



TC03624

Appeal number: TC/2012/10195

Customs duty and VAT - whether the decision by Border Revenue not to restore goods to the owner when they had been lawfully seized at Heathrow on being presented for entry into the UK for free circulation with false documentation was a reasonable decision - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AMEDEO MARIA GAGLIARDIO

Appellant

-and-

THE DIRECTOR OF BORDER REVENUE

Respondent

TRIBUNAL: JUDGE HOWARD M. NOWLAN

Sitting in public at 45 Bedford Square in London on 16 May 2014

The Appellant was neither present nor represented

James Fletcher, counsel, on behalf of the Respondent

DECISION

1. This was an Appeal by the Appellant challenging the decision of the UK Border Agency, subsequently confirmed by a decision on review, not to restore goods to the Appellant when the goods had been seized on arrival at Heathrow Airport, and presented for entry into free circulation on the basis of false documentation.
2. The Appellant was neither present nor represented at the hearing. On e-mailing the Appellant in Italy the Appellant confirmed that nobody would appear before the Tribunal, but that the Appeal should proceed as all the contentions that the Appellant wished to advance had been recorded in writing. I accordingly decided to proceed with the hearing.
3. Whilst the Appeal was only brought by the particular Appellant, the facts revealed that numerous Italians had purchased goods on the internet from suppliers in the USA, and that the goods had been delivered to the Miami premises of a company called Transatlantic Express Courier Corp (“TECC”). TECC appeared to operate a web-site in Italian under the name www.consegnato.com which purported to arrange for internet purchases made in the USA by Italian residents to be transported to Italy, all on the basis that the goods would be delivered to Italy in return for a payment that would include “shipping, VAT, customs duties, customs clearance, and final delivery to the purchaser”.
4. It seems that TECC engaged the services of a company called Global Services Network GSN (“Global) to undertake the shipment and delivery, and that in turn when the aircraft on which the goods had been carried from Miami to Heathrow arrived at Heathrow, Global had arranged for a company called Urban Logistics Solutions to enter the goods for customs purposes.
5. While the Appellant’s particular goods consisted of:
 - 26 items of Ralph Lauren clothes;
 - a Canon EOS camera; and
 - 2 Canon zoom lenses,
 -the actual goods examined by Customs officers consisted of 530 packages, weighing in total 934 kilos, containing the goods being purchased by numerous Italian purchasers, and being transported via the chain of companies just mentioned, all initially arranged through the Consegnato web-site.
6. The documentation accompanying the goods indicated that all the packages contained low value computer parts, each with a value of less than US \$25. When the packages were opened, it emerged that their contents bore no relationship to the description or the indicated values. The purchases for the present Appellant were in fact valued at \$4,185, with the value given on the false documentation being just \$31.
7. Since the goods had been imported into the UK for free circulation on false documentation, and without the proper duty and VAT being declared, they were seized. Within the one month given for the challenge of the legality of the seizure expiring without the legality being challenged in the Magistrates Court, the goods were then deemed to have been seized legally, and the only remaining question was whether they should be restored to the owner. It certainly emerged that the present Appellant had asked for the goods to be

restored to him, and that he was ready to pay the correct duty and VAT. He had claimed that he had relied on the representation or undertaking by TECC that the goods would be delivered, with payment of all duty and tax. The Appellant confirmed that he had paid 186 Euro via PayPal to cover the delivery, duty and taxes, and that he claimed that he had acted himself in good faith.

The Appellant's contentions

8. The Appellant challenged the original decision to refuse restoration, and the review decision that confirmed the original refusal on three grounds.

9. First the Appellant complained that the review had been slightly slipshod because it referred to just one Canon zoom lens, and not two, and secondly it failed to deal with the further importation of an iPhone 4S. It was subsequently confirmed by the reviewing officer that he had considered the case in relation to the two zoom lenses, and that it was only by a typing error that the second was not referred to in the decision. No reference was made to the iPhone because it seemed that the iPhone was not in fact owned by the Appellant in any event.

10. This first complaint seems somewhat insubstantial. When the facts remain that all the Appellant's purchases, alongside the remaining purchases in 530 packages, had all been imported on fraudulent documentation, the slip in the review decision of failing to refer to the second lens appears to have nothing to do with the claim that exceptional circumstances might justify the restoration of the goods.

11. The second complaint was that it was illogical for the decision and the review decision to refer to the normal customs practice not to restore goods that had been legally seized for importation on false documentation, and then to refuse restoration. I fail to understand that contention. It is not suggested that the treatment in the present case conflicts with any claim as to normal practice, or as to why there are asserted to be exceptional circumstances in this case to justify restoration.

12. The third and main complaint is that the Appellant asserts that he acted in good faith.

My decision

13. It is clear that I can allow this Appeal only if I consider that either the original decision or the review decision were unreasonable decisions on the facts known at the time of each decision.

14. It is certainly clear from the review decision that the officer undertaking the review was somewhat influenced by the concern that the Appellant was not entirely innocent of the fraud. The review decision recites the respects in which the officer noted that the Appellant knew that he was being charged only 186 Euro, ostensibly to cover the cost of carriage, customs duty and VAT, and when the goods were worth \$4,185 and the 186 Euro charge was calculated by reference to weight and size (when obviously neither the duty nor VAT are so calculated) the Appellant might have been aware that no duty or VAT was being paid or provided for in the overall charge. There was also the rather strange remark in the Notice of Appeal to the effect that the Appellant noted that "*The charge made by Consegnato appears to have been based on the good relations between Consegnato and the custom*".

This almost seems to suggest that the Appellant may have thought that there had been some deal between the US firm that operated the Italian website and the customs authorities in Italy or elsewhere in the UK where the product might be landed and imported. This is not a credible proposition.

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15. It is not clear from the original decision, or indeed the review decision, whether the same conclusion of refusing restoration would have been maintained even if the Appellant had demonstrated total innocence, and preferably some cogent explanation for how it was supposed that the duty and VAT due would have been paid. A factor that suggests that further evidence in relation to such innocence might have had some influence on the officer considering the review, and justified restoration, was that the officer did undertake, towards the end of the letter giving the decision on review, to consider additional evidence, but none was provided, and the Appellant simply appealed to the Tribunal. The Appellant has admittedly complained before us that the officer doubted the Appellant's claim to have acted in an entirely *bona fide* manner, and has then failed to prove complicity. However it is essentially for the Appellant to prove his case, and when the Appellant has not amplified the claim about good faith, or been available to be cross-examined by the Respondent's counsel, it is not surprising that we cannot allow the Appeal when the officer understandably expressed some misgivings in relation to the Appellant's claim of total innocence.

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16. As I said, it was not made clear in the decision or the review decision what the outcome would have been, had there been further evidence that established total innocence on the part of the Appellant. Bearing in mind that in this case there had clearly been a major fraud, and that the Appellant and all the people using the same website and the services of TECC had actually chosen to use an exporter that appears to have tried to increase its appeal to customers by fraudulently seeking to avoid duty and tax (i.e. costs of one form or another that should have been borne by the customers), I am far from clear that there would have been a clear case for restoring the goods even if the Appellant had demonstrated total innocence.

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17. Since the Appellant had chosen to use the services of TECC, and had taken the risk of any shortcomings on the part of TECC, and since TECC had clearly indicated that it would be paying the duty and tax, the Appellant's obvious course will have been to sue TECC. Indeed that is precisely what the Appellant has sought to do, only to find either that TECC is insolvent or that it has completely disappeared. I accept that this is unfortunate, but that course, of bringing an action against the selected export agency was obviously the correct course. It does not then seem natural that the UK Border Agency should forgive the fraud on the part of the Appellant's appointed agent and restore the goods.

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18. The points made in the previous two paragraphs are not the sole basis of this decision. It is clear that the reviewing officer was at least considerably influenced by his doubt that the Appellant had been totally honest and innocent, and on the facts known at the time of the original decision and the review decision, I cannot say that either decision was unreasonable.

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19. This Appeal is accordingly dismissed.

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20. I might add that I was unclear why the goods had indeed been imported into the UK and presented for entry into the UK and free circulation, when they were obviously intended to be transported to Italy. Had the same aircraft simply continued a flight to Rome, or had the goods been temporarily stored in a bonded warehouse and then re-exported to Italy, none of the present problems (i.e. with UK Border Agency, as opposed to the Italian authorities)

would have arisen. Nevertheless this is now irrelevant because the goods were in fact imported into the UK; they have not been exported, and since the month has expired without proceedings having been brought before the Magistrates' Court, the seizure is anyway deemed to have been legal.

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21. It may incidentally be that this Appeal will again illustrate the unfairness of claimants only having one month in which to bring proceedings before the Magistrates' Court. I doubt whether there would have been any ground in this case for challenging the legality of the seizure, but it does sound as if complaints by the Italian customers were dealt with in an unsatisfactory manner by TECC when the customers failed to obtain their purchased goods, and it may very well be that the one month period had expired before any of the customers knew that their goods had been seized by the UK Border Agency at Heathrow airport.

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22. Since this Appeal was heard in the absence of the Appellant, the Appellant can apply for a re-hearing in his presence, though there is no absolute right to such a re-hearing.

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Right of Appeal

23. This document contains full findings of fact and the reasons for our decision in relation to each appeal. Any party dissatisfied with the decision relevant to it 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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**HOWARD M. NOWLAN
TRIBUNAL JUDGE**

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RELEASE DATE: 22 May 2014

