



TC01964

Appeal number:TC/2011/3984

VAT – import VAT – whether small hand-held wooden crosses basic necessities – no – whether other conditions for relief met – no - whether non-commercial consignment – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE VENERABLE HUGH GLAISYER

Appellant

- and -

DIRECTOR OF BORDER REVENUES

Respondents

TRIBUNAL: JUDGE BARBARA MOSEDALE

The Tribunal determined the appeal on 12 April 2012 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 17 May 2011 (with enclosures), HMRC's Statement of Case submitted on 4 July 2011 and skeleton argument submitted on 22 January 2012 and the various letters (the last dated 9 February 2012) from the Appellant

DECISION

1. The Venerable Hugh Glaisyer appeals against a review decision of the UK
5 Border Agency (“UKBA”) of 5 May 2011 refusing to refund import VAT of £60 on
the import by him of small wooden crosses from Israel.

2. The parcel was delivered to Mr Glaisyer on payment of £73.50. This comprised
£60 VAT and £13.50 clearance fee levied by Parcelforce. This Tribunal has no
jurisdiction over fees levied by Parcelforce so this decision is limited to consideration
10 of the legality of the charge of £60 VAT.

The Facts

3. The facts were not in dispute. A number of clergy, including the appellant,
clubbed together to raise £300 to purchase a box of 1,000 wooden crosses from a
family which makes them in Bethlehem, Israel. Mr Glaisyer imported them through
15 the postal system. Each cross is about 2” by 1” and is intended to be held in the hand.
On arrival in the UK, the crosses are divided up among the clergy who contributed to
their purchase. These clergy then distribute the crosses free of charge to persons who
they view as being in need of them, such as sick and dying persons in hospitals and
the bereaved.

4. Mr Glaisyer has been importing crosses on an occasional basis in this manner
for some 30 years and has never before been asked to pay VAT on them. An initial
query some 30 years ago was raised as to their VAT liability which Mr Glaisyer
presumes he answered to HMRC’s satisfaction as he never heard anything further
until the demand for £60 plus Parcelforce’s fee in 2011. That no query has been
25 previously raised by HMRC or now UKBA on Mr Glaisyer’s earlier importations is,
however, irrelevant to the legal question of whether the importation fulfils the
conditions for VAT relief.

The law

5. Under the Value Added Tax Act 1994 s2 and the Principal VAT Directive
30 2006/112 EC Article 2 VAT is payable on imported goods at the time of their
importation. This is not in dispute.

6. What is in dispute is whether the appellant was entitled to relief from payment
of VAT on his importation of the crosses. I deal with the potentially applicable reliefs
below and determine whether Mr Glaisyer is, as he claims, entitled to relief from the
35 VAT.

Relief for basic necessities

7. The Value Added Tax (Imported Goods) Relief Order 1984 at Item 1 of group 6
of Schedule 2 provides relief for:

“Basic necessities obtained without charge for distribution free of charge to the needy by a relevant organisation”

The notes to that Group provide the following definition:

5 “basic necessities” means food, medicines, clothing, blankets, orthopaedic equipment and crutches, required to meet a person’s immediate needs”

8. This relief implements what is now Council Directive 2009/132 EC (originally Council Directive 83/181 EC.) The European legislation is relevant because Mr Glaisyer is entitled to rely on it. Article 43(1)(a) provides relief from VAT on
10 importation on:

“basic necessities obtained free of charge and imported by State organisations or other charitable or philanthropic organisations approved by the competent authorities for distribution free of charge to needy persons”

15 Article 43(2) provides:

“For the purposes of 1(a) “basic necessities” means those goods required to meet the immediate needs of human beings, such as food, medicine, clothing and bed clothes.”

20 9. Part of HMRC’s case is that the crosses cannot be a basic necessity because not all needy persons are Christian. This reasoning is fallacious. For instance, in UK law, crutches are defined as basic necessities whereas it is obvious that not all needy people are crippled. In both UK and EU law, medicines are defined as basic necessities but not all needy persons will be in need of them. So whether the crosses
25 are “basic necessities” does not depend on whether all needy persons need them or whether only a class of needy persons need them.

10. But that does not answer the question of whether crosses (or indeed any other item of religious significance to a member of a religion) are basic necessities within this legislative definition. The list in the Notes in the UK legislation is not on its face
30 a list of examples. It uses the word “means” rather than the word “includes”. This suggests that to be within that definition the crosses must be food or medicine or clothing or blankets or orthopaedic equipment or crutches. The crosses are none of these. They are items to meet a person’s spiritual needs. Item 1 does not include items to meet a person’s spiritual needs.

35 11. However, the EU legislation, which the UK legislation must be read if possible as conforming with, uses the expression “such as”. That means that the list of basic necessities is not a closed list. Other similar items will be included. Nevertheless, even extending basic necessities to include items similar to food, medicine, clothing and bed-clothes, I would still not read Item 1 as including items to meet a person’s
40 *spiritual* needs. All the items listed relate to physical needs and in particular relief from hunger, illness or disability. I cannot consider items for the relief of spiritual needs as sufficiently similar to such items: they do not preserve physical health.

12. Mr Glaisyer clearly considers items for a person's spiritual needs are as much a basic necessity as items listed within Item 1. But for the reasons given above, I find that neither Parliament nor the European Council intended to include in the exemption articles to meet spiritual needs. The crosses are not "basic necessities" under either
5 UK or EU law and for this reason Mr Glaisyer is not entitled to relief on their importation under Item 1.

13. In any event, as HMRC pointed out, not all basic necessities are covered by Item 1. To be within Item 1 the basic necessities must be both "obtained without charge" and be "for distribution free of charge." The EU legislation is virtually
10 identical, requiring the goods to be "obtained free of charge" and "for distribution free of charge". The crosses are distributed free of charge by Mr Glaisyer and the other clergy who purchase them. However, the crosses were not obtained free of charge. Mr Glaisyer paid about £300 for them. For this reason as well, Mr Glaisyer is not entitled to relief under Item 1.

14. Mr Glaisyer disputes whether this is a correct reading of Item 1 because, as he points out, blankets are "basic necessities" but the manufacturer will charge for them. This is a misunderstanding by Mr Glaisyer. What Item 1 requires is that the importer acquires the blankets free of charge, and then donates them to needy persons. So a person importing blankets from a supplier who charges for them is outside the relief
15 of Item 1 even if that person distributes the blankets to needy persons. Whereas a person importing blankets from, say, a charity (which may have paid to obtain the blankets but which does not charge the importer for them) is able to claim Item 1 relief if he donates them to needy persons.

15. There is an issue which HMRC has not raised of whether Mr Glaisyer and the other clergy who club together to buy the crosses are a "relevant organisation". I do not address this point as neither party has made submissions on it and it is irrelevant, having already decided on other grounds that Mr Glaisyer is not entitled to this relief.
25

16. In conclusion, as the crosses are neither "basic necessities" nor obtained without charge, Mr Glaisyer is not entitled to relief on them within Item 1.

30 *Low value consignments*

17. Item 8 of the same provision provides for exemption from VAT on consignments of goods not exceeding £18 in value. This relief clearly does not apply in this case where the consignment had a value of about £300.

Non-commercial consignments

35 18. The Value Added Tax (Non-commercial consignments) Relief Order 1986 No 939 provides for relief for:

"...on the importation...of goods forming part of a small consignment of a non-commercial character."

A "small consignment" is defined as:

“...a consignment (not forming part of a larger consignment) containing goods with a value of customs purposes not exceeding £40”

A “consignment of a non-commercial character” is defined as one which:

“(a) it is consigned by one private individual to another;

5 (b) it is not imported for any consideration in money or money’s worth;

(c) it is intended solely for the personal use of the consignee or that of his family and not for any commercial purpose.”

19. This relief implements what is now Council Directive 2006/79 EC (originally
10 Council Directive 78/1035.) The European legislation is relevant because Mr Glaisyer is entitled to rely on it. However, although there are some differences in wording, in basic effect it is the same as the UK legislation.

20. Therefore, I conclude that Mr Glaisyer is not entitled to this relief. The crosses
15 were not a small consignment as their value was £300, well in excess of the permitted £40. In any event, the consignment was not of a non-commercial character. The crosses were imported for consideration: Mr Glaisyer paid for them. I note that the crosses fail the other conditions too. The consignor (a family) could not be regarded as a private individual because they charged for the crosses. Nor were the crosses intended for the personal use of Mr Glaisyer or his family: they were intended to be
20 given away to other persons.

21. Mr Glaisyer’s case is that the crosses were a non-commercial consignment because he purchased them in order to give them away. But that is not the point. To obtain relief, the legislation requires that Mr Glaisyer be given the crosses rather than purchase them. It also requires them to be worth less than £40. The consignment met
25 none of these conditions.

Conclusion

22. The crosses, if purchased by Mr Glaisyer in this country from a person registered for VAT, would be subject to VAT irrespective of Mr Glaisyer’s charitable intention to give them away to persons in need of spiritual help. It is therefore not
30 surprising that the law provides that the crosses Mr Glaisyer purchased from a supplier outside the EU similarly attract VAT.

23. The appeal is dismissed.

35

24. 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.

10

TRIBUNAL JUDGE

RELEASE DATE: 18 April 2012

15