



**TC03674**

**Appeal number: TC/2013/03359**

*VALUE ADDED TAX – importation – tax paid at time of importation – artworks on exhibition in UK – items unsold – shipped back to USA approx one year after importation – subsequent claim for repayment of VAT – application treated as being for retrospective temporary import authorisation – application refused by HMRC as over one year since entry of goods – EC Regulation 2454/93 Art. 508 – if authorisation had been possible, customs declaration would have been required – potential claim would be affected by difference between items imported and those returned – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SHAFaq AHMAD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOHN CLARK**

**Sitting in chambers at 45 Bedford Square London WC1B 3DN on 9 May 2014**

**Appeal heard on papers only**

## DECISION

1. The Appellant, Mrs Shafaq Ahmad, appeals against a decision of the Respondents (“HMRC”), upheld on review, to refuse repayment of VAT paid on importation of artworks exhibited in London and subsequently shipped back unsold to her in the USA.

2. Mrs Ahmad’s appeal was allocated to the Standard category. In a letter to her dated 31 July 2013, HMRC asked her whether she consented to their proposals to request that the matter be allocated to the Basic category and dealt with on the papers without a hearing. However, no reallocation of the appeal occurred. HM Courts & Tribunals Service (“HMC&TS”) wrote to Mrs Ahmad on 9 August 2013 to ask her whether, as a resident outside the UK, she would wish to attend the hearing of her appeal. In her reply dated 19 August 2013 she confirmed that she would not be able to attend given the costs involved.

3. I therefore considered her appeal on 9 May 2014, taking into account the written representations provided by her and by HMRC. As Mrs Ahmad was unable to be present, I am setting out my conclusions in this decision with full written findings of fact and reasons for the decision.

### *The facts*

4. The evidence consisted of a bundle of documents; this included correspondence and documentation provided by Mrs Ahmad, as well as correspondence and documents provided by HMRC.

5. From the evidence, I find the following facts.

6. On 20 October 2011, Mrs Ahmad sent various artworks from the USA to a gallery in London. The purpose was to exhibit the items for sale. In the UPS Customs Entry Advice, the gallery was shown as the importer, and the consignor was Fanoos Art Crystal, the business name used by Mrs Ahmad. The customs value for VAT was £35,376.74, the VAT charged being £1,768.83.

7. The items were ten hand pulled prints, two oil paintings on linen, six oil paintings on canvas, and a sculpture consisting of a number of acrylic panels painted with oils.

8. The commodity code shown in the Customs Entry Advice for the prints and paintings was 970200 00 00. The correct code for “Paintings, drawings and pastels” is 970110 00 00, but as later confirmed by HMRC, the effect of the error was not significant as both the code used and the correct code attract a zero rate of import duty and a reduced rate of import VAT of 5 per cent.

9. The consignment was entered using Customs Procedure Code (“CPC”) 4000000, which is the standard import CPC. (I refer below to the effect of using this CPC.)

10. In subsequent correspondence for the purposes of this appeal, Mrs Ahmad said that she was very surprised to be asked to pay VAT when the goods arrived in the UK, as this was totally unexpected. She had had no choice but to pay the tax, otherwise the shipment would not have cleared.

5 11. Subject to certain exceptions (see below), the artworks remained on display at the gallery from the date of their import until they were returned unsold by the gallery to Mrs Ahmad. The gallery's list of returned items was dated 9 October 2012. The invoice from Pack & Send for packing only was dated 15 October 2012. The UPS  
10 Commercial Invoice was dated 16 October 2012, and signed by Mrs Ahmad as President of Fanoos Art Crystal on 17 October 2012. According to the US Department of Homeland Security Entry Summary form, the date of export of the items from the UK was 23 October 2012, the import date to the US was 25 October 2012, and the Entry Date was 2 November 2012. The value of the goods as shown in the Entry Summary was \$37,710. Although HMRC's Statement of Case refers to the items as  
15 having been shipped back to the USA on 27 October 2012, based on information set out in Mrs Ahmad's application for repayment (see below), that date does not appear to be correct. I find that the export date was as shown in the Entry Summary, ie 23 October 2012.

20 12. On the basis of the documentation provided by Mrs Ahmad, I am satisfied that the remaining items were shipped back to the USA and cleared by the US Customs.

25 13. On 18 December 2012 Mrs Ahmad wrote to HMRC's National Duty Repayment Centre ("NDRC") applying for refund of the VAT. She enclosed a form C285 (Application for repayment/remission) and supporting documentation to evidence her claim. This included a copy of the list of items returned by the gallery. The items referred to in this list were five oil paintings on canvas, one oil painting on  
30 linen, and the panels for the sculpture. All these items had been picked up by Pack and Send. In addition, the list showed that Mrs Ahmad had picked up the ten hand pulled prints on paper.

35 14. As the gallery's list of returned items shows a smaller number of artworks than those originally despatched from the USA, I find that the shipment back to the USA did not amount to the complete return of all the items imported into the UK in October 2012. The total invoice value shown in the Customs Entry Advice was US \$54,000. The total value of the returned items as shown in the gallery's list was US \$40,300, of which Mrs Ahmad had picked up the ten prints valued at \$3,000. I find that the items returned by air freight were those shown in the list as valued at \$37,700, despite the small discrepancy between that figure and the \$37,710 shown in the US Entry Summary form. There is no evidence to show on what date Mrs Ahmad returned to the US with the ten hand pulled prints.

40 15. Among the papers submitted by Mrs Ahmad was a copy of an email to her dated 16 October 2012 from UPS in Poyle, Berkshire. This stated:

"The Customs help desk is 0845 0109000, please contact them prior to export so that the correct documentation can be arranged, so that the VAT can be reclaimed."

16. There is nothing in the evidence to indicate that Mrs Ahmad contacted Customs (ie HMRC) prior to export of the artworks from the UK.

17. On 9 January 2013, NDRC wrote to HMRC's National Temporary Admission Section ("NTAS"), enclosing the papers which had been submitted by Mrs Ahmad.  
5 The letter explained that the papers had been submitted as a repayment claim, but were being forwarded to NTAS as they related to a temporary importation.

18. On 24 January 2013, NTAS wrote to Mrs Ahmad as follows:

10 "You have submitted a request to amend the above import entry to Temporary import status. However due to changes in EC legislation which came into effect 1<sup>st</sup> July 2001 this has been considered as an application for Retrospective Simplified Temporary Import Authorisation (Article 508 EC regulation 2454/93).

15 I am writing to inform you that your application has been rejected. For Retrospective Temporary Import Simplified Authorisation to be considered, applications must be submitted within one year of the original import. Article 508.3 of the implementing provision 2454/93 'In exceptional circumstances, the retroactive effect of an authorisation may be extended further, but not more than one year before the date the application was submitted, provided an economic need exists.....' "

20 I do not need to set out the remainder of the letter.

19. On 15 February 2013, Mrs Ahmad wrote to the HMRC Customs and International Review and Appeals Team requesting a review of the decision to refuse her claim to a refund of the £1,768.83 VAT.

25 20. On 3 April 2013, Steve Palmer, the Review Officer, wrote to Mrs Ahmad with the results of his review. He upheld the decision not to grant her a repayment of import VAT in the sum of £1,768.83. He agreed with NTIS that the only grounds for allowing a repayment of the VAT paid in the circumstances of Mrs Ahmad's case would be by way of a retrospective Simplified Temporary Import Authorisation. He explained the nature and operation of Temporary Admission.

30 21. He indicated that Mrs Ahmad's application for retrospective authorisation for Simplified Temporary Import Authorisation failed on two points. The first was the one year limit on retrospective authorisation. Her application was dated 18 December 2012, but the entry was dated 27 October 2011. The second was that, even if the application had been made in time, Mrs Ahmad would still not be entitled to a  
35 repayment, as she would have to show that the goods had been exported; in this case there did not appear to be an export declaration, but only an Air Waybill, which did not qualify.

40 22. On his consideration of the facts of Mrs Ahmad's case, his conclusion was that there was no scope for any retrospective authorisation of Temporary Importation under Article 508 of the Implementing Provisions.

23. On 29 April 2013, Mrs Ahmad wrote to HMC&TS to appeal Mr Palmer's decision. Her letter was not received by the Tribunals Service until 7 May 2013. On 15 May HMC&TS wrote to her. Her letter had been treated as a Notice of Appeal, which was acknowledged. However, as her letter had been received on 7 May 2014,  
5 her appeal appeared to be out of time. She was requested to give her reasons for the appeal being late.

24. In her reply dated 21 May 2013, Mrs Ahmad explained that she had thought that the postmark on the envelope should be before the deadline.

25. By an email message dated 24 June 2013, HMRC notified their consent to the  
10 appeal being served out of time.

*Mrs Ahmad's arguments*

26. Mrs Ahmad did not agree with the explanation given in the review letter. She had not been made aware of the regulations either by UPS (the importing agent) or by UK Customs (ie HMRC) when the goods arrived in the UK. She had been very  
15 surprised to be asked to pay the VAT as it was totally unexpected. However, at the time she had had no choice but to pay up, otherwise the shipment would not have cleared.

27. She felt that the VAT was another name for collection duties which otherwise did not apply. The refusal to pay back the VAT which she had paid was putting  
20 unnecessary financial hardship on her business as an individual artist. She hoped that the Tribunal would consider all the facts and especially her point of view so that she could have some financial relief by getting back the VAT amount which she felt was due to her.

28. In her later letter dated 19 August 2013 confirming that she would not be able to  
25 attend the hearing and agreeing that the appeal should be decided on the papers, she enclosed supporting documentation and hoped that the Tribunal would sympathise with her for all the additional costs which she had had to incur to send back the work.

*HMRC's arguments*

29. In their Statement of Case, HMRC set out the detailed legislation, as well as  
30 both parties' contentions. HMRC's arguments were:

- (1) Mrs Ahmad's application dated 18 December 2012 had incorrectly been submitted to NDRC.
- (2) HMRC submitted that the only grounds for allowing repayment of VAT in the circumstances would be by way of treating the application as a  
35 retrospective request for Simplified Temporary Import Authorisation.
- (3) HMRC had considered the application in the alternative as a retrospective application but had concluded that the application had not been received within one year of the original import. The application made on 18 December 2012 fell

outside this 12 month permitted retrospective period, the goods having been originally imported in October 2011.

5 (4) HMRC further contended that even if the application had been received in time, the application would still have failed as Mrs Ahmad would be required to show that the goods had been exported, but no export declaration had been submitted. Mrs Ahmad had submitted an airway bill only; this did not qualify as an export declaration.

*Discussion and conclusions*

10 30. I need to explain for Mrs Ahmad's benefit that the jurisdiction of these Tribunals is statutory and that we do not have general discretionary powers in relation to appeals. We are required to work within the statutory framework imposed on us.

31. As a result, I have to consider the appeal on the basis of the applicable legislation.

15 32. The starting point is that goods imported into the UK are charged to VAT unless relieved under VAT legislation or customs and excise legislation applied to VAT. Thus, unless some specific relief applied on the importation of the artworks to the UK in October 2011, the VAT was payable. As Mrs Ahmad explained, the goods would not have cleared Customs if the VAT had not been paid. The use of CPC 400000, the standard import code, was the reason for VAT being charged in the normal manner  
20 for imports.

33. There is nothing in the evidence to suggest that any approach had been made to HMRC before the artworks arrived in October 2011 to enquire about the VAT position. It is unclear whether relief from the VAT charge could have been sought in advance, but no steps were taken and therefore the VAT had to be paid.

25 34. In the same way, there is no evidence to show that Mrs Ahmad or the agents used by her made any contact with HMRC during the period while the artworks were in the UK. In their email dated 16 October 2012, UPS gave Mrs Ahmad the contact details for the Customs help desk, but there is nothing to suggest that she followed this up. I find that she did not contact HMRC until she sent her letter dated 18  
30 December 2012 enclosing her application for repayment of VAT.

35. In their Statement of Case, HMRC set out the relevant legislation. This consisted of certain Articles of European Council Regulation 2913/92 ("the Customs Code"), namely Articles 137, 182(3), and 236, as well as three Articles of European Commission Regulation 2454/93 ("the Implementing Provisions"), ie Articles 199,  
35 508 and 576. As Mrs Ahmad has been provided with a copy of the Statement of Case as well as the other documentation, I do not set out the legislation in this decision.

36. As the VAT had to be paid on the importation of the artworks in October 2011, the only way in which it could be repaid was if some form of relief could have applied. When NDRC considered the repayment claim made in December 2011, they  
40 concluded that it amounted to a request for Temporary Import Authorisation. For that

reason, they sent Mrs Ahmad's papers to NTAS to consider the application as such a request.

37. NTAS treated Mrs Ahmad's claim as a request to amend the import entry for the artworks to Temporary Import Status; as shown in their letter, this was considered  
5 as an application for Retrospective Simplified Temporary Import Authorisation. HMRC's discretion under the EC legislation, Article 508 of the Implementing Provisions, is limited. Article 508(3) imposes an upper limit on the extension of the retroactive effect of an authorisation, stating:

10 "In exceptional circumstances, the retroactive effect of an authorisation may be extended further, but not more than one year before the date the application was submitted . . ."

38. As Mrs Ahmad's application for repayment of the VAT, treated as an application for Temporary Import Authorisation, was made in December 2012, this meant that the period since the original importation of the artworks in October 2011  
15 was longer than a year. This meant that HMRC's discretion to grant a retrospective authorisation was no longer available, and there was no other basis on which HMRC could provide Mrs Ahmad with any form of relief from the VAT charged on the original importation.

39. As a result, my conclusion is that HMRC's decision on this issue was correct  
20 and is not open to challenge.

40. There are other issues to be considered. The first is whether, if the application had been made in time, it would still have failed as a result of the absence of proof of export. Mrs Ahmad supplied various items of supporting documentation with her application in December 2012. Although these documents indicate that the goods  
25 were returned to the US, they do not include a formal export declaration. HMRC are correct in their argument that the air waybill for the return of the items to the US does not qualify as an export declaration; various items of information must be stated in a declaration, and these are not shown in the air waybill.

41. The second issue is that of the difference between the list of items imported into  
30 the UK and the list of those returned to the US. Even if retrospective Temporary Import Authorisation could have been given within a year from the importation date and an export declaration had been provided, it would not have been correct for the whole of the VAT to be repaid, as some of the items originally imported had been sold. The VAT claim would therefore have had to be scaled down.

35 42. As the application was not in fact made in time, neither of these issues affects the outcome, which is that there is no basis on which the VAT can now be repaid.

43. I sympathise with the difficulties which Mrs Ahmad has encountered, but there is no means of achieving the result which she is seeking. It is unfortunate that the VAT implications were not investigated before the artworks were shipped to the UK;  
40 if action had been taken in time, it might have been possible to bring the goods into the UK without incurring a charge to VAT at that point. I should emphasise that I do

not think it appropriate for me to investigate the terms and conditions on which this might have been achieved, as the task of the Tribunal is to make its decision on the appeal based on the actual facts rather than hypothesis.

5 44. The position for goods imported for exhibition has been clarified by HMRC for importations from 30 June 2013 onwards. In Customs Information Paper (13) 22 they state:

10 “From 30 June 2013 all goods imported for exhibition with a view to sale, possible sale, for sale by auction or similar activities, should be entered to TA [ie Temporary Importation], either directly at import or on removal from a customs warehouse if a period of storage is required.”

Unfortunately this is too late for Mrs Ahmad, unless she is considering sending any artworks to the UK for exhibition and possible sale.

15 45. Despite my sympathy for the difficulties for Mrs Ahmad as a result of the VAT charge, I have no alternative but to dismiss her appeal.

*Right to apply for permission to appeal*

20 46. 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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**JOHN CLARK  
TRIBUNAL JUDGE**

**RELEASE DATE: 3 June 2014**

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