



TC04607

Appeal number: TC/2014/01561

VAT and CUSTOMS DUTY – whether goods where over 100 years old – held – yes – whether HMRC was unreasonable to conclude they were not over 100 years old - held – no – appeal partially allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

G MUSIC AND SONS LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE SARAH ALLATT
CHRISTOPHER JENKINS**

Sitting in public at Royal Courts of Justice on 26 June 2015

Timothy Bown, instructed by Portner Solicitors, for the Appellant

Simon Pritchard, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

The Appeal

- 5 1. This appeal is against customs duty in the amount of £24,014.96 and VAT in the amount of £144,964.64, totalling £168,979.60. We understand this amount has been reduced to £143,070 on review due to one item being out of time for the demand to be made.

Background

- 10 2. G Music and Sons (London) Ltd, hereafter referred to as 'G Music and Sons' is a jeweller based in Hatton Gardens in London. This appeal relates to several items of duty purchased in the United States of America and imported to the UK.
3. On importation the goods were declared, by the direct representative, usually PDQ Freight Ltd, under the combined nomenclature code 9706 00 00 'Antiques of an age exceeding 100 years'
- 15 4. HMRC contend that the code should be 7113 xx xx 'Articles of jewellery and parts thereof'.
5. There is much common ground in this appeal, which turns mainly on how to apply the different law which applies to the VAT and the customs duty under appeal.
- 20 6. The common ground is as follows:
7. Leaving aside an import in October 2010 which as stated above has been removed after HMRC review, this appeal concerns importations of jewellery made between December 2010 and July 2013. 19 importations were made, generally of more than one item of jewellery per importation. All except one import was from the United States, the exception being one importation from Switzerland.
- 25 8. The jewellery was bought abroad by Mr Felstead, director of the appellant. It was then imported by a shipping agent who either received the goods abroad from Mr Felstead, shipped them to the UK, and handled the importation, or who met Mr Felstead in the red customs channel when he arrived in the UK, and handled the importation there.
- 30 9. HMRC had visited Mr Felstead in August 2013 for a routine check. They had checked the importation of loose diamonds and of antique jewellery. They subsequently issued two post clearance demands, one on the loose diamonds and the one on antique jewellery which is the subject of this appeal. The demand on the loose diamonds was later removed by HMRC on closer examination of the relevant paperwork.
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Evidence

10. We heard from Mr Felstead, who we found to be an honest and credible witness. He explained that he had been in the jewellery business for 36 years. He explained he frequently travelled abroad to purchase jewellery from his business contacts, mainly in New York, Miami and Las Vegas.

11. He explained that he had taken over the G Music and Sons business 12 years ago, having previously been employed in the business, and as part of the handover he had shadowed the former business owners and they had explained that it was necessary, for importation of items of jewellery over 100 years old, to have this fact stated on the invoice.

12. He therefore explained that he requested a statement on the invoice to the effect that items were over 100 years old whenever such an item was purchased.

13. As an expert himself, he believes himself also qualified to judge the age of the items he was buying, and he believed them all to be over 100 years old.

14. He explained he was buying from 'serious' dealers with a reputation to uphold, and using reputable freight companies.

15. He explained how the freight companies required all his paperwork handed over for them to take copies before the items were imported, and how a doubt on one piece of paperwork would hold up the rest of the shipment.

16. Mr Felstead stated he was unaware of the Public Notices 702 and 362 dealing with the importation of goods and specifically antique jewellery. He stated that although he was made aware, when HMRC made their inspection visit, that one of the pieces of evidence that would satisfy them as to the age of the jewellery was a report by an independent expert, he had decided not to commission such a report. This was due to the fact that 'the vast majority' of the items under question had by the time of the visit been sold, and also because Mr Felstead considered himself to be an expert judge of the age of the items in question.

17. The tribunal were shown invoices for all the goods in question. All the invoices had on them the statement 'the items are over 100 years old' with a signature. In most cases the statement was written, though a few suppliers stamped the statement on the invoice and then signed it.

18. The tribunal were shown the importation notices for the items in question. These showed that they had been imported by the freight agent as a direct representative for the appellant, with the codes indicating they were importing antiques over 100 years old. The tribunal were shown schedules of the jewellery made by the appellant for the agent, each having varying wording but broadly 'I certify the above items to be over 100 years old.' Not all purchases were for antique jewellery and therefore some schedules showed clearly which items were considered to be over 100 years old and which were not. In others, the entire importation was of antique jewellery.

19. The tribunal were also shown letters, addressed ‘to whom it may concern’ from every supplier of jewellery to which this appeal relates, dated October 2014, stating that ‘between the period 1 October 2010 to the present day the items invoiced to G Music and Sons as antiques were to the best of my knowledge and belief antiques over 100 years old.’

20. The tribunal were also shown bank statements evidencing the payment for all of the items in question.

21. There is no suggestion by HMRC of impropriety in this case by any person.

The Law

22. Although the importation code for the items relates to the classification for both VAT and customs duty, the law regarding each is separate.

23. The law surrounding the VAT is contained in various European Council Regulations and implemented into UK law by VATA 1994. Section 21 sets out the value to be determined as follows:

4)...For the purposes of this Act, the value of any goods falling within subsection (5) below which are imported from a place outside the member States shall be taken to be an amount equal to 25 per cent of the amount which, apart from this subsection, would be their value for those purposes.

(5)The goods that fall within this subsection are—

(a)any work of art;

(b)any antique, not falling within paragraph (a) above or (c) below, that is more than one hundred years old;

(c)any collection or collector’s piece that is of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic, numismatic or philatelic interest.

24. The burden of proof is with the Appellant to prove that section 21 applies, the jurisdiction of the Tribunal (given by section 83 of that Act) is to decide whether the Appellant has discharged that burden of proof.

25. The law surrounding customs duty is contained in the Customs and Excise Duties (General Reliefs) Act 1979:

9 Relief from customs or excise duty on antiques, prizes, etc.

The Commissioners may allow the delivery without payment of customs or excise duty on importation—

(a)of any goods (other than spirits or wine) which are proved to the satisfaction of the Commissioners to have been manufactured or produced more than 100 years before the date of importation;

26. The jurisdiction of the tribunal in relation to Customs Duty is given by Finance Act 1994, section 16

5 (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

10 (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and

15 (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

20 27. This is not an ‘ancillary matter’ so subsections (4) and (5) both apply. The burden of proof is again on the Appellant, but the question is slightly different, as the Appellant has to prove that he has ‘proved to the satisfaction of the Commissioners’ that the goods are over 100 years old.

Grounds of Appeal

25 28. The appellant contends that the jewellery imported was over 100 years old at the time of importation. He submits that sufficient evidence has been produced of that fact, namely,

(1) the invoices with the statement on that the items were over 100 years old;

30 (2) the statement by Mr Felstead on the importation schedules that the items are over 100 years old, together with Mr Felstead’s expertise in this area;

(3) the acceptance of this evidence by a reputable importation agent, and then the entry by the importation agent of the items under the relevant code;

(4) The letters by each supplier confirming the items bought and invoiced as antiques over 100 years old were over 100 years old.

35 The appellant also contends (for customs duty) that the evidence should ‘prove to the satisfaction of the Commissioners’ that the items were over 100 years old.

29. HMRC contends that the evidence is not sufficient for the Tribunal to decide that the items are 100 years old and that (for customs duty) it is not unreasonable of the Commissioners to decide otherwise. They drew the Tribunal’s attention to Notice

362 on importing antiques. It is not submitted that this notice has the force of law. It is however submitted that it contains details of the evidence HMRC would like to see as proof in such cases. Their contention is the appellant has not provided such proof, and therefore the Commissioners are not satisfied as to the age of the items in question.

30. Notice 362 contains the following sections

2.Importing antiques

2.1 How should I enter my goods

For antiques imported in baggage or by post, see paragraph 2.5. For antiques imported by other means; you must complete an entry (form C88). You should put the appropriate Customs Procedure code in box 37.

The procedure codes are:

- 40 00 29 for goods from outside the European Community (EC)
- 49 00 29 for goods imported from Special Territories of the European Community. Refer to VAT Notice 702 Imports

Also complete boxes 44 and 47 as directed in the Tariff at Volume 3, part 3, section 3.1 and Appendix E2.

You must provide, with the entry:

- an age declaration (see paragraph 2.2)
- evidence of age (see paragraph 2.3)

2.2 What is the age declaration?

Your written declaration should read as follows:

‘I declare that, to the best of my knowledge and belief, the articles in the form as imported were wholly manufactured or produced more than 100 years before the date of importation’.

Only you, as the importer, can make this declaration.

2.3 What evidence of age can you accept?

For most items we accept the following evidence:

- a certificate of age given by the seller
- a certificate of age given by an independent expert in the country where the goods were acquired
- the catalogue of an auction sale
- 5 • a booklet or other document describing the article

However items such as gold and silver antiques may require special treatment see paragraph 2.10.

2.4 What if I do not have satisfactory evidence of age?

For antiques where:

- 10 • you do not have the evidence of age
- the evidence you have produced is not satisfactory to us

you may get, at your own expense, a certificate of age from a recognised independent expert in the UK. You must have our agreement before you employ the expert you nominate. The articles must remain in our charge until examined by the expert. On receipt of a satisfactory certificate from the expert the articles will be released free of duty, and at the reduced value for import VAT.

15 31. HMRC submit that the evidence of age provided by the importer ‘these items are over 100 years old’ is not of the same quality as ‘I declare that, to the best of my knowledge and belief the articles in the form as imported were wholly manufactured or produced more than 100 years before the date of importation’. They further submit that no evidence as detailed under 2.3 has been provided, the various statements and letters provided by the suppliers not being the same as any form of ‘certificate’. They also point out that even though the ‘vast majority’ of items had been sold by the time HMRC made their visit, no effort was made to get the remainder examined by an independent expert as set out in section 2.4 of notice 362.

20 32. HMRC further point out that the implementation of the law required by the European Council Regulations is required, under those Regulations, to ‘take the utmost care to prevent any fraud or irregularity’ and that allowing the lack of ‘proper certification’ does not provide adequate fraud prevention. They also point out that the principles of good decision making mean that a policy (namely notice 362) is desirable and that as this policy is published, it is not unreasonable that anything less than adherence to the policy should not satisfy the Commissioners.

The Decision

35 33. We deal first with the decision relating to VAT. Here we need to decide whether we, the Tribunal, are satisfied that, from the evidence produced, the items in question were over 100 years old at the time of importation and therefore liable to a reduced rate of VAT.

34. We are satisfied that the items in question were over 100 years old at the time of importation. On coming to this decision we have the following in mind:

5 (1) All of the invoices relating to the items in question state that the items are over 100 years old. The statements differ from supplier to supplier, some using the word 'certify', some using the word 'warrant', others simply stating the items are over 100 years old. Most are handwritten but some are either stamped and signed, or typed up on headed note paper. The existence of a stamp shows that the supplier was aware that the statement was one frequently required by customers and not simply written at the behest of one. The appellant made multiple purchases over a period of time from a few suppliers, further confirming Mr Felstead's oral evidence that he had good relationships with these suppliers.

15 (2) All the suppliers then wrote, at Mr Felstead's request, to further confirm the fact that the supplies were of items over 100 years old. These letters would appear to be produced promptly after the request, all being dated during October 2014.

(3) The freight companies (mainly PDQ Freight Ltd) were satisfied with the documentation provided. As direct representatives, they have a responsibility to make correct returns to HMRC.

20 (4) At least one importation schedule shows both modern and antique jewellery to have been imported, and differentiates clearly between the two.

25 (5) The declarations by Mr Felstead were present on the importation schedules, albeit not containing the exact wording specified by HMRC. Although no independent evidence was produced as to Mr Felstead's expertise, he stated he had been in the jewellery trade for 36 years and running G Music and Sons for 12, and his expertise was not challenged by HMRC.

(6) There are no allegations of impropriety by HMRC.

30 35. Having found that the items were over 100 years old, we then turn to the customs duty appeal 'has the Appellant satisfied the Commissioners that the items were over 100 years old.'

36. On this separate question we find that the Appellant has not satisfied the Commissioners and that the decision by the Commissioners that they are not satisfied is not unreasonable.

37. On coming to this decision we bear the following in mind

35 (1) No effort has been made to have an independent witness verify the age of the (probably very few) items that relate to the appeal in question and that are still in the Appellant's possession or were while this appeal was being prepared. Whilst Notice 362 that suggests this does not have the force of law, it is material in weighing up whether the Commissioners should be satisfied as to the age of the items.

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5 (2) We agree with HMRC that the evidence produced, strong though we believe it to be, does not meet the Commissioners requirement of a ‘certificate’ from the suppliers. For example, no qualifications have been mentioned by any supplier when signing. In addition, when signing the letters, only one signatory gave a job title. Whilst the Commissioners have alternatives to a ‘certificate’ these were not applicable to the items in question.

10 (3) We believe it is reasonable for the Commissioners to have a policy; we find that the policy has been applied fairly in this case, with all relevant facts taken into account, and nothing irrelevant taken into account.

38. We therefore allow the appeal as it relates to VAT, and dismiss the appeal as it relates to customs duty. No VAT is therefore due, and the duty payable is £20,009.79.

15 39. 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)”
20 which accompanies and forms part of this decision notice.

25 **SARAH ALLATT**
TRIBUNAL JUDGE

RELEASE DATE: 24 AUGUST 2015