



TC02075

Appeal number: TC/2011/7425

*VAT – Import of goods – Inclusion of postal charges in customs value –
Foreign currency exchange rate - Appeal allowed in part*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR E W DOBSON

Appellant

- and -

UK BORDER AGENCY

Respondents

TRIBUNAL: JUDGE PETER KEMPSTER

The Tribunal determined the appeal on 10 May 2012 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (determination without a hearing with consent of parties) having first read the Notice of Appeal dated 14 September 2011 (with enclosures), the Respondents' Statement of Case submitted on 13 December 2011 (with enclosures), the Appellant's Reply dated 22 January 2012 (with enclosures), and the Respondents' Reply dated 29 February 2012 (with enclosures).

DECISION

1. Mr Dobson appeals against the amount of VAT imposed by the Respondents (“UKBA”) on two parcels he received from Canada. Both parties agreed that the appeal should be determined without an oral hearing, pursuant to Tribunal Procedure Rule 29, and the Tribunal consented to that course of action.

2. The parcels were birthday gifts of jewellery to Mr Dobson’s wife from her relatives in Canada. On 4 August 2011 the parcels were intercepted by UKBA in Coventry. The first parcel disclosed the contents as jewellery, stated the value as 350 Canadian Dollars (“CAD”), and stated postal charges as CAD 54.43. The second parcel disclosed the contents as jewellery, stated the value as CAD 100, and stated postal charges as CAD 68.54. UKBA assessed VAT of £52.93 on the first parcel and £22.06 on the second parcel.

3. UKBA’s calculation of the VAT was as follows:

	First parcel	Second parcel
Value	CAD 350.00	CAD 100.00
Postage & insurance	CAD 54.43	CAD 68.54
Total	CAD 404.43	CAD 168.54
Rate of exchange	CAD 1.528: £1	CAD 1.528: £1
Value for VAT	£264.67	£110.30
VAT @ 20%	£52.93	£22.06

4. Mr Dobson’s grounds of appeal are twofold. First, “For the UK to tax the post and insurance charges levied by a foreign country on the sender before arriving in the UK is illegal”. Second, the exchange rate should “be the same as the exchange tourist rate ie valued as 1.55 [CAD]/1.00 British Pound.” Mr Dobson gives no authority for either ground.

5. UKBA’s case is:

(1) The goods were liable to VAT as being imports of gifts of value over £40: ss 1 & 2 VAT Act 1994 and art 3 VAT (Non-commercial Consignments) Relief Order 1986 (as amended).

(2) The value of the goods for these purposes includes all postal charges levied up to the place of destination: art 165 EC Regulation 2454/93. The exception for gifts provided by the Regulation is not applicable as it is restricted

to gifts sent other than by Express Mail Services, which was not the case with the two parcels. The fact that Parcelforce Worldwide made a charge of £13.50 confirmed that the parcels were sent by express mail, as standard mail attracted a fee of only £8.00.

5 **Consideration and conclusions**

6. I agree with UKBA that VAT is chargeable on both parcels, being gifts with values in excess of £40.

7. Mr Dobson's first ground of appeal concerns whether the postal charges should be included in the customs value for VAT purposes. UKBA direct me to Article 165
10 EC Regulation 2454/93 which states:

“1. All postal charges levied up to the place of destination in respect of goods sent by post shall be included in the customs value of these goods, with the exception of any supplementary postal charge levied in the country of importation.

15 2. No adjustment to the declared value shall, however, be made in respect of such charges in determining the value of consignments of a non-commercial nature.

20 3. Paragraphs 1 and 2 are not applicable to goods carried by the express postal services known as EMS-Datapost (in Denmark, EMS-Jetpost, in Germany, EMS-Kurierpostsendungen, in Italy, CAI-Post).”

8. My reading of art 165 is that if the parcels were carried by “EMS-Datapost” then para 3 disapplies para 1 so that postal charges do not form part of the customs value. Contrariwise, if the parcels were *not* carried by “EMS-Datapost” then para 2
25 disapplies para 1 for non-commercial consignments so that, again, postal charges do not form part of the customs value. So, in the case of a non-commercial consignment postal charges do not form part of the customs value whatever the mode of carriage. The two parcels were gifts and thus non-commercial consignments (I believe UKBA accept this but if not then I make that finding). Accordingly, the customs value
30 should not include the postal charges.

9. Mr Dobson's second ground of appeal concerns the correct exchange rate. Nether party has provided me with any authority as to what rate should be used. I note that arts 168 to 172 of the same EC Regulation relate to rates of exchange and appear to contemplate that there will be published exchange rates determined monthly
35 by member states (described as “the rate recorded”). I have no evidence either way as to whether CAD 1.528: £1 was the rate recorded for the relevant month. As it is incumbent on Mr Dobson to support his allegation that the incorrect rate has been used but he has failed to do so, I find he has not proved his second ground of appeal to the appropriate standard (being the balance of probabilities).

Decision

10. The appeal is ALLOWED IN PART so that the customs value of both parcels used to calculate the VAT should not include the postal charges. I calculate the revised VAT as £45.81 for the first parcel and £13.08 for the second parcel, but I
5 grant leave to the parties to apply for determination of exact figures if they disagree with that calculation.

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
10 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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**PETER KEMPSTER
TRIBUNAL JUDGE**

RELEASE DATE: 14 June 2012