TC02647

Appeal number: TC/2012/02466

VAT and Customs Duty – importation of goods from Hong Kong – replacement item for previous purchase of wrong size – was VAT and Customs Duty due -yes- was review decision reasonable – yes – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

WILLIAM ABRAHAM **Appellant**

- and -

THE DIRECTOR OF BORDER REVENUE **Respondent**

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in public at Bedford Square on 24 January 2013

The Appellant appeared in person

James Fletcher of counsel, instructed by the Cash Forfeiture and Condemnation Legal Team, UKBA, appeared for the Respondent

DECISION

1. This appeal concerns the decision of the Respondent, dated 13 January 2012, that VAT and import duty were due on a parcel that had been sent to the Appellant from Hong Kong.

2. The Appellant promptly paid the tax due but applied for a refund. UKBA replied to him on 6 December 2011 maintaining that the tax had been correctly imposed. The Appellant asked for that decision to be reviewed. The outcome of the review was communicated to the Appellant by letter dated 13 January 2012, which decision he now appeals by way of his Notice of Appeal dated 26 January 2012.

The Facts

3. The facts in this appeal were not in dispute. The Appellant bought a cardigan as a present for his wife while in Hong Kong on business in October 2011 and brought it home in his hand luggage. The value of the cardigan in sterling was agreed to be £233.46. The cardigan proved to be the wrong size, so Mr Abraham sent it back to Hong Kong by post and was sent an identical replacement item of the correct size by the retailer. The parcel was intercepted in November 2011 by UKBA and found to have a value that made it liable to import duty at 12% (£28.01) plus VAT of 20% of the value of the item including the customs duty (£52.29), giving a total tax due of £80.30. A "clearance fee" was also charged by Parcelforce Worldwide, but that is not a matter within the jurisdiction of this Tribunal.

4. The Tribunal heard evidence from Officer David Harris, who had conducted the review on behalf of UKBA. He said he had taken advice on all the possible exemptions available to the Appellant and produced as exhibits to his witness statement copies of the e mails he had received from colleagues, showing that he had taken pains to explore all options for relief for the Appellant.

The Law

5. Good imported from outside the European Community are liable to customs duty under Council Regulation (EEC) Number 2913/92 Article 48. Import Duty is charged as a percentage of the value of the goods, and there is a tariff applicable depending on the nature of the goods and where they are imported from. Section 16(4) of the Finance Act 1994 provides a right of appeal to the Tribunal, with the question for the Tribunal being whether the decision taken on review was reasonable.

6. VAT, based on the value of the goods including the import duty, is charged at the same rate applicable for similar goods in the UK by virtue of section 1 of the Value Added Tax Act 1994 ("VATA"). Section 37 of VATA allows for certain exemptions to be applied and section 83(1)(b) of VATA provides a right of appeal to the Tribunal.

7. The provisions in force at the date of importation in this case provided that tax was due if the value of the goods was over £18 for VAT purposes and over £135 for duty purposes. There are certain exceptions to this general rule. For example, if the goods are imported in hand luggage, then the value of the goods is raised to £390 before tax is due by virtue of the Travellers' Allowance Order 1994. This was, of course, the exception which was applicable to the original importation of the cardigan by the Appellant.

8. There are certain exceptions applicable to postal importation also. Under the VAT (Non-Commercial Consignments) Relief Order 1986/939 (as amended), relief from VAT is available if the imported goods are sent as a present from a private person abroad to a private person in the UK and the value of the goods for VAT purposes is under £40.

9. Outward Processing Relief is available under Article 145 of Council Regulation 2913/92 where goods are exported temporarily in order to be repaired and where replacement items are imported because it is not possible to repair the original goods. This provides relief from import duty but not VAT.

10. Relief is available under Council Regulation 1186/2009 in relation to the personal property of natural persons where the owner is transferring his or her normal place of residence from outside the EC into a Community State.

Submissions

11. In his grounds of appeal, the Appellant had submitted that the imported cardigan was a replacement item, relying on correspondence with the retailer in Hong Kong which he produced, showing that the original cardigan had been exchanged for one of the correct size. At the hearing he also submitted that the item was a gift for his wife and so the provisions concerning gifts should have been applied to this case. In the alternative, he Appellant drew an analogy with personal property relief available when moving one's place of residence because the cardigan was, he contended, already owned by him when it was imported. He argued that this was essentially a case of double jeopardy and that he was being unfairly penalised for importing the same item twice. At the hearing, the Appellant also argued that common sense should be applied to his circumstances and the charges waived under section 37 of VATA. The Appellant was at pains to make clear that he had not attempted to evade tax lawfully due and I entirely accepted this aspect of his submission.

12. The Respondent submitted that the relief in relation to gifts did not apply because the item in question exceeded the relevant value for the exempting provision and also because the goods were not sent by a private person but by the retailer. It was argued that the intention of the Appellant to make a gift of the item once it had been imported did not engage the relevant provision in any event. The Respondent further submitted that the relief available for the repair or exchange of faulty items was not applicable here as the item was the wrong size and the correspondence produced by the Appellant himself showed that it had not been faulty and it had not been exported for the purpose of repair. Relief under section 37 VATA was not

available as that provision merely permitted the Treasury to make orders giving relief but no order had been made which applied in the circumstances of this case. The Respondent's case was that the law had been correctly applied and that the review decision was reasonable. Further, that the Appellant (upon whom the burden of proof lay) had not advanced any arguments on which the Tribunal could rely to show that the law had been incorrectly applied or that the review decision had not been reasonable. The Respondent had exhibited its internal correspondence showing that Officer Harris had explored every possible option before issuing his review letter. It was further submitted that it had been the Appellant's responsibility to familiarise himself with the law applicable to postal importations (guidance for international postage users is available on HMRC's website) and that the Crown has a duty to collect all tax lawfully due and cannot simply waive that duty.

Conclusion

13. I conclude that the Appellant imported two different items under two different tax regimes and that the relevant charges were applied to both importations. The importation in his hand luggage was under the relevant limit for the charging of import tax and VAT, but the subsequent importation by post of a new item of a different size (albeit of the same style) properly attracted import tax and VAT. I am satisfied that none of the exemptions which have been cited by the Appellant may correctly be applied to the second importation and that the review letter of 13 January 2012 was both correct in law and reasonable, taking into account all the information provided by the Appellant. It follows that this appeal is dismissed.

14. The Appellant pointed out that he had originally asked for this matter to be determined on the papers but that the Respondent had insisted on an oral hearing and instructed counsel. The original hearing date had been vacated and a new one arranged. He expressed the view that UKBA's approach to this matter had involved a disproportionate cost to the taxpayer when one looked at the amount of tax in dispute. I have considerable sympathy with the Appellant's view, especially as the facts were not in dispute and the law was not so complicated that it could not be understood by a Judge on the papers with the benefit of written submissions. However, under the Tribunal's procedural rules a paper determination may only take place if both parties agree and so an oral hearing was required to be arranged. It was open to the Appellant not to attend the hearing in person and to ask the Tribunal to rely on his written submissions. However, he did attend and I was grateful to him for taking the time to do so and for his clear and considered submissions.

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

ALISON MCKENNA
TRIBUNAL JUDGE

RELEASE DATE: 16 April 2013