an extent, influenced by knowledge and information gained during these discussions with … Customs.

1 . 6 *The observation is also made that the methodology of … Customs in arriving at their 'uplift' is not available to us and we do not comment [on] or draw [any] conclusion as to the relationship, or lack thereof, between the recalculation [by EY as set out in the EY Report] and the uplift applied by … Customs.*

[emphasis added]

It was quite clear that the EY Report could not be treated as conclusive one way or the other *vis-à-vis* the accuracy of the revised Customs' OMVs of the Cars. This was because, as indicated in paras 1.3–1.6 of this report, the information with which EY had prepared the report was incomplete. Another indication of missing data can be seen in the footnote to Appendix 5a of the EY Report, which set out the "[c]omputation of Included Expenses to Total Import Purchases" for the period from 1 December 1997 to 31 March 1999. This footnote read as follows: "Certain data for the period from 1 December 1997 to 31 December is estimated due to *missing records*" [emphasis added].

50 Secondly, the EY Report did not purport to comment or draw any conclusions on the relationship between the recalculations by EY (of, *inter alia*, the Cars' uplift percentages) and the calculations carried out by Customs in reviewing the Cars' OMVs. This was because the EY Report was based on EY's own assumptions as to how the Explanatory Guide should be interpreted. Moreover, it appeared to us that much of EY's analysis regarding the various items which could possibly be included in or excluded from DOFs was carried out based on information which EY had obtained from Komoco itself, a point which EY acknowledged in para 1.3 of the EY Report (reproduced at [49] above). In the premises, the mere fact that EY came to a view which was different from that of Customs did not entail that Customs was therefore manifestly wrong. At a broader level, in assessing whether there were exceptional circumstances that required her to depart from the Administrative Convention and carry out an independent calculation of the values of the Cars for the purposes of determining the ARF payable, the Registrar was entitled to take into consideration the fact that EY had possessed imperfect information when it prepared the EY Report. In such circumstances, it was perfectly understandable and reasonable for the Registrar not to have placed much stock on the EY Report despite Komoco's contentions to the contrary effect. We were therefore unable to agree with the adverse inference which the Judge drew against the Registrar on the ground that the latter had failed to make any comment on the contents of the EY Report when one might have expected her to do so.

51 In relation to the DT Report, it was clear from a perusal of that report that, in preparing the report, DT had merely obtained profit and loss statements prepared by Komoco and then checked the arithmetical computations therein. The DT Report was therefore simply the end result of the *arithmetical exercise* of adding up the numbers provided by Komoco. It certainly did not constitute an independent valuation, audit or review, contrary to Komoco's use of the term "audit"[note: 12] in relation to the DT Report in its submissions before this court. Crucially, in the penultimate paragraph of the DT Report, the authors stated as follows:

Because *the above procedures* [*ie*, the procedures carried out by DT in preparing the DT Report] *do not constitute either an audit or a review* made in accordance with [the] Singapore Standards on Auditing, we do not express any assurance on the schedule of [p]rofit and loss statement[s] [i]n Appendix 1. [emphasis added]

52 In summary, there was therefore nothing in either the EY Report or the DT Report which justified a departure from the Administrative Convention; nor was it necessary for the Registrar to comment on the contents of these reports if she deemed it unnecessary to do so. In contrast, there was clear and unchallenged evidence that the Registrar had genuinely considered Komoco's representations.

53 For the reasons set out at [35]–[52] above, we were of the view that the Judge was wrong to find that the Registrar had not given genuine consideration to Komoco's representations simply because she was not prepared to depart from the Administrative Convention. In our view, in deciding to adhere to that convention *vis-à-vis* Komoco, the Registrar had not fettered the discretion conferred on her under r 7(3) of the Rules as Komoco had not presented to her any evidence that was new or that had not already been provided to and rejected by Customs.

Whether the Registrar abrogated her discretion to Customs

54 The Judge found (at [64] of the GD) that as at 8 December 2004 (the date on which the Registrar first sought payment of the additional ARF due on the Cars (see [17] above)), the Registrar had merely accepted the revised Customs' OMVs of the Cars without question, but this nevertheless did not amount to an abrogation of the Registrar's discretion as she was "simply following her usual course of implementing the policy [*ie*, the Administrative Convention] that had been adopted since 1968" (see the GD at [64]). The Judge, however, was of the view that when the Registrar wrote to Komoco on 20 December 2004 informing it (via the 20 December 2004 Letter) that, "*subject to further advice from Customs*" [emphasis added] (*id* at [65]), she would have to collect the additional sum payable (which amounted to $7,394,967 in total (see [17] above)), she had abrogated to Customs her discretionary power under r 7(3) of the Rules to determine the values of the Cars because that letter indicated that (see the GD at [66]):

> [T]he Registrar invested absolute trust in the arrangement [relating to the assessment and review of motor vehicles' OMVs] in Customs, to the extent that even her review [of the ARF payable] was conditional on further advice from Customs. Although it was argued that the Registrar was prepared to disagree with Customs' valuations if there were exceptional or compelling reasons to do so, in this case, when the occasion arose, the Registrar was not even prepared to find out whether such exceptional or compelling reasons existed by giving time to Komoco to make representations but instead indicated that she was only prepared to change her stance upon "further advice from the Singapore Customs". As at 20 December 2004, therefore, and in relation to Komoco's case, the Registrar had abrogated her decision. *There was no evidence of any change in the Registrar's attitude thereafter*. [emphasis added]

The Registrar's arguments refuting the Judge's finding of abrogation of discretion

55 We earlier alluded briefly (at [33] above) to the Registrar's arguments on why the Judge was wrong to find that she had abrogated to Customs the discretion conferred on her by r 7(3) of the Rules. To elaborate, the Registrar's submissions were as follows:

(a) The 20 December 2004 Letter predated the Settlement Agreement (which clearly expressed the Registrar's commitment to reconsider the question of whether any additional ARF was payable on the Cars, and, if so, the quantum to be paid).

(b) Seeking advice did not constitute an abrogation of discretion.

(c) The 20 December 2004 Letter reiterated the Administrative Convention. To that extent,

the Judge's finding that "[w]hilst the Registrar might countercheck with Customs if there was some inconsistency or irregularity in the revised OMVs, this was not an exercise of discretion because … the Registrar would simply accept Customs' confirmation of the correctness of the figures" (see the GD at [60]) contradicted her earlier holding (*id* at [26]) that the Registrar's policy of tapping on Customs' expertise to determine the value of a motor vehicle (*ie*, the Registrar's reliance on the Administrative Convention) was not an abrogation of discretion.

(d) By relying on the 20 December 2004 Letter to find that the Registrar had abrogated her discretion to Customs, the Judge effectively held that the Registrar ought to have departed from the Administrative Convention and, thus, from the revised Customs' OMVs of the Cars once Komoco raised objections to those values. It was beyond the power of the Judge to make this finding, which implied that Komoco's case was an exceptional one, as it intruded into the merits of the Registrar's decision (which the Judge had no power to review).

Komoco's arguments in support of the Judge's finding of abrogation of discretion

56 Counsel for Komoco, on the other hand, contended that the Judge's finding that the Registrar had abrogated to Customs her discretionary power under r 7(3) of the Rules was correct for the following reasons:

(a) The Registrar had not exercised any discretion in computing the additional ARF allegedly due on the Cars as she had relied on the revised Customs' OMVs of these vehicles and had then merely engaged in the purely mathematical exercise of taking a fixed percentage (as stipulated in Pt II of the First Schedule to the Rules) of the revised Customs' OMV of each of the Cars as the ARF which should have been paid on the vehicle concerned.

(b) The Registrar's mechanism for counterchecking Customs' OMV figures did not in any way indicate that an objective analysis of these figures was carried out.

(c) The correspondence which predated the Settlement Agreement was indicative of the Registrar's frame of mind. The Registrar's rigid adherence to the Administrative Convention was evident from this correspondence, and there was no evidence to suggest that the Registrar changed her stance at any time thereafter.

Our analysis of the parties' arguments on abrogation of discretion

57 In our view, on the basis of our finding (at [53] above) that the Registrar had given genuine consideration to Komoco's representations, the ground of appeal based on the Judge's finding of abrogation of discretion must succeed, whatever the words "*[s]ubject to further advice from … Customs*" [emphasis added] in the 20 December 2004 Letter might have meant. This was because since the Registrar had genuinely considered Komoco's representations, she could not possibly have rejected these representations merely out of deference to Customs. Instead, exercising her discretion under r 7(3) of the Rules (which was the *antithesis* of abrogating such discretion to Customs), she found that there was no merit in Komoco's representations in view of the materials from both Komoco and Customs which were placed before her. In this connection, we did not see any substantial difference between fettering an administrative discretion and abrogating such discretion on the facts of this case.

58 Although (as stated in the preceding paragraph) the interpretation of the words "*[s]ubject to further advice from … Customs*" [emphasis added] in the 20 December 2004 Letter was immaterial to our conclusion on the issue of abrogation of discretion, in the interest of completeness,

we will at this juncture address the parties' arguments on the meaning of these words. In our view, the Registrar's argument that she intended these words to mean that she was, at that point in time, seeking further advice from Customs had little merit since she did not explain what kind of advice she sought to obtain from Customs. The words "subject to" contained at least the suggestion that the Registrar could only decide whether to reconsider the additional ARF imposed on the Cars *if* she received Customs' further advice. A reasonable interpretation of these words (which was also the interpretation canvassed by Komoco), having regard to the factual context in which they were written, would be that the Registrar was waiting for further advice from Customs as to whether there was any basis on which she could depart from Customs' calculation of the revised OMVs of the Cars and thus alter her decision to impose the additional ARF on these vehicles. On balance, it was our view that Komoco's understanding of these words was a better reflection of the reality than the Registrar's explanation or argument.

59 Nevertheless, in our view, the Registrar did not abrogate her discretion under r 7(3) of the Rules in adopting the above stance (*ie*, that she could not alter her decision to impose the additional ARF on the Cars unless Customs advised her that she could do so) for the following reasons. The Registrar had followed the Administrative Convention in imposing the additional ARF on the Cars based on their revised Customs' OMVs. If any decision of the Registrar had amounted to an abrogation of power, her decision to adhere to the Administrative Convention and thereby adopt Customs' revised OMV figures as the "value[s]" of motor vehicles for the purposes of Pt II of the First Schedule to the Rules would have been the one. If this conclusion is correct, two consequences ensue as a corollary. First, it would mean – incongruously – that the Registrar had abrogated to Customs her discretion for some 40 years (since the 1968 Policy Directive was implemented) without challenge from the motor vehicle industry. Second, the Registrar's conduct in seeking advice from Customs on the OMVs of the Cars in the present case (which was really what Komoco said the Registrar had done) would then make no difference to the impropriety (*ie*, abrogation to Customs of the discretion under r 7(3) of the Rules) that has persisted to this day, in that the act of seeking such advice would not give rise to an impropriety that had not hitherto existed. On the other hand, if the above conclusion is not correct, then the Registrar's act of seeking advice from Customs (as evinced by the contents of the 20 December 2004 Letter) could not constitute a new instance of abrogation of the Registrar's discretion to Customs.

60 Of the two possible conclusions set out in [59] above, we were of the view that the latter conclusion – *viz*, that the adherence by the Registrar to the Administrative Convention did not amount to an abrogation to Customs of the discretion conferred on her by r 7(3) of the Rules – was the more defensible one (in terms of legal plausibility), given the terminology used in r 7(3) of the Rules. It bears recalling that r 7(3) of the Rules states that:

> [T]he value of a motor vehicle shall be determined by the Registrar after making such enquiries, *if any*, as he thinks fit and the decision of the Registrar shall be final. [emphasis added]

The power of the Registrar under r 7(3) of the Rules is so wide that she can: (a) determine that the OMV of a motor vehicle is its "value" for the purposes of Pt II of the First Schedule to the Rules; and (b) determine, further, that the appropriate OMV in this regard is the *Customs'* OMV of the vehicle concerned (both of which practices have been adopted by the Registrar since the 1968 Policy Directive was introduced). Furthermore, the use of the words "*if any*" [emphasis added] in r 7(3) entails that the Registrar, in valuing a motor vehicle, need not make any inquiries at all if she has a reliable means of determining that vehicle's value. In the present case, the Registrar did have a reliable means in the form of Customs' determination of a motor vehicle's OMV, given that (see the GD at [28]):

> Customs had a comprehensive documentary system to compute the OMVs of imported motor vehicles and an empowering investigative section under the … Act to conduct checks and audits on the motor vehicle dealers to ensure [that] the information and documents submitted for the purposes of OMVs were correct and accurate.

In our view, the legal position is that the words of r 7(3) of the Rules permit the Registrar to exercise her discretion to determine the value of a motor vehicle in every case by relying on the Customs' OMV of that vehicle, whether or not the importer or trader concerned agrees to it, subject only to the court deciding that Customs' calculation of the vehicle's OMV is wrong. In other words, the Administrative Convention is not only administratively efficient and procedurally fair (see [7] above), but also legally valid.

Observations on rule 7(3) of the Rules

61 As noted earlier (at [32] above), the question of whether a motor vehicle importer or trader (referred to in this section as a "motor vehicle dealer") has a right to be heard by the Registrar with regard to the valuation of a motor vehicle – which is, in essence, the crux of issue (a) – did not arise for this court's determination as the Registrar conceded that Komoco had a right to be heard. However, in the interest of providing future guidance for the Registrar and the motor vehicle industry as a whole, we take this opportunity to address this issue.

62 For ease of reference, we will reproduce r 7(3) of the Rules again, which is as follows:

> [T]he value of a motor vehicle shall be determined by the Registrar after making such enquiries, *if any*, as he thinks fit and the decision of the Registrar shall be final. [emphasis added]

This formulation of the power of the Registrar does not require her to give any hearing at all to a motor vehicle dealer when determining the value of a motor vehicle so long as her determination is not arbitrary or discriminatory (and, in our view, the Registrar's decision in the present case to adhere to the Administrative Convention when determining the values of the Cars was not in any way arbitrary or discriminatory). This interpretation of r 7(3) is supported by the Privy Council decision of *Patterson v District Commissioner of Accra* [1948] AC 341. In that case, the relevant statutory provision, *viz*, s 9 of the Peace Preservation Ordinance (Laws of the Gold Coast, 1936 Revision, c 40), provided that:

> Where additional constabulary or police have been sent up to or stationed in a proclaimed district the Governor in Council may order that the inhabitants of such proclaimed district be charged with the cost of such additional constabulary or police.
>
> A District Commissioner within whose district any portion [is] … a proclaimed district … shall, *after inquiry, if necessary*, assess the proportion in which such cost is to be paid by the said inhabitants according to his judgment of their respective means.
>
> All moneys payable under this section may be levied under the law for the time being in force for the levying of moneys ordered by a Court to be paid.
>
> [emphasis added]

The Privy Council, on appeal from the West African Court of Appeal, held that the wording of that provision did not contemplate that the District Commissioner was bound to hold "anything in the nature of a judicial inquiry" (at 349), and, therefore, the omission to give the appellant, an inhabitant

of a "proclaimed district" against whom an order for the payment of the cost of additional police had been made, an opportunity to be heard in relation to the quantum of such cost did not infringe the common law principle that no person should be deprived of his property without his being heard.

63 In our view, the legislative framework governing the ARF Scheme is structured such that the right of a motor vehicle dealer to be heard on the value of a motor vehicle, *vis-à-vis* the calculation of the ARF payable, is satisfied by the right of hearing provided to him under ss 22B(1) and 22B(5) of the Act when the OMV of the vehicle is being determined by Customs (*vis-à-vis* the imposition of, *inter alia*, excise duty).

64 In the present case, Komoco – significantly – elected to forego the right of appeal to the High Court afforded by s 22B(5) of the Act.

65 Komoco also elected to forego another right to be heard, this time by a court of law, when it chose to accept the Offer of Composition instead of defending a prosecution for the offence under s 128 of the Act of under-declaring a motor vehicle's OMV. In such criminal proceedings, Komoco could have either: (a) pleaded not guilty, or (b) pleaded guilty whilst denying the extent of the under-valuation of the Cars alleged by Customs. If Komoco had taken the former option, Customs would have had to prove beyond reasonable doubt, in accordance with the standard of proof applicable to criminal cases, both the fact of under-declaration as well as the extent of the under-declaration. If Komoco had taken the latter option, Customs would not have had to prove the fact of under-declaration, but would still have had to prove the extent of the under-declaration alleged. The point which bears emphasis is that whichever option Komoco chose, Customs would have had to prove beyond reasonable doubt the extent of the under-valuation of the Cars, which would in turn impact on the Customs' OMVs of the Cars and, thus, the ARF payable.

66 In this regard, we found it significant that Komoco gave no reason for accepting the Offer of Composition. The offence compounded was that under s 128(1)(*a*) of the Act (although the offence originally charged was that under s 128(1)(*d*)). Both offences are punishable with a fine not exceeding $10,000 or the exact amount of duty payable (whichever is the greater), or with imprisonment for a term not exceeding 12 months, or with both. As Komoco is a corporate entity, the punishment of imprisonment was irrelevant, and it was only the fine – specifically, a fine equivalent to the exact amount of duty payable since this amount was greater than $10,000 in the present case – which it was concerned with. If Komoco had claimed trial and had been found guilty of the offence under s 128(1)(*d*) of the Act (which was the offence originally charged), it would have ended up having to pay both the full amount of the excise duty (*ie*, $1,412,077.89) and the GST (amounting to $43,829.58) properly due on the Cars, as well as a fine equivalent in quantum to the exact amount of excise duty and GST payable (*ie*, $1,412,077.89 plus $43,829.58). In comparison, as Komoco knew or should have known, a failure to challenge the revised Customs' OMVs of the Cars could result in the levying of additional ARF on the Cars far in excess of the fine prescribed in s 128(1) of the Act (as indicated in the Registrar's letter of 8 December 2004, the additional ARF payable by Komoco was $7,028,559). From a practical point of view, it was difficult to appreciate the commercial sense of Komoco's decision to accept the Offer of Composition instead of seeking, by way of defending a prosecution for the offence under s 128(1)(*d*) of the Act, a determination from the court on the correctness of the revised Customs' OMVs of the Cars.

67 From the foregoing analysis, it can be seen that Komoco not only denied itself of two avenues by which it could have been heard by the court on the valuation of the Cars – namely, by appealing to the High Court under s 22B(5) of the Act (following a prior unsuccessful application to the DG under s 22B(1) of the Act) and by defending a prosecution for the offence under s 128 of the Act – but also denied itself of the right to be heard by, specifically, a higher authority.

68 In essence, Komoco sought to re-open the revised Customs' OMVs of the Cars *vis-à-vis* the Registrar for the purposes of the ARF Scheme; it wanted the Registrar, in assessing the ARF payable, to carry out her own determination of the Cars' values on the basis of the same evidence and the same representations that had earlier been considered by Customs in revising the OMVs of the Cars. In our view, Komoco's attempt to procure such an outcome should not be entertained for three reasons.

69 The first is that natural justice does not mandate that Komoco be given a hearing by the Registrar on an issue (*ie*, the valuation of the Cars) on which it had earlier already been heard by another administrative agency of the Government (*viz*, Customs). The right of hearing of a person who is affected by an administrative decision is merely a facet of the broader principle of procedural fairness. In *Lloyd v McMahon* [1987] 1 AC 625, Lord Bridge of Harwich stated (at 702–703):

> [T]he so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much *and no more* to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. [emphasis added]

In our view, Lord Bridge's statement is apt to apply to the legislative framework governing the ARF Scheme. This framework, coupled with the 1968 Policy Directive, permits the Registrar, in the interest of efficient public administration, to choose the Customs' OMV of a motor vehicle as the basis for assessing the ARF payable. In the present case, Komoco was not in any way denied procedural fairness by the Registrar, especially in the light of the objectivity and the transparency of the Administrative Convention (see, in this regard, our earlier observation at [7] above). Given that Komoco had chosen not to avail itself of the statutory avenues through which it could have voiced its views on what it thought were the appropriate values of the Cars, there was no reason why this court should "create" (as it were) another opportunity for Komoco to be heard on this same issue (*viz*, the values of the Cars) by ruling that the Registrar was obliged under r 7(3) of the Rules to hear Komoco on the matter.

70 In our view, the goal of efficiency in public administration would not be advanced if Komoco were held to be entitled to re-open the revised Customs' OMVs of the Cars *vis-à-vis* the Registrar for the purposes of the ARF Scheme in the circumstances of this case, given that it had decided to forego its right to be heard by a higher and more authoritative body. What Komoco effectively sought to do, in attempting to re-open the revised Customs' OMVs of the Cars *vis-à-vis* the Registrar, was to create another opportunity to reduce its liability with one administrative agency (*ie*, the Land Transport Authority ("LTA"), in terms of the ARF payable on the Cars) when the basis on which that liability was to be assessed (namely, the OMVs of the Cars, as stipulated in the 1968 Policy Directive) had already been determined by another administrative agency (*ie*, Customs) which was in a better position to determine that basis. In this connection, we should add that, in the eyes of the law, the Government is an indivisible legal entity when discharging its executive functions and powers (see, for example, *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 399–400 and *Smith v Lord Advocate* 1980 SC 227 at 231). Although, with regard to the collection of fees and taxes payable on motor vehicles, Parliament has empowered Customs to collect, *inter alia*, excise duties and the LTA to collect the ARF, both agencies are part of the Government, albeit under the charge of different Ministers. There is nothing to be gained and much to lose in terms of efficient

and good public administration if, in the present case, this court were to construe r 7(3) of the Rules to require the Registrar to give a fresh hearing to Komoco on the question of the values of the Cars when Komoco had chosen not to avail itself of the ample opportunities which it had to challenge the revised Customs' OMVs of the Cars in a court of law.

71 The second reason why Komoco should not be allowed to re-open the revised Customs' OMVs of the Cars *vis-à-vis* the Registrar is that if Komoco were permitted to do so, it would effectively be able to mount a collateral attack on Customs' determination of the OMVs of the Cars. In view of our earlier observation (at [70] above) on the indivisibility of the Government in the exercise of its executive powers, it is easy to imagine the confusion and the damage to public administration that will be caused, not to mention the loss of public confidence in the exercise of discretionary powers by public authorities as well as the intractable legal problems which would ensue, if two administrative agencies (*ie*, Customs and the LTA) were to come to different conclusions on the same matter of the value of a motor vehicle.

72 The third reason for rejecting Komoco's legal position that it was entitled to re-open the revised Customs' OMVs of the Cars *vis-à-vis* the Registrar (because it had accepted the Offer of Composition and had paid Customs the Composition Sum under protest) is that if Komoco's position were sound in law, then the Registrar would, as we alluded to earlier (at [11] above), have been placed in a no-win situation. If the Registrar were to follow the Administrative Convention, she would be open to the accusation that she had fettered her discretion or had abrogated it to Customs (which the Judge in fact found to be the case). If she were to disapply the Administrative Convention but agree with Customs' revised OMV figures, she would be open to the accusation that she had failed to give genuine consideration to Komoco's representations (which the Judge also found to be the case). But, if she were to fix the values of the Cars (for the purposes of computing the ARF payable) at levels higher than their revised Customs' OMVs, she would be open to the allegation that her calculation of the values of the Cars could not be more accurate than Customs' calculation of the same (as, by her own admission, she did not have the same resources and expertise which Customs had). In other words, if Komoco's legal position were correct, the Registrar's calculation of the values of the Cars could never be correct unless it resulted in values which were lower than the corresponding OMVs calculated by Customs.

Conclusion

73 For the reasons set out at [35]–[53] and [57]–[60] above, we found that the Registrar had neither fettered the discretion conferred on her by r 7(3) of the Rules nor abrogated such discretion to Customs in arriving at her decision to impose the additional ARF on the Cars on the basis of their revised Customs' OMVs. In our view, the Registrar had considered Komoco's representations on the valuation of the Cars and had found no reason to disagree with Customs' revised OMV figures. We accordingly allowed the appeal with costs here and below, and with the usual consequential orders.

[note: 1]See para 3 of the letter dated 12 October 2005 from Komoco's solicitors to the Registrar's solicitors.

[note: 2]See para 4 of Komoco's letter to Customs dated 1 November 2004.

[note: 3]See para 3 of Komoco's letter to the Registrar dated 10 December 2004.

[note: 4]*Ibid*.

[note: 5]*Supra* n 1.

[note: 6]*Supra* n 1.

[note: 7]See para 2.2 of the notes of the May 2006 Meeting.

[note: 8]*Supra* n 1.

[note: 9]See para 10 of the Registrar's Affidavit.

[note: 10]See para 14 of Mr Teo Hock Seng's affidavit dated 1 November 2006.

[note: 11]See para 18 of the Registrar's Affidavit.

[note: 12]See para 16 of Komoco's written case filed on 20 September 2007.