Komoco Motors Pte Ltd v Registrar of Vehicles and another
[2007] SGHC 74

Case Number : OS 1599/2006, SUM 4519/2006

Decision Date : 17 May 2007

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Harry Elias SC, Philip Fong, Navin Joseph Lobo and Sharmini Selvaratnam (Harry Elias Partnership) for the applicant; Quentin Loh SC, Simon Goh and Baldev Singh (Rajah & Tann) for the first respondent; Jeffrey Chan and Dominic Zou for the second respondent

Parties : Komoco Motors Pte Ltd — Registrar of Vehicles and another

Administrative Law – Judicial review – Fettering of discretion and abrogation of responsibility – Registrar of Vehicles having statutory discretion to determine duty payable on imported cars – Registrar adopting policy of basing duty payable on Singapore Customs' valuation – Whether Registrar entitled to adopt policy – Whether Registrar failed to consider whether exceptions should be made – Whether responsibility abrogated to Customs – Rule 7(3) Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, R 5, 2004 Rev Ed)

17 May 2007 Judgment reserved.

Judith Prakash J

1 This summons relates to the proper determination of the extra Additional Registration Fee ("ARF") payable in respect of 17,448 motorcars (the "cars") imported by the applicant, Komoco Motors Pte Ltd ("Komoco"). Komoco has applied for judicial review of the decision of the Registrar of Vehicles ("the Registrar") that the ARF on the cars had been undercharged and that there was an additional sum amounting to $7,028,559 payable as ARF by Komoco based on the revised Open Market Values ("OMVs") of the cars as well as an amendment fee of $366,408 charged at the rate of $21 per car.

2 Komoco is seeking:

(a) an order of *certiorari* to quash the Registrar's decision; and

(b) further or in the alternative, an order of *mandamus* to compel the Registrar to exercise her discretion in accordance with the law and reconsider her decision.

Background

3 When a motor vehicle is imported into Singapore, the Singapore Customs ("Customs") is the first government body to levy a tax, *i.e.*, excise duty, on the vehicle. This duty is based on the OMV of the motor vehicle.

4 OMV is the value of a motor vehicle assessed at the price it would normally fetch between independent buyers and sellers in an open market. The method of valuation (prior to 1 April 2003), was based on the Brussels' Definition of Value ("BDV") and generally included the following expenses in arriving at the taxable value of a motor vehicle:

(a) *transaction value*: the price paid or payable for a vehicle by a buyer to a supplier on a CIF

basis;

(b) *handling charge*: the handling expense for transferring a vehicle from the conveyance carrier into land if the vehicle arrived by air or sea. Handling charges were imputed as one percent of the vehicle's CIF value;

(c) *agency uplift*: expenses for advertising, promotion, warranties, as well as showroom and warehousing costs. Generally, agency uplift was estimated by Customs as a percentage of a vehicle's invoice price. This percentage was fixed for certain periods of time and generally reviewed on an annual basis.

5 To assist Customs to assess the OMV of the vehicle and thus the duty payable, the importer was required to submit a Declaration of Fact ("DOF") to Customs. The information in the DOF declared the agency uplift components of that particular importer. Hence, expenses incurred by the importer in getting its motor vehicle off the ship, into its showroom and into the hands of the customer had to be properly and correctly declared in the DOF. Customs used this information to compute the uplift component of the OMV. Customs carries out 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 given in the DOF and, accordingly, the correctness of the uplift percentages applied during previous assessment periods.

6 When a vehicle is registered, various taxes are payable to the Registrar pursuant to the Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, 2004 Rev Ed) ("the Rules"). Among these is the ARF. Under r 7, the Registrar levies an ARF on importers based on a percentage of the value of the motor vehicles. The exact percentage to be applied is provided for under Part II of the First Schedule of the Rules. In practice, in order to determine the ARF payable, the Registrar uses the OMV as declared by the importer to Customs as the value on which the ARF is calculated.

7 The application for registration by an importer such as Komoco would be submitted via the "On-Line Dial-up System – Vehicle Registration". This application is made pursuant to rr 3(1) and 3(2) of the Rules. In this application, information such as the OMV (being the same OMV as previously declared to Customs), the ARF rate, the registration fee and road tax payable are entered by the importer and transmitted electronically to the Registrar. Hard copies of supporting documents such as the original identity card of the prospective owner, the cargo clearance permit showing the OMV as declared by the importer and the motor insurance cover note must be submitted to the Vehicle Registration and Licensing Division ("VRL Division") of the Land Transport Authority to verify the information in the application form.

8 In 2001, Customs conducted a post-clearance audit on Komoco and for this purpose obtained from Komoco substantial accounting documents and records covering the period from 1996 to 2001. In early 2004, Customs conducted interviews with the accounting staff of Komoco. The initial focus of the audit was on whether the import values of cars imported during the stated period had been underdeclared. Subsequently, the focus shifted to the components of the uplift. After the interviews began, Komoco engaged tax experts from M/s Ernst & Young to provide technical advice and to liaise with Customs on the audit. In August 2004, Customs informed Komoco that it considered that Komoco had made incorrect OMV declarations in respect of 17,449 cars contrary to s 128 of the Customs Act (Cap 70, 2004 Rev Ed). Customs offered to compound the offence on payment by Komoco of the shortfall in duty and the GST collected as well as a composition fine.

9 Over the next few months, several exchanges of correspondence and rounds of meetings took place between Komoco and Customs. The crux of the discussions related to the calculation of the

uplift. Customs revised the percentages of the uplifts to 11% and 8% (from the original levels of 9% and 6% respectively) for two of the periods covered by the audit. Komoco strongly objected to the revision of the uplifts. It submitted reports by its auditors M/s Deloitte & Touche ("the DT report") and its external consultants M/s Ernst & Young ("the EY report") to Customs for the latter's consideration. In the end, however, Customs maintained that its original decision was correct and informed Komoco of this finding on 29 October 2004. To avoid prosecution by Customs, on 1 November 2004, Komoco accepted Customs' offer of composition.

10 Once the composition fine was paid, Customs informed the Registrar of the underdeclaration of the OMVs of the 17,449 cars. The Registrar then carried out her own checks and computations in respect of the cars. In the process, the Registrar discovered that one of the 17,449 cars had yet to be registered. That was why the Registrar subsequently found there had been a shortfall in ARF payments in relation to 17,448 cars only. On 8 December 2004, the Registrar wrote to Komoco in respect of the alleged underpayment. Paragraph 2 of this letter read:

> Based on the Singapore Customs' reassessment of the OMVs of the vehicles imported and registered by your company, there is a shortfall of $7,028,559 in ARF payments. Please see Annex A for details.

Komoco responded by stating that it had consistently objected to Customs' revaluation of the uplifts on the cars and that it had not under-declared the OMVs as alleged. The Registrar's reply stated:

> Nonetheless, the Singapore Customs has informed the Authority of the revised OMVs of the said cars. Since the ARF is computed based on the OMVs as assessed by the Singapore Customs, we have accordingly recomputed the ARF of the said cars based on the revised OMVs provided by the Singapore Customs, and note that there is a shortfall of $7,028,559 …

The proceedings

11 On 24 January 2005, Komoco filed an application (OS 86 of 2005) for leave to apply for a judicial review of the Registrar's decision in December 2004 that there was an underpayment of $7,028,559 in respect of the ARF for the cars. This application was granted by Lai Siu Chiu J on 7 April 2005. Pursuant to this order, on 19 April 2005, Komoco filed Notice of Motion 31 of 2005, *i.e.*, the substantive judicial review application.

12 The parties, however, did not proceed with the substantive application as they reached an agreement in October 2005. The terms of this settlement were as follows:

> (a) that [the Registrar] provides [Komoco] with a fair, reasonable and just hearing to consider [Komoco's] position on whether there should be an imposition of the ARF, and if so, the quantum of the same;
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> (b) that [the Registrar] considers fairly any documentation submitted by [Komoco], and/or their auditors, including but not limited to Adrian Ball's Affidavit filed on 5 April 2005 which exhibits [the EY report];
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> (c) that the decision made by [the Registrar] on or around 8 December 2004, imposing the additional ARF be reconsidered, based on the new hearing and in accordance to *(sic)* the terms set out in paragraph 3a and 3b above; and
>
> (d) the proceedings in OS 86 of 2005/W be adjourned sine die with liberty by *(sic)* either party

to apply.

13 Pursuant to the settlement, Komoco met with the Registrar on 10 March 2006 ("the March meeting"). At the meeting, Komoco and its consultants made representations to the Registrar. The meeting lasted about two hours. On 28 March 2006, Komoco's solicitors wrote to the Registrar's solicitors asking when there could be a follow-up meeting on the representations made and whether any further documents were required by the Registrar. No response to this letter was received by Komoco.

14 On 18 May 2006 ("the May meeting"), the Registrar met with Komoco again. At the meeting she handed over her letter of the same date informing Komoco that the additional ARF payable was $7,028,559 with an amendment fee of $366,408.

15 Komoco, not being satisfied with the Registrar's decision, commenced new judicial proceedings (the present originating summons, OS 1599 of 2006) on 17 August 2006. On 21 August 2006, the Registrar applied for the restoration of OS 86 of 2005 which had been adjourned *sine die* in accordance with the parties' prior agreement.

16 Although both sets of proceedings were listed before me, the parties put forward substantive arguments only in respect of OS 1599 of 2006 and it is that proceeding in respect of which this judgment is written. As far as OS 86 of 2005 is concerned, I consider that the matter was in fact resolved when the parties came to an agreement for the Registrar to look into Komoco's case again and, although the proceeding was adjourned *sine die*, in effect there was no further dispute to be heard and determined thereafter. The decision of the Registrar which is now sought to be impugned is that made on 18 May 2006 rather than the prior decision of December 2004.

Grounds of the application

17 This application concerns the proper exercise of the Registrar's discretionary power as given to her by r 7(3) of the Rules. That Rule provides:

> (3) For the purposes of paragraph (8) and Part II of the First Schedule, the 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.

Komoco averred that it was clear from the correspondence and the meetings between the parties that, in determining the value of a motor vehicle for the purposes of calculating ARF, the Registrar depended entirely on Customs' assessment of the OMV and merely adopted the same without making any proper or further enquiries. Furthermore, the Registrar had fettered her discretion and misdirected herself, as she was not prepared to deal with the exceptional circumstances of Komoco's case nor to afford it the opportunity to make complete representations to her.

18 Komoco thus contended that the decision made by the Registrar in determining the OMVs of the relevant vehicles 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 of the cars for use in computation of the ARF, the Registrar had:
>
> (i) failed to give effect to r 7(3) which allowed her to exercise her discretion independently

of any assessment of the value of the cars by the 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 of the cars by Customs was correct, *i.e.*, 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 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 settlement agreement, the Registrar 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; and

(d) the Registrar failed to take into account the relevant consideration of the objections raised and/or 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 relied on the Customs' valuation of the OMV;

(ii) the Registrar did not consider two reports submitted by Komoco or the presentation by M/s Ernst & Young and there is no documentary evidence to show otherwise;

(iii) the Registrar did not pay regard to the items included in the uplift computations in her valuation of the OMV; and

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

The law

19 The law in this area is fairly well settled and does not need detailed explication. Only a brief recounting of the general principles is therefore required. Komoco cited a number of authorities relating to the exercise of the court's powers of judicial review in a situation where the decision sought to be quashed was that exercised by an officer of the executive pursuant to discretionary powers conferred upon him. Generally, the courts will intervene if they are satisfied that the repository of a discretionary power has failed, wrongfully, to exercise the discretion. This could happen where the officer has misconstrued the scope of his powers or where he has failed to exercise the discretion because he has acted on the instructions of another body or officer. In this connection, in *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board*

[1997] 2 SLR 584, (the "*Lines*" case) I found at [98] and [99] that the Port of Singapore Authority was not entitled to direct itself to take instructions from other statutory boards:

> 98 The second point here is the plaintiffs' contention that vis-à-vis PSA the guidelines are illegal in that PSA has purported to fetter its own discretion by agreeing to take instructions from STPB and GSB on the denial of berths to cruise ships. This challenge is based on condition (iv) which reads:
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> > The Port of Singapore Authority will refuse allocation of berth to a vessel if the Gambling Suppression Branch, CID and Singapore Tourist Promotion Board so *(sic)* determine that such action is necessary.
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> 99 The plaintiffs are correct in their submission that PSA as the authority entrusted with the control over berths and, accordingly, the discretion as to how such berths are to be allocated, has also the duty to exercise that discretion itself after considering various relevant factors. It cannot abrogate this responsibility by taking orders from other statutory boards unless it is under a legal duty to do so. PSA did not contend that it was under any legal duty to obey orders from either GSB or STPB in regard to the allocation or denial of berths in the cruise centre. I must therefore agree with the plaintiffs' submission that in so far as condition (iv) appears to be a direction by PSA to itself to take orders from either GSB or STPB to deny berths to cruise vessels it is a fetter on the proper exercise by PSA of its discretion and is therefore invalid.

20 The courts will also intervene if the repository of a discretionary power wrongfully fails to exercise discretion because it has fettered its discretion by a self-imposed rule of policy or practice. See *H Lavender v Minister of Housing and Local Government* [1970] 3 All ER 871 where Willis J said at 879d to 879j:

> In the present case counsel for the applicants does not shrink from submitting that the decision letter shows that no genuine consideration was given to the question whether planning permission could, in the circumstances, be granted… I have said enough to make it clear that I recognise that in the field of policy, and in relation to Ministerial decisions coloured or dictated by policy, the courts will interfere only within a strictly circumscribed field … I return, therefore, to the words used by the Minister. It seems to me that he has said in language which admits of no doubt that his decision to refuse permission was solely in pursuance of a policy not to permit minerals in the Waters agricultural reserves to be worked unless the Minister of Agriculture was not opposed to their working. Counsel for the Minister submits that, read as a whole, the decision letter should be taken as implying some such words as 'I have gone through the exercise of taking all material considerations into account, but you have not persuaded me that this is such an exceptional case as would justify me in relaxing my policy; therefore I stick to it and apply it.' If that were the right construction perhaps counsel for the Minister would be justified in saying that there was no error in law. But in my judgment the language used is not open to any such implication. There is no indication that this might be an exceptional case such as would or could induce the Minister to change his policy. It is common ground that the Minister must be open to persuasion that the land should not remain in the Waters reservation. How can his mind be open to persuasion, how can an applicant establish an 'exceptional case' in the case of an inflexible attitude by the Minister of Agriculture? That attitude was well known before the inquiry, it was maintained during the inquiry, and presumably thereafter.

21 The above does not mean that an administrative authority cannot adopt a general policy for dealing with cases that come before it. As I stated in the *Lines* case at [78], the adoption of a general policy by a body exercising an administrative decision is perfectly valid provided that:

(i) the policy is not unreasonable in the special sense given to the term in *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 176, ie it is not a decision that is so outrageous in its defiance of logic or accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it or that no reasonable person could have come to such a view see also *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374;

(ii) in considering unreasonableness in the *Wednesbury* sense, the courts are not entitled to substitute their views of how the discretion should be exercised with that actually taken: see *Chan Hiang Leng Colin v PP* [1994] 3 SLR 662 nor is unreasonableness established if the courts merely come to the view that such a policy or guideline may not work effectively as another since the courts are not exercising an appellate function in respect of administrative decisions and the burden of proving that the policy or guideline is illegal or ultra vires is on the plaintiffs: see Chan's case;

(iii) [the policy is] made known to the persons so affected; and

(iv) [the body does not fetter] its discretion in the future and is prepared to hear out individual cases or is prepared to deal with exceptional cases: see *Findlay*'s case and also *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610.

Analysis of the grounds

1st ground: has the Registrar fettered her discretion?

22 The first matter to be decided here is whether Rule 7(3) confers a discretion upon the Registrar which she is duty bound to exercise. According to the Merriam-Webster dictionary, the word "determine" may mean " to find out or come to a decision about by investigation, reasoning, or calculation". Another possible definition, which is also similar to the one preferred by the Registrar (and taken from Chambers Dictionary), is "to fix conclusively or authoritatively"; such as to *determine* national policy. The distinction between the two meanings is significant. The former emphasizes the deliberative process — that is the element of discretion — while the second meaning may admit the suggestion that the Registrar is to merely make official the evaluations submitted by someone else.

23 Looking at the Rule in its entirety, in my judgment, the proper construction is that the word "determine" is used in the first sense rather than in the second. The Rule provides that the Registrar may make such enquiries as she thinks fit before making her determination. By implication, the Registrar must embark on some evaluative exercise after the receipt of the answers to her enquiries. Further, the determination is referred to as a "decision" which is to be final, which again suggests a discretionary element. Therefore, when the Registrar "determines" the value of a motor vehicle, it is a requirement under the Rules that she exercises her discretion. For this reason, I do not accept the Registrar's submission that whilst she had a discretion to consult other persons or departments or bodies in coming to her decision, the words of r 7(3) merely required her to have the final say on the value used.

24 As stated above, in practice, the Registrar calculates the ARF based on the OMV as declared by the dealer (which in turn is based on the uplift percentage stipulated by Customs). If Customs decides after a post-clearance audit that the OMV should be revised, the Registrar would use the revised OMVs to calculate the new ARF applicable. This practice is based on a policy that was adopted by the Registrar many years ago. The origins of this policy were set out in the affidavit of

Alanna Frances Lean Saw Kin sworn in OS 86 of 2005 in September 2005. At the time she made the affidavit, Ms Lean was the deputy director of the Vehicle Registration and Licensing Division of the Land Transport Authority ("the VRL Division"). She stated at paras 7, 9 and 10:

> 7. In or around 1968, the [Registrar] decided to use OMV as the basis for the computation of ARF. This decision was made after a series of consultation *(sic)* and discussions with the then Customs and Excise Department ('Customs') and between our respective parent Ministries – the Ministries of Communications and Finance. Since the imposition of import duty on motor vehicles in January 1967, Customs have been collecting the import duty based on the OMV of the imported motor vehicles whereas the [Registrar], prior to 1968, was using the CIF value to determine the value of a motor vehicle.
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> 9. In the [Registrar]'s discussions with Customs in or around June 1968, it was apparent to the [Registrar] that Customs had a comprehensive documentary system in place to compute the OMVs of imported motor vehicles and an investigative section to conduct checks and audits on the motor vehicle dealers to ensure the information and documents submitted for the purposes of OMVs was accurate and correct. Accordingly, it concluded and agreed at the end of these discussions that Customs would henceforth assist the [Registrar] with information on their valuation of motor vehicles by supplying the [Registrar] with the valuation figures of motor vehicles as and when required by the [Registrar].
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> 10. In [the] deliberation of using the OMV figures supplied by Customs, important factors such as consistency between government agencies on the value of the same item in the eyes of the public and efficient allocation of public resources to undertake the computation of OMV by one government agency, weighed heavily in the [Registrar]'s determination of how the value of a motor vehicle ought to be determined.

25 The next question is whether the Registrar's policy is in conflict with the discretion entrusted to her by the Rules. Komoco submitted that in determining the value of the motor vehicle, the Registrar must act independently of Customs because this was a duty entrusted to her by law. It said that her policy and her discretion under r 7(3) were in direct conflict. Whilst the Rule conferred absolute discretion on the Registrar, her adopted policy of relying solely on Customs to assess the OMV completely fettered and/or abrogated that discretion. If policy were meant to be the paramount consideration in the exercise of the discretion given to the Registrar by Parliament, then the policy would have been included or reflected in the relevant statute or the Rules.

26 I do not accept the above submissions. In [21] above, I have stated the legal position which is that government agencies or bodies like the Customs and the Registrar who exercise their functions and carry out their duties within a statutory framework, are entitled to adopt a general policy in the exercise of such functions, duties and powers. Accordingly, *prima facie*, there can be no objection to the adoption of such a general policy by the Registrar. Rule 7(3) itself in providing that the Registrar may make such enquiries as she thinks fit before making her determination does not restrict the addressees of the enquiries or the manner in which they may be made. The rule does not prevent the making of enquiries in the context of a formalised arrangement such as that adopted by the Registrar at the time it was decided to use the Customs' OMV figures as the basis for the computation of the ARF. As long as the policy adopted meets the conditions set out in the *Lines* case (at [21] above), the courts will not declare such adoption to be an illegal fetter on the exercise of discretion. I now turn to consider whether these conditions were met in the present case.

Was the policy unreasonable?

27 As established by the *Wednesbury* case, the policy would be unreasonable if deciding to adopt it was a decision that was so outrageous in its defiance of logic or accepted moral standards, that no sensible person who thought about it could have made such a decision or if no reasonable person could have come to the decision.

28 The Registrar gave the following reasons for the adoption of the policy:

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

(b) if the Registrar adopted the same basis of assessment, the task of computing OMV would be undertaken more efficiently by Customs and then subsequently reviewed by the Registrar;

(c) the implementation of a standardised and uniform basis of valuation would ensure public confidence in the administration of both Customs and the Registrar; and

(d) adoption of Customs' OMV figures would lead to consistency between government agencies and promote the efficient allocation of public resources.

29 It can be seen from the above that the Registrar had both practical and policy reasons for deciding to follow Customs' computation of the OMV. It was also clear from the evidence that this policy had been the result of careful consideration over a period of time. Komoco itself, while arguing that the Registrar should not have adopted the policy, did not contend that the reasons given by the Registrar were irrational or that no sensible person could have come to the same decision as the Registrar had. The test of reasonableness as enunciated in the *Wednesbury* case is not a difficult one. In fact it is much more difficult to prove that a decision is unreasonable than to show that it is reasonable in the *Wednesbury* sense. In the circumstances, I cannot hold that the Registrar's policy was unreasonable.

30 The Registrar had also submitted that the policy was consistent with Parliamentary intent. In particular, the Registrar quoted the Budget Speech of then Finance Minister Dr Goh Keng Swee made on 3 December 1968, in which he proposed to revise the extant system of assessing the value of imported motor vehicles for the purposes of ARF assessment, which was the CIF system. He proposed that ARF assessment be based on "open market value". He also remarked that "the new basis of assessment is in line with the practice in Malaysia and in the Customs Division". In this connection, I note, however, Parliamentary intent of the nature that the Registrar was dealing with would ordinarily be expressed in the language of the statute or the subsidiary legislation. It would not have been difficult for Parliament to revise r 7(3) so that it provided expressly that ARF should be calculated on the basis of Customs' OMV figures had it wanted to lay down an absolute rule. This it did not do. In my view, the Minister's statements did not indicate that the Registrar should adopt Customs' valuation of the OMV. He merely indicated that the Registrar should value motor vehicles according to their OMV and had pointed out that Customs and Malaysia used the same system of basing their duties on open market values.

Was the policy made known to the persons affected?

31 According to the Registrar, the fact that the OMV of a motor vehicle is assessed by Customs, and that the ARF is calculated based on this OMV, is "well-known and commonplace". Komoco did not deny this. This requirement has, therefore, been satisfied.

Was the Registrar prepared to hear out individual cases or deal with exceptional cases?

32 In the implementation of a policy, an authority must be willing to make exceptions. In order to do so, the authority must necessarily take time to hear an applicant's case so that it may fairly determine whether an exception should be made. The hearing need not be oral. The authority also need not accede to the applicant's request for repeated hearings if the applicant has nothing new to add. But equally, the hearing cannot be merely *pro forma*. The authority must have heard that applicant's case in full before it makes its decision. Also, the authority must genuinely consider the applicant's case. It cannot have resolved to dismiss the applicant's case from the start.

33 In the present case, the Registrar met with Komoco on 10 March 2006 as a follow-up to the settlement agreement and for the express purpose of receiving Komoco's representations. The meeting took about two hours. The Registrar then delivered her decision on 18 May 2006. Komoco, however, has submitted that the Registrar did not hear Komoco adequately and in full and, further, did not give genuine consideration to Komoco's representations.

34 What happened at the meeting was set out in an affidavit affirmed by the Registrar herself on 23 October 2006. She stated that at the start of the meeting at 10am, she informed Komoco that the meeting would have to end at 12 noon because of an emergency meeting which she had to attend. Komoco, through its representative, Mr Teo Hock Seng, then gave its reasons why it disagreed with the Customs' valuation of the OMVs. Following this, Komoco's consultant, M/s Ernst & Young, delivered a powerpoint slide presentation giving further details of the main points that Mr Teo had put forward. During the presentation, the Registrar asked a few questions in her attempt to understand Komoco's operations. M/s Ernst & Young and Komoco responded to these queries. The Registrar also explained to Komoco that since the late 1960s, it had been the policy of the Registrar to base the computation of the ARF on the OMVs of motor vehicles as assessed by Customs. At the end of the two hour meeting, the Registrar informed Komoco that she had taken note of its representations and assured it that she would review the materials submitted by Komoco and, if necessary, call for another meeting.

35 According to Komoco, the March 2006 meeting was meant to be a preliminary meeting to "set the parameters of how [Komoco] could assist the Registrar in making [her] fresh decision". This was because:

(a) the settlement agreement required that the Registrar determine the ARF *de novo*. As such, a genuine decision could not be made in one meeting. This was because the Registrar would have to decide on whether there had indeed been an under-declaration of the OMV by Komoco to Customs and, if there was, the Registrar would have to determine the revised uplift. This would require, according to Komoco, significant accounting input. Komoco's own efforts to engage auditors and experts to assist it in ascertaining the uplift was testament to the fact that the decision necessarily entailed a great deal of work. Customs itself had needed a three year post-audit clearance on Komoco to calculate the revised OMVs. Thus, it was reasonable to assume that it was necessary for the Registrar to have further dealings with Komoco;

(b) the Registrar had told Komoco at the end of the March meeting that further contact would be made if other information or clarification was required; and

(c) Komoco had offered the Registrar access to all its accounting documents and its accounting system which evidenced its position that it had always contemplated the March meeting to be a preliminary one.

36 After 10 March 2006, however, Komoco did not hear from the Registrar. Its solicitors wrote to the Registrar's solicitors on 28 March 2006 asking the Registrar to specify what documents she required for her follow up and when she would like to meet Komoco again. No response was received to this letter.

37 The Registrar submitted that Komoco was given a full and fair hearing on 10 March 2006. The Registrar stressed that the purpose of this meeting was for Komoco to make its representations to the Registrar on why it disagreed with the Customs' assessed OMVs – it was not a judicial or quasi-judicial hearing. She also stated that although the parties had agreed in October 2005 that they should meet, it took four months and constant reminders and chasers from the Registrar's solicitors before Komoco gave a date when it would meet with the Registrar. The 10 March 2006 meeting was only agreed
to on 14 February 2006.

38 The Registrar said that she would consider representations by the importer if the importer disagreed with the computation on the revised ARF payable. She pointed out that she readily agreed to Komoco's request for a soft copy of the worksheet setting out its computation of the revised ARF.

39 According to Komoco, the main point of its representations was that both the EY report and the DT report showed that even on a best case scenario from Customs' standpoint, the uplifts would not have been as high as Customs alleged. The other point was that the guidelines which Customs promulgated, which informed importers of what should be declared in the DOFs, was insufficiently clear. Komoco did not complain, however, that it had any additional grounds which were not made known to the Registrar. The reason Komoco required a further meeting appeared to be because it thought that the Registrar did not have sufficient accounting data to calculate the uplifts to obtain the correct OMVs. It did not argue that it had not been given sufficient time to state the core of its arguments during the March meeting or that it had other new arguments which it had not been able to put forward then.

40 On the evidence, therefore, it appears to me that Komoco had the opportunity to put forward its arguments to the Registrar for consideration. Since the Registrar was not persuaded by these arguments, there was no need for her to go to the next stage of calculating a new OMV and therefore she did not need to see Komoco's accounting data. The situation might have been different if the Registrar had agreed with Komoco's representations but had then given her own new OMV figures without the benefit of Komoco's submissions on the accounting data. This, however, was not the case. Therefore, the fact that the March meeting turned out to be the one and only meeting rather than a preliminary meeting as Komoco had supposed it to be, did not mean that the Registrar did not give Komoco a proper hearing. The Registrar had heard the representations and had agreed to review all materials submitted. The Registrar was not obliged to give Komoco a hearing of any particular length or to agree to a series of hearings. In my view, Komoco's complaint that it did not have a full hearing has not been substantiated.

41 The next issue is whether the Registrar gave genuine consideration to the representations made. If the Registrar had adopted a closed mind impervious to suggestion, whether consciously or not, then she could not have been genuinely prepared to hear out exceptional cases.

42 The Registrar's evidence on this aspect was that after the March meeting and during the period from 16 March to 5 April 2006, she had several internal discussions with her senior officers during which she reviewed the points made and the materials submitted by Komoco and M/s Ernst & Young. These materials included a powerpoint presentation and the affidavit of one Adrian Ball dated 5 April 2005 which considered the EY and DT reports. The Registrar also reviewed a copy of the DOF issued

by Customs and its accompanying explanatory guide. It was clear to the Registrar that Customs had spent a long time and expended substantial resources on its post clearance audit on Komoco. Bearing all relevant facts in mind and having re-looked at the whole issue and all materials, the Registrar had another internal discussion with her senior officers and decided that her determination of the OMVs for the cars was to stand.

43 This decision led to the calling of the May meeting with Komoco. The Registrar was present. She informed Komoco that, as the Registrar, she was the person who under r 7(3) had to determine the value of a motor vehicle after making such enquiries as she deemed fit and her decision would be final. She stated that it was well known in Singapore that Customs assessed the OMVs of motor vehicles and there were valid policy considerations for her to base the assessment of a motor vehicle's ARF on the OMV as provided by Customs, unless there were very good reasons to do otherwise. The Registrar stated that having listened to and duly considered the points raised and materials submitted by Komoco, she maintained her previous decision.

44 Komoco submitted that it was striking that the Registrar had provided no documentation to support her claim that between 10 March and 18 May 2006 she held several meetings with her officers to discuss Komoco's case or details of such discussions. I agree. On just the facts adduced, it is difficult to ascertain whether the Registrar actually gave due consideration to the materials before her. The Registrar's submission was that the fact that she took more than two months before the release of her decision on 18 May 2006 was evidence of the careful consideration she gave to the issue. It would be easier to accept that argument if she had supplied more details of what steps she took in considering the materials. The passing of time does not by itself indicate how the time was used.

45 In the absence of such details, it becomes necessary to draw inferences from the reasons provided by the Registrar as justification for her eventual decision. I am not, in conducting this exercise, deciding whether the decision was correct or not. In judicial review, the court is concerned with processes rather than with outcomes.

46 From the Registrar's own evidence and documents, it is clear that she was strongly influenced at all times by the fact that her adoption of Customs' OMV valuations was due to various policy considerations. The minutes provided by the Registrar of the March meeting describe her response at the close of Komoco's representations:

> 2.7 [The Registrar] explained that it was a policy decision since the 1960s for [her] to use the value determined by [Customs] for import/excise duty purposes, i.e. the OMV, to also compute the ARF.

The same sentiments were expressed by the Registrar at the May meeting during which she gave her reasons for maintaining her assessment of the revised ARF on the basis of Customs' revised OMVs. I have adverted to such statements in [43] above. The minutes of the meeting supplied by the Registrar further state:

> 2.4 [The Registrar] reiterated that LTA had listened to Komoco's representation. To Mr Lawrence Koh's suggestion of an alternative, she stated that the policy was very clear that when determining the value of the vehicle, the LTA would use the OMV, and [Customs] was the assessor of the OMV.

47 Both sets of minutes disclosed no other reason for the rejection of Komoco's arguments. From the paragraph cited above, the minutes of the May meeting, in particular, appear to suggest that the

Registrar considered that she should maintain her practice of using Customs' OMVs simply because "the policy was very clear".

48 In her affidavit in these proceedings, the Registrar gave further reasons for the rejection of Komoco's representations. She said:

(a) the guidelines in the explanatory guide were clear as to which expenses ought to have been declared in the DOFs;

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

(c) Customs had extended its deadline for Komoco's acceptance of the offer four times so as to enable Komoco to make further representations, review Customs' computations and meet with Customs on the issue; and

(d) Komoco accepted Customs' offer of composition and did not appeal against the valuation as it could have under the Customs Act.

The second, third and fourth reasons do not deal with the key issue which was whether Customs' valuations were correct. In this connection it was irrelevant how long a time was spent by Customs, how many meetings it had with Komoco or that Komoco accepted the offer of composition. Only the first reason meets Komoco's contentions directly. This reason was not, however, stated in the minutes of the two meetings and the Registrar herself did not assert that at the May meeting, this reason was disclosed to Komoco. Whilst the Registrar was not, of course, obliged to give full reasons for her decision to Komoco, this reason would have been a very relevant one to disclose if indeed she had had it in her mind at the material time. Further, there was no indication in her affidavit that during the internal meetings time had been spent considering the clarity and relevance of the statements in the explanatory guide. On balance therefore, this reason appears to be an afterthought.

49 Komoco also complained that the main thrust of its representations was completely misunderstood or ignored. Komoco said that it was clear from its representations that even on a best case scenario from Customs' point of view, the uplift percentages should only have been 8.73% and 4.825% for the respective review periods according to the DT report and 8.21% and 4.55% for the same periods according to the EY report. These reports had included all components of expense data which Customs had indicated ought to be considered as part of the uplift percentage, as well as ambiguous expense data. If the Registrar had given proper consideration to Adrian Ball's affidavit, it would have been clear that Customs' uplift percentages were unreasonable. The Registrar did not respond to this argument. Whilst she claimed that she had considered Adrian Ball's affidavit, she made no comment on its contents as might have been expected.

50 Komoco also stressed the language used in two letters sent by the Registrar to it in 2004. In the first letter dated 8 December 2004, the Registrar stated that "*Based on Customs reassessment of the OMVs* of the vehicles imported and registered by [Komoco] there is a shortfall of $7,028,559 in ARF payments …" (emphasis Komoco's). In the second letter dated 20 December 2004, the Registrar stated:

Nonetheless, [Customs] has informed [the Registrar] of the revised OMVs of the said cars. Since the ARF of the car is computed based on the OMVs as assessed by [Customs], we have accordingly recomputed the ARF of the said cars based on the revised OMVs provided by the [Customs], and note that there is a shortfall of $7,028,559. *Subject to further advice from the*

[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. (emphasis Komoco's)

Komoco submitted that the letters spoke for themselves and showed that the Registrar did not exercise her discretion but simply imported the stand taken by Customs. In my view, whilst the letters, having been written much earlier, do not necessarily show that the Registrar did not give genuine consideration to Komoco's representations in 2006, they are indicative of a certain frame of mind.

51 On the evidence as a whole, including in particular the minutes of the March and May meetings, on balance, it appears that the Registrar did not give genuine consideration to the contentions raised by Komoco. Since the Registrar had gone into the discussions with a frame of mind that was predisposed to maintain the existing policy, it behoved her to show how she had nevertheless undertaken an objective analysis of Komoco's arguments. She did not condescend to particulars in this respect. Whilst discussions may very well have taken place between the Registrar and her senior officers, her subsequent statements to Komoco regarding the reasons for her decision did not in any way indicate that any objective analysis that was not influenced by the views of Customs had occurred.

52 I therefore conclude that the Registrar had fettered her discretion in relation to the valuation of the cars because, having instituted a policy of adopting Customs' valuation of the OMV, she was not prepared to hear out Komoco's case with an open mind. Since the policy itself was not, as I have stated unreasonable or irrational, this finding does not invalidate the policy completely. It merely renders the decision taken in relation to Komoco itself invalid.

2nd ground: did the Registrar abrogate her powers to Customs?

53 As I indicated in [19] above, it is not permissible for a power conferred upon one authority to be, in effect, exercised by another. This principle was applied in the *Lines* case itself where I held that the Port of Singapore Authority could not direct itself to exercise its discretion in accordance with the instructions of another statutory body. This was an unlawful delegation of authority. An authority cannot abrogate its own authority by taking orders from other statutory bodies unless it is under a legal duty to do so.

54 The claim of unlawful delegation is similar to the claim of fettering of discretion through the rigid adherence to a policy. Both involve the question of whether the discretion given to the Registrar had been exercised by her. In the case of fettering of discretion, the court's attention is directed at the question of whether a full and fair hearing was afforded to the applicant, and whether the authority thereafter gave proper consideration to the applicant's case. In a case of unlawful delegation, however, the issue is whether the authority slavishly adopted the position taken by another authority at all material times during the decision making process.

55 The Registrar rejected any notion of slavishness being applicable to this case. While her position was that unless there were exceptional or compelling reasons to disagree with Customs' valuation of OMV, she would adopt those values, she asserted it was clear on the facts and the evidence that:

(a) the VRL Division does not blindly adopt Customs' valuation of OMV but carries out its own checks; and

(b) the Registrar has the last say and will only notify and seek to recover the revised ARF amounts if she agrees with the Customs' revision and if she finds them reasonable and

acceptable.

The determination process

56 According to Ms Lean's affidavit, since 1968, Customs has supplied the Registrar with the OMV figures of motor vehicles as and when required by the Registrar. The initial assessment of the ARF, however, is not done using figures directly obtained from Customs. The prospective registered owner of the motor vehicle submits an application to register it and gives various details including the OMV of the vehicle as previously declared to Customs. The fees to be paid at registration will then be computed by LTA's "On-line Dial-up Systems – New Registration". The Registrar will then check and verify the data entered into the New Registration Module against the hardcopy documents submitted by the applicant. If all are in order, the vehicle will be registered accordingly.

57 As regards revision of the OMV of a vehicle, the procedure followed is that Customs will inform the Registrar that it has revised the OMV once the importer concerned has accepted Customs' offer of composition with regard to the revised OMV. At the same time, Customs will provide the Registrar with a softcopy of the list of import permit numbers of the importer concerned, as well as the engine and chassis numbers of the affected vehicles and their declared and revised OMVs. Based on this list of engine and chassis numbers, the Registrar will retrieve the records of the relevant vehicles and, through the VRL Division, will conduct her own independent computations of the revised ARF resulting from the revised OMVs. In the course of these computations, the Registrar sometimes makes enquiries with Customs. The VRL Division uses its acquired knowledge of the usual range for OMVs for the particular models of motor vehicles to further check through the revised OMV figures as assessed by Customs. Checks are made for unusual figures and any large difference in the revised OMV figures from the original figures will be verified with Customs. The Registrar will accept the figures for the revised OMVs only when Customs confirms that the revised OMV figures have been double-checked and are correct.

58 Once the VRL Division has computed the revised ARF figures, it will notify the importer of the outstanding ARF and the relevant amount fee payable and will forward details of the revised ARF computations to the importer. The VRL Division will consider representations by the importer if the importer disagrees with its computations. The VRL Division will review its computations and, once it is established that the original revised figures are correct and have been properly calculated by the division, the Registrar will require the importer to pay the outstanding amount due.

Analysis of the determination process

59 The Registrar's account of the determination process makes its plain that no independent evaluation process would take place when the Registrar calculates the initial ARF from the OMV value in the importer's application. The verification of the data in the New Registration Module is only against the declarations in the importer's hardcopy application and is not in relation to the OMV itself. It is significant that the OMV calculated by the importer using Customs' stipulation of the applicable uplift percentage is the only input used as the motor vehicle's value when the Registrar calculates the ARF. There is no evidence that the Registrar receives any other information which would enable her to decide that this OMV is incorrect. The Registrar admitted that one of the reasons why the policy was instituted in 1998 was that Customs had a comprehensive documentary system in place to compute the OMVs of motor vehicles and investigative powers under the Customs Act to conduct checks and audits on the importers to ensure that the information and documents submitted were true and accurate. There was no evidence that the Registrar possessed any of these abilities. Therefore, the Registrar, even if she wished to do so, would not have had the ability to contradict the OMVs calculated using Customs' stipulated uplifts.

60 In respect of the revised OMVs after Customs' post-clearance audit, there was little evidence that the Registrar would attempt to conduct an independent evaluation of the figures received from Customs. Whilst 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 according to Ms Lean's affidavit, the Registrar would simply accept Customs' confirmation of the correctness of the figures. Furthermore, the "independent" computations of the revised ARFs are irrelevant to the question of whether the values used as the basis of such computations were arrived at through the application of the Registrar's discretion. It is also difficult to appreciate where the "independence" lies in the mathematical exercise of adding a fixed percentage to the established OMV value. Ms Lean's affidavit ended by asserting that "in deciding whether to use the reassessed OMV figures by Customs, we will review the same in our worksheet to ensure that the reassessed OMV figures are acceptable and reasonable". There was no elaboration as to what constituted this "review" and if this assertion merely referred to the "counterchecking" mentioned earlier, then it is no evidence of the exercise of discretion. This statement, however, also was the one indication of some evaluation taking place as it related to the assertion that the VRL Division used its acquired knowledge of the usual range of OMVs for the particular models of motor vehicles to check through the revised OMV figures as assessed by Customs. However, even that indication was equivocal in that the submission was that differences in the figures would be verified with Customs and therefore the impression given was that if Customs said that the differences were not significant or were justified in the particular case, this assertion would be accepted.

The Registrar's determination in Komoco's case

61 From a systemic point of view, the present arrangement as disclosed in the evidence given by the Registrar shows no step in the procedure at which the Registrar exercises any discretion whatsoever. This, however, is not fatal in general terms since the Registrar was entitled to implement her policy of simply adopting Customs' valuations in respect of the general run of cases as long as she could show that when any particular case came along that required special consideration she applied an independent mind to it. For the purposes of determining the validity of the decision in relation to Komoco's present application therefore, that decision must be upheld if the Registrar has shown that she, regardless of the general policy, applied an independent discretion in this instance when it became clear that the circumstances required a fresh look at the situation and not simply the application of the existing policy.

62 The evidence adduced by the Registrar in this respect was that after the Registrar received a softcopy of the revised OMVs for Komoco's cars from Customs on 8 November 2004, work on computing the revised ARF commenced immediately. This work involved the following steps:

(a) information on the revised OMVs was uploaded into the VRL Division. The engine/chassis numbers of the 17,449 affected vehicles matched against their vehicle registration numbers and other data, including the previous OMV. The matching of such data revealed that one of the cars was still not registered;

(b) the Registrar checked the figures generated for the revised AFT for each of the 17,448 cars to ensure that a positive figure was obtained; and

(c) the Registrar noted the differences between the original and revised ARFs, but since the figures were not unusual, no verification with Customs took place.

Thereafter, on 8 December 2004, the Registrar notified Komoco of the revised ARF.

63 It is apparent that up to that stage, no evaluative step was taken. The work done in the computation of the revised ARF may well have been "painstaking and detailed" and "substantial" as claimed by the Registrar but hard work in computing and checking for consistency and verifying data do not amount to exercising discretion. Possibly, the assertion that the Registrar chose not to verify the figures with Customs because they were not unusual could reveal some element of judgment but the Registrar's letter of 8 December 2004 which I have quoted in [10] above appears to indicate that the Registrar merely adopted Customs' revised OMV figures without question. The Registrar submitted that the letter was "an unfortunate loose use of language" but this is unlikely since it contained no suggestion whatsoever of any independent analysis conducted by the Registrar.

64 Notwithstanding the foregoing, I do not think that as at 8 December 2004, the Registrar had abrogated her discretion. She was simply following her usual course of implementing the policy that had been adopted since 1968. At that stage, there was no indication that any difference of approach was required since she was aware that Komoco had accepted Customs' offer of composition and therefore had reasonable grounds to believe that Komoco had accepted Customs' recalculation of the uplifts.

65 On 10 December 2004, Komoco sent a letter to the Registrar disputing the under-declaration of the OMVs and asked for an extension of time up to 22 February 2005 in order to make representations. Ms Lean's affidavit disclosed the Registrar's thinking at that point of time. The Registrar was satisfied then that the revised OMVs were correct. She considered that Customs would have already received and considered any representations from Komoco in reviewing the revised OMVs and that Komoco had accepted Customs' offer of composition and did not appeal Customs' decision. The Registrar also considered that Customs had a comprehensive system in place to assess the OMVs. In those circumstances, the Registrar replied to Komoco by a letter dated 20 December 2004 that, subject to further advice from Customs, the LTA would have to collect the additional ARF of $7,028,559 and the amendment fee. An extension of time up to 29 December 2004 was given for the payment.

66 That letter, to my mind, indicated that contrary to her protestations in court, the Registrar invested absolute trust in the arrangement in Customs, to the extent that even her review 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 discretion. There was no evidence of any change in the Registrar's attitude thereafter.

Other claims

67 Komoco claimed that the Registrar had failed to satisfy herself as to the correctness of Customs' OMVs. Further, she had failed to give it a full and fair hearing. I have already dealt with these points.

68 Finally, Komoco claimed that the Registrar had acted *ultra vires* because under r 7 she had no powers to revise the OMV in order to impose any further ARF at a time subsequent to the first registration of a motor vehicle in Singapore.

69 Rule 7(1) provides that:

Additional registration fee

… a fee in accordance with the scale specified in Part II of the First Schedule shall be payable on the first registration of a motor vehicle in Singapore whether new or second hand.

70 According to Komoco, r 7(3) did not permit the Registrar to impose a further ARF subsequent to the first registration. Furthermore, the power to impose a further ARF is contained in r 7(8), which only refers to cases where a registered vehicle is being used in an altered condition or for a purpose that brings it within a higher rate, thereby requiring the "re-registration" of the vehicle. As such, unless there is an express power conferred on the Registrar, she cannot impose a further ARF on motor vehicles which have already been registered.

71 I cannot accept that submission. The Registrar is not seeking to impose a "further ARF" since it is clear she is merely revising the ARF already payable. The revised ARF is also not being imposed "subsequent" to the first registration as the trigger for its applicability remains the fact that the motor vehicle had been registered for the first time in Singapore. Furthermore, the revision is based not on circumstances which occur after the first registration, which would have necessitated an express power like in r 7(8), but on the true value of the motor vehicle already existing at the time of the first registration. There can be no doubt that the Registrar had the power to revise the ARF payable on a motor vehicle even if such revision took place after the first registration.

Conclusion

72 The Registrar had fettered the discretion given to her under r 7(3) by her unwavering adherence to the policy of adopting Customs' valuation of the OMVs as a basis for assessing the ARF payable by Komoco. Although the Registrar heard Komoco's objections, she did not do so with an open mind and was not genuinely prepared to consider if an exception ought to be made for Komoco. Furthermore, the Registrar had also unlawfully delegated her authority to Customs by refusing to consider whether or not exceptional circumstances applied, thus justifying her disregarding her usual policy in relation to the valuation of the OMV. In the circumstances, there must be an order in terms of prayers 1 and 2 in favour of Komoco together with costs of the application.