



**TC03543**

**Appeal number: TC/2013/04473**

*VAT on importation – goods sent to US for repair – repair not effected – goods replaced free of charge – whether relief for VAT – VATA 1994 s1 & s21 – VAT Regulations 1995 reg. 126 not applicable – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LYNETTE SHAW**

**Appellant**

**- and -**

**THE DIRECTOR OF BORDER REVENUE**

**Respondent**

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY**

**The Tribunal determined the appeal on 1 May 2014 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 27 June 2013, HMRC's Statement of Case submitted on 30 September 2013 and the other papers contained in the appeal bundle.**

## DECISION

1 The appeal concerns value added tax of £45.50 charged on an item of  
5 goods sent to a Mr Andrew Shaw (who I take to be the appellant's husband)  
from the United States claimed to be due on importation of goods into the  
United Kingdom on or about 27 August 2012. The item of goods consisted  
of an HP TouchPad Wifi 16gb 9.7 inch. The declared value of this touchpad  
for import duty was £227.54; no customs duty was imposed, and the tax  
10 chargeable was therefore calculated at £45.50. There is no issue about the  
valuation. The Parcelforce handling fee is a separate matter and not within  
the scope of the appeal.

2 A similar touchpad had been bought over the internet on 30 December  
2011 from a firm called Simply Electronics for £219.95. It is not clear  
15 whether this firm has any presence in the United Kingdom, but it is  
apparent that the touchpad purchased had been intended for distribution in  
the United States market, but was sold in the United Kingdom on what is  
known as the 'grey' market – in other words by a seller who was not  
authorised under contract with the manufacturer as a official distributor of  
20 the goods in question.

3 The evidence shows that the touchpad thus acquired malfunctioned and  
was sent out of the United Kingdom for repair on or about 25 September  
2012. Because of its status as a grey market import, the manufacturer HP  
would only deal with it for repair if it was sent to them from an address in  
25 the United States. To achieve this, the touchpad was sent to a family  
member living in the United States, and thence to HP for repair under the  
manufacturer's warranty. In the event, HP did not repair the item but  
replaced it free of charge instead, sending a replacement touchpad to the  
family member in the United States who had submitted the original item for  
30 repair. The replacement was then sent on to Mr Andrew Shaw in the United  
Kingdom, who was therefore its importer.

4 In her appeal to the tribunal, the appellant states that "I feel I have paid  
VAT twice on the machine and therefore feel a refund is a reasonable  
request. I request the refund of \$59.00; this includes the £13.50 Parcelforce  
35 administration fee." No reference is made to the original item having been  
bought by Mr Shaw, or to the replacement item having been sent to him.  
The appellant was unable to provide proof of posting of the original item  
sent out for repair, but did supply an email from the family member in the  
United States to whom it had been sent.

40 5 In the course of the correspondence with the respondent seeking the  
refund, Mr Shaw emailed HP in the United States asking for details of  
asking for details of the warranty which applied to his purchase. The reply  
from HP stated "you will need to explain the United Kingdom customs that  
this device is a gift from HP as a compensation and it comes without a  
45 receipt." No customs duty has been charged in respect of the import,  
presumably because the amount falls below the *de minimis* threshold of £9.

*Legislation*

6 Sections 1 and 21 of the Value Added Tax Act 1994 provide:-

5 1(1) Value added tax shall be charged, in accordance with the provisions of this Act—

(a) on the supply of goods or services in the United Kingdom (including anything treated as such a supply),

(b) on the acquisition in the United Kingdom from other member States of any goods, and

10 (c) on the importation of goods from places outside the member States, and references in this Act to VAT are references to value added tax.

(2) VAT on any supply of goods or services is a liability of the person making the supply and (subject to provisions about accounting and payment) becomes due at the time of supply.

15 (3) VAT on any acquisition of goods from another member State is a liability of the person who acquires the goods and (subject to provisions about accounting and payment) becomes due at the time of acquisition.

(4) VAT on the importation of goods from places outside the member States shall be charged and payable as if it were a duty of customs.

20 21(1) For the purposes of this Act, the value of goods imported from a place outside the member States shall (subject to subsections (2) to (4) below) be determined according to the rules applicable in the case of EU customs duties, whether or not the goods in question are subject to any such duties.

25 (2) For the purposes of this Act the value of any goods imported from a place outside the member States shall (subject to subsection (2A) below) be taken to include the following so far as they are not already included in that value in accordance with the rules mentioned in subsection (1) above, that is to say—

30 (a) all taxes, duties and other charges levied either outside or, by reason of importation, within the United Kingdom (except VAT);

(b) all incidental expenses, such as commission, packing, transport and insurance costs, up to the goods' first destination in the United Kingdom; and

35 (c) if at the time of the importation of the goods from a place outside the member States a further destination for the goods is known, and that destination is within the United Kingdom or another member State, all such incidental expenses in so far as they result from the transport of the goods to that other destination;

40 7 Regulation 126 of the Value Added Tax Regulations 1995 provides:-

126 Subject to such conditions as the Commissioners may impose, VAT chargeable on the importation of goods from a place outside the member States which have been temporarily exported from the member States and are reimported after having undergone repair, process or adaptation outside the member States, or after having been made up or reworked outside the member States, shall be payable as if such treatment or process had been carried out in the United Kingdom, if the Commissioners are satisfied that—

45 (a) at the time of exportation the goods were intended to be reimported after completion of the treatment or process outside the member States, and

(b) the ownership in the goods was not transferred to any other person at exportation or during the time they were abroad.

*Conclusions*

5 8 The touchpad the subject of this appeal is not the touchpad sent to the United States for repair. It is clear from the evidence that it is a distinct item of goods and therefore chargeable as such to value added tax under section 1(c) of the 1994 Act in accordance which its correct valuation. As I have noted, the valuation rules applied to the case are not in dispute, and it has been made clear to the appellant that the Parcelforce administration charge of £13.50 is charged by that company and is a matter which she must take up with them if she objects to it.

9 The charge to value added tax on the importation of this item falls, in accordance with section 1(3) of the Act, on the person who acquired the goods on import. The evidence is that this was Mr Andrew Shaw and not the appellant. The appeal must therefore be dismissed on the ground that the appellant was not the importer and has shown no legitimate interest in the goods imported.

10 The same result would be reached if the appellant had been the importer. Relief from VAT on import is given under regulation 126 for goods temporarily exported from the European Union and reimported after having undergone repair, process or adaptation, or after having been made up or reworked, outside the European Union. That is not the case here, since the item imported was not in any form the item exported for repair. The appeal must therefore be dismissed on that ground also.

11 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.

**MALACHY CORNWELL-KELLY  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 May 2014**