



TC01653

Appeal number: TC/2010/08028

Zero rating- transfer of ownership of dogs by animal charity in return for a 'donation' – was the donation consideration for the transfer – yes – was the Appellant making a taxable supply – yes – appeal allowed.

FIRST-TIER TRIBUNAL

TAX

THREE COUNTIES DOG RESCUE

Appellant

- and -

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

Respondents

**TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)
MICHAEL ATKINSON (MEMBER)**

Sitting in public in Birmingham on 28 November 2011.

Philip Luty, Accountant, appeared for the Appellant

Bernard Haley, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. Three Counties Dog Rescue ('TC') was appealing against the decision of the Commissioners dated 20 July 2010 to refuse its application to register for VAT with effect from 1 April 2006 and to refuse repayment of an input tax claim of £61,939.

2. We heard oral evidence from Mr Maxwell James Mauchline on behalf of TC and from the decision making officer Mr John Bumby on behalf of the Commissioners.

Legislation and Case Law

3. Item 1, group 15, Schedule 8 of the VAT Act 1994 allows for the zero rating of a sale by a charity of any goods donated to it. The Commissioners had always interpreted donated goods as being those which had been given by their owners. This view was successfully challenged before the Tribunal in *Gablesfarm Dogs and Cats Home 20519*. Gablesfarm was in a similar business to that of TC. It received in dogs which had for example been rescued by the emergency services and others which were strays or had been lost or abandoned – i.e. they had not been donated by their owners. The animals were then sold on. It was decided by the Tribunal that the sale of the cats and dogs given to the Appellant constituted the sale of donated goods meeting the requirements of zero rating in item 1 group 15 Schedule 8.

The issue before the Tribunal

4. It is in the light of *Gablesfarm* that TC made its application for registration and its claim to recover associated input tax of £61,939. TC's contention that it was making taxable supplies of donated dogs in return for a consideration was refuted by the Commissioners on the basis that they were merely re-homing dogs in return for a voluntary donation. Therein lies the difference between the parties and the issue before the Tribunal.

The Facts

5. We accept Mr Mauchline's evidence as to the facts in its entirety and the facts we find to be as follows. TC was founded in 1971 and Mr Mauchline has been running it with his wife from the outset. It registered as a charity in 1981, its stated charitable aim being

“to accept, care for and find homes for lost strayed and unwanted dogs of all breeds and to ensure their wellbeing thereafter”.

As the charitable aim indicates dogs, (and the occasional cat) coming in to TC will all have been abandoned or lost. Some will have been strays and some will be in poor physical shape. The animals are kennelled, fed, given the necessary veterinary care and vaccinations and generally nursed back to health and fitness at which stage they will be advertised for re-homing. The dogs have to be re-homed as TC does not have the space, the funds or the facilities to keep an ever increasing number of animals. There has to be a throughput.

6. The re-homing is a painstaking process, carried out by Mrs Mauchline, as meticulous care is taken to ensure the suitability of the prospective new owner. There is an initial filtering process followed by a visit by the prospective owner to the kennels to view the dog and Mrs Mauchline will herself make a home visit to the owner to ensure in the main that the dog will be safe and secure. Once Mrs Mauchline is satisfied, the prospective owner will foster the dog for a trial period of something like two weeks. At the outset of the trial period, the prospective owner will sign a 'pre-ownership agreement' which in effect sets out the terms and conditions under which the dog is to be kept during that period. Once the trial period has been successfully completed, the owner and TC enter into an 'Adoption Agreement'. Adoption is the word given to the formal transfer of ownership and the Agreement is the document by which ownership is transferred from TC to the new owner.

7. The re-homing process is described fully on TC's Website and we were shown a print-out of the 2007 Website which contains the following paragraph relating to payment.

"A home check is conducted before a dog is re-homed. Once prospective owner and dog are matched the dog is taken on for a trial period. After this trial period (about 1-2 weeks) has successfully run, ownership is made permanent, and a donation to the Society to help with running costs is made. All the dogs we re-home are neutered, inoculated and micro chipped. Free pet insurance is also provided for a 6 week period.

It costs on average £150 for us to neuter, vaccinate and microchip each dog in our care. Ideally we would like your donation to cover these costs and any additional donation for the dog would be appreciated.

Although we operate from home and bear the costs of transport and telephone, we incur significant costs in kennelling, veterinary bills and advertising. Our running costs can be especially high where we have kept a dog for some time before a suitable home is found. We therefore welcome a realistic donation from the new home to defray costs, as the true cost to the Society is in the region of £800 per dog homed."

Mrs Mauchline will have explained on the initial interview that a contribution of £150 (originally £100) is expected to be made and the Adoption Agreement itself contains the following clause.

"I acknowledge, with thanks, receipt of your donation of £....."

8. Before the Tribunal were several letters from owners confirming this process in terms such as:

"During the first conversation she explainedand required, upon completion of the adoption, a payment of a minimum of £100 to be made to the charity to cover expenses such as neutering and kennelling."

“I was told that if I wanted the dog a payment would be required in the order of £100 but that I could have the dog on trial first before a payment needed to be made.”

5 “I called the number and spoke with Gyll Mauchline, during the initial conversation Gyll went through the re-homing process which included a payment of £150....”

9. Mr Mauchline explained that he had used the word “donation” rather than payment because he preferred to use soft language in respect of the activities of the charity – hence the reference to “rescue” and “re-homing” and the use of the word ‘donation’ was merely a part and parcel of this policy. He told us that should the new owner refuse to make the donation, the re-homing process would be terminated as it would be deemed that if the new owner was unable to afford the contribution, he would be unable to cover the future upkeep costs of owning the animal.

10. Mr Mauchline did not treat the donations received from new owners in the same way as other donations to the charity. They were kept entirely separately in the accounts, the entries being described as “donations for dogs” and “other donations”. Gift aid was claimed in respect of “other donations” but never for the “donations for dogs”. This, explained Mr Mauchline, was in line with the advice given by HMRC that “a minimum donation where there is no choice about payment” does not qualify for Gift aid as it is “simply a fee for goods or services” and not a gift. It was the gist of Mr Mauchline’s evidence that there was nothing voluntary about the contribution. It was the fee charged to a new owner for the dog, although it would be entirely up to the new owner to make an additional and voluntary donation if they wished.

11. We have referred previously to the Website as it was in 2007. We understand the Website was in this precise form and wording from 1 April 2006 to 1 August 2010 with the exception of a few weeks in June/July 2010. Mr Mauchline, in his oral evidence, described an addendum which had been made during this period by a temporary web designer whose fear apparently was that the original wording would deter people from coming forward for dogs because of the apparently mandatory nature of the payment. The addendum was only on site for a matter of weeks when Mr Mauchline removed it because it was causing confusion as it did not spell out precisely what the policy of TC was in relation to payment. We did not see a copy of the addendum but it was summarised by Mr Luty in correspondence in the following terms:

35 “It starts by implying my client would really like the donation to be more than £150 as the real cost is a lot more but goes on to say ‘if you cannot make a donation of £150 this will not bar you from having one of our dogs’. It goes on to refer to taking a dog that is difficult to re-home, setting up a direct debit or long term fostering.”

40 The idea behind the addendum was, in Mr Luty’s terms, to indicate that in certain circumstances a donation of less than £150 would be acceptable because some dogs were difficult to re-home and others were old and would be in need of regular and

expensive veterinary treatment. There was also an alternative to a transfer of ownership in long term fostering where the dog continued to belong to TC but was kept and looked after by the owner or an owner could set up a direct debit instead of an up front payment. Even though the wording of the addendum seemed to imply that there could be a voluntary nature to the payment, this was not its aim and as Mr Luty stressed it would be very much the norm for a payment to be made and the circumstances referred to above were the exceptions to the norm.

12. The change to the website on 1 August 2010 was a permanent change and was instigated to reflect the view which the Commissioners were then taking (we set this out in more detail below). The new wording reads:

“A home check is conducted before a dog is re-homed. Once prospective owner and dog are matched, the dog is taken on for a trial period. After this trial period (about 2 weeks) has successfully run, ownership is made permanent, and a payment to the Society to help with running costs is made. All the dogs we re-home are neutered, inoculated and micro chipped. Free pet insurance is also provided for a 4 week period.

A legal undertaking is signed to confirm that the dog will be kept as intended and, that in the event of a future problem, the dog will be returned to the Society.

Payment

It costs an average £150 for us to neuter, vaccinate and microchip each dog in our care. Consequently, there will be a charge, normally £150 for each dog taken after the trial period ends. If you are in a position to give more we would welcome it as the true cost to the Society is £800 per dog homed. If you are not in a position to take from us on that basis you should enquire about the possibility of fostering of a dog.”

The application to register and what followed

13. It fell to Mr Bumby to consider the application to register and the consequential claim for a refund of input tax. Mr Bumby set up a meeting with Mr Mauchline and Mr Luty. At the outset of the meeting, Mr Bumby asked Mr Mauchline whether an inability to afford the donation would prevent someone from taking ownership of a dog. Mr Mauchline apparently told Mr Bumby that in theory it would not but he could think of no occasion when this had happened. Mr Mauchline in his oral evidence, whilst not for one moment questioning Mr Bumby’s recollection, said that he could not recall saying this and the only possible context in which he would have said it would be in the context of when dogs were taken in. He would not and did not intend to imply that the payment for a dog was entirely voluntary because it was not. After a wide ranging discussion of the various activities of the charity, Mr Bumby returned to his office, studied *Gablesfarm* and looked up the website for TC which was at that stage the addendum. In the light of all he had gleaned, Mr Bumby concluded, and notified TC by letter dated 28 June 2010, that the income received by TC was outside the scope of VAT, being donations and not payment for the dogs.

14. Extensive representations were made by Mr Luty and Mr Bumby's decision was reviewed by Mr Peter Jennings. Mr Jennings' review letter was dated 23 September 2010 by which time he had had sight of the new website (post 1 August 2010) and he drew a clear distinction between the period prior to 1 August 2010 and thereafter. Mr
5 Jennings concluded that post 1 August 2010, in the light of the website entry "it is quite clear that payment for the supply of a dog is expected, and therefore cannot be seen as a donation, one that is unconditional and freely given." He therefore accepted that as from 1 August 2010, payment for the dogs was mandatory and taxable supplies were being made which could be zero rated thus enabling registration and from
10 thereon a refund of associated input tax. Prior to 1 August 2010, however, Mr Jennings agreed with Mr Bumby's view and concluded that during that period "the sums received for the supply of dogs constituted unconditional freely given donations and as such were outside the scope of VAT". He went on to state that the dogs were being supplied, not in the course of business, but in order to further TC's charitable
15 activities and that the input tax incurred on the care of the dogs was incurred to achieve the purposes of the charity (animal welfare) and was not incurred for a business purpose.

Submissions and Conclusions

15. We are considering here the period from 1 April 2006 to 1 August 2010, the
20 Commissioners accepting that post 1 August 2010 TC were making zero rated taxable supplies. It was Mr Haley's submission that TC's stated charitable purpose was the re-housing of rescued dogs. Where a new owner took an animal from TC, the owner thereby assisted TC in achieving its charitable purpose and any receipt of a donation would be a bonus. He further contended that at the time of re-housing, the charity
25 only anticipated a monetary donation. The lack of donation would not have precluded the new owner from being provided with a re-housed animal.

16. We ask first therefore what was the nature of the payment being made by the owners. Was it or was it not a donation in the proper meaning of that term? Mr Luty referred us to the Commissioners' definition of a donation contained in their Notice
30 701/1 Charities. In paragraph 5.9.1, it is stated that "a donation is outside the scope of VAT provided that it is freely given, with nothing supplied in return". Our view is that the payments made by the owners were neither 'freely given' nor were they given 'with nothing supplied in return'. We have the oral evidence of Mr Mauchline which we accept that only in the rarest of circumstances – perhaps with an old or ill dog –
35 would a transfer of ownership (as distinct from fostering) be allowed without the payment of a donation. The original website makes it clear that on transfer "a donation to the Society to help with running costs *is* (our emphasis) made". There is nothing optional about this and even if, as an exception, a dog is transferred without payment that does not mean that it is not standard practice to expect payment. We
40 have the evidence of the new owners and there is also the accounting evidence as to how the donations for the dogs were treated. They were kept entirely separate from the charitable donations and also they were not subject to gift aid.

17. It is also quite clear that the owners in fact did get something in return for their donations – they got a dog. Mr Bumby, we think, was probably misled in his initial

view by the very temporary addendum on the website and what he took to be an assertion by Mr Mauchline that dogs could be transferred without payment. The addendum, we find, did not reflect the true and accepted policy and practice of TC throughout the period and as to the conversation between Mr Bumby and Mr Mauchline, they appear to have been, through no fault of either, at cross purposes.

18. It is clear to us and so we find that between 1 April 2006 and 1 August 2010, TC were supplying dogs in return for a mandatory payment, termed by TC as a donation but this not in any way altering the nature of the payment. The substance of the transaction was the supply of a dog for a consideration, a mandatory contribution towards the care costs which had been incurred by TC.

19. There is also, in our view quite crucially, the decision of the Commissioners to accept that TC were making taxable supplies post 1 August 2010. Based purely and simply on the re-worded website, the Commissioners imply to TC a change in policy. It is referred to in the Statement of Case as a “change of practice”. In his oral evidence, Mr Bumby saw it as demonstrating a change in ‘intent’. The charity no longer accepted voluntary donations on re-housing but ‘demanded a payment for the sale of the dog’. He saw a distinction in not only how the payment was described but also in how it was treated. This is a distinction which does not exist. The website in effect re-words the terminology for the payment, but absolutely nothing else has changed. Beneath the wording, the practice remains identical and the substance of the transactions unchanged. There is no change in treatment, no change in policy and no change in practice. Post 1 August 2010, TC acted and carried on and pursued the transactions in precisely the same way as they had before. It is therefore, in our view, illogical to allow that zero rated taxable supplies were being made post 1 August but not before.

20. We find that the Appellant, in its supply of dogs to new owners, was making zero rated taxable supplies, thus entitling it to register for VAT and to recover its input tax. The appeal is therefore allowed.

21. 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.

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TRIBUNAL JUDGE
RELEASE DATE: 12 December 2011