



TC02807

Appeal number: TC/2012/04512

Customs duty and VAT on importation of camera parts purchased on e-bay - how to calculate “customs value” - whether the cost of postage should be included in the “customs value” - whether it is relevant when parts were sold by and despatched by a US seller that they had originally been manufactured in Germany - whether it is relevant that the camera was incomplete and in a state in which it would not work - whether VAT had been waived

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JAMES BENNETT

Appellant

-and-

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE HOWARD M. NOWLAN
HELEN MYERSCOUGH**

Sitting in public at 45 Bedford Square in London on 16 July 2013

The Appellant was neither present, nor represented

David Sawtell, counsel, on behalf of the Respondents

DECISION

1. This was a rather extraordinary case, brought, we imagined, essentially as a matter of principle by the Appellant because he objected to the charge that had been imposed to VAT when he had purchased, on three occasions, historic cameras or camera parts on e-bay from sellers in the United States. The purchases had accordingly been posted to the Appellant in the UK.
2. The Appellant did not appear at the hearing and had indicated in advance that on account of his wife's illness he would not be able to appear. We had, however, no hesitation in proceeding with the Appeal. This was principally because the Appellant had initially asked for the Appeal to be heard on the basis of the paperwork provided. It was the Respondents who had requested a full hearing, perhaps to ensure that their case was fully explained to us. We were satisfied that all the issues in dispute were legal issues in relation to which the answers were clear, such that there was no remote prejudice in our proceeding to hear the appeal in the absence of the Appellant.

The facts and the basic law

3. When the Appellant's various purchases arrived at the Royal Mail postal depots, they were charged to VAT at the standard rate.
4. When goods (new and second-hand) are sent to the UK from outside the European Community, their importation is always subject to Customs Duties and VAT save for the exemptions that if the value of the goods is under £135 no customs duty is chargeable and if the value is under £15, no VAT is chargeable. For VAT purposes, VAT is charged on the "customs value" of the goods, which is the value provided in the Regulation referred to below, but specifically inclusive of any customs duty charged. One further detail is that if the value of the goods exceeded the customs threshold of £135, but the duty would have been less than £9, then that *de minimis* amount of duty can be waived, and no duty would then be added to the customs value when later calculating the VAT.
5. In this case, no customs duty was charged, for one or other of the reasons just addressed. VAT was however charged.
6. Article 29 of Council Regulation 2913/92 (EEC) provides that in ordinary purchases of goods, where there are no restrictions on subsequent sale or other factors that have influenced the price paid for the goods, the "customs value" is the price paid for the goods.
7. Article 165 of EC Regulation (EEC) 2454/93 then requires postal charges to be added to the "customs value" initially ascertained under the previous paragraph. If customs duty has been paid, then the "customs value" is increased to include the customs duty as well as the postage cost, and it is on the total of those items that VAT is payable. In the present case, VAT was of course only chargeable on the combined amount of the price paid plus the postage charge, because no customs duty was paid on any of the three packets.

8. The one other item that was charged against the Appellant in respect of each packet that was posted to the UK was a handling charge imposed by the Royal Mail.

9. The camera and the camera parts in question were not modern products but very old products that were not in working condition. The Appellant was purchasing them for nostalgic reasons since many years ago he had remembered the particular make and model of camera being used.

The Appellant's contentions

10. The Appellant contended that:

1. The value of the goods was far less than the price paid. The seller had indicated a much lower price at which he was prepared to sell, and the fact that the Appellant had got "carried away" and had paid more than the goods were worth ought not to increase their customs value. A camera shop had also indicated that the items were worth less than he had paid. The American seller had inserted the price that had been paid on the form where the value was meant to be stated, but he had had no occasion to insert this price as the value.
2. Although the goods had been purchased from an American and delivered from the United States, the goods had originally been manufactured in German, i.e. within the Community.
3. The postage and the Royal Mail charge ought not to have been added to the customs value.
4. The goods were not strictly a camera at all since they were not in working condition.
5. The duty had been waived because there was a pencil line through the duty box on the paperwork handed to the Appellant.

Our decision

11. The Appellant's first argument about value and price is wrong. This is first and foremost because the Regulations provide that the price paid is the value of the goods. There are cases where the price paid might be unrealistically low because there are restrictions on on-sale, or because there are contingent obligations to pay further price in certain circumstances. None of those are relevant in the present case, and therefore the price paid does govern the customs value.

12. Whilst the point just recorded is conclusive, it is worth saying that it accords with every general principle about valuation, namely that the value of goods is regularly governed by the price paid or payable in a transaction between arms' length willing buyers and sellers. The price at which the American seller had indicated that he was prepared to sell was simply the reserve price at which, but not below which, he was prepared to sell. The seller might have thought that the goods were worth considerably more than the reserve price, and he might have hoped, seemingly here with justification, that the goods were indeed worth more. When the Appellant had to increase his initial bid to defeat another bidder, so that his bid ended up on e-Bay counting as \$1 more than the defeated bid, the actual price paid quite correctly became the price at which the willing seller sold to the willing buyer.

13. The price that the American seller had inserted on the customs declaration had actually been the correct price, but this is still secondary to the point made in

paragraph 11 above. The customs value, unusual circumstances apart, was simply the price paid and would have been that amount even if the American seller had inserted some different price.

14. The fact that the goods had originally been manufactured in Germany was irrelevant. “Community goods” (importation of which would not attract customs duty) were defined to mean goods “wholly obtained in the customs territory of the Community”, and the goods in the three importations in the present were all imported from the United States. The relevant Council Regulation puts the matter beyond doubt by stating that “Community goods shall lose their status as such when they are actually removed from the customs territory of the Community.”

15. We have already indicated that although the price paid is generally the starting point in ascertaining the customs value of imported goods, it is a requirement that postal charges are added to that price, and also a requirement (when customs duty has been charged and not waived under the £9 rule) that postal charges and the customs duty should also be added to the customs value for the purposes of calculating the VAT owed. In the present case it was therefore correct to include the postage in the amount chargeable to VAT.

16. The Royal Mail charge was something quite separate, charged by the Royal Mail and not imposed in any way as part of the liability to customs duty or VAT.

17. It was irrelevant that the camera was not in working condition. Insofar as that might have been said to influence its value, this is irrelevant since the value is to be determined in the manner already summarised. If the contention about the camera not being in working condition was raised in case it might move the goods from one customs category to another, with the latter attracting less duty, this was completely irrelevant in this case since no customs duty was chargeable anyway. VAT was simply chargeable on goods and whether the camera was working or not was irrelevant to the charge to VAT.

18. The duty had not been waived, and the Respondents had no idea who had put a pencil line through any box on the customs declaration. We ourselves found it difficult even to see the pencil line, and since the declaration indicated that duty was owed and the Respondents had no idea who had put any pencil line on the documentation, there was no basis whatever for saying that the duty had been waived.

19. The Appellant’s appeal is accordingly dismissed.

Right of Appeal

20. This document contains full findings of fact and the reasons for our 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.

**HOWARD M. NOWLAN
TRIBUNAL JUDGE**

RELEASE DATE: 26 July 2013