



TC05210

Appeal number: TC/2015/02188

*Customs Duties – VAT – Imported telephone – seizure as miss-declaration
of value – Regulation 20, Postal Packets (Revenue & Customs)
Regulations 2011 – whether restoration appropriate – No – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANDREW KNOX

Appellant

- and -

BORDER FORCE

Respondents

**TRIBUNAL: JUDGE KENNETH MURE
MEMBER: MISS PATRICIA GORDON**

Sitting in public at The Royal Courts of Justice, Belfast on Monday 13 June 2016

Appellant – not present or represented

Respondents – Miss Fiona Fee, Barrister

DECISION

1. The appellant, Mr Knox, was not present or represented and a preliminary issue
5 arose as to whether to proceed with the appeal in his absence. An earlier hearing at
which he had not appeared had been adjourned as he complained that he had not been
informed of the date and that he wished to address the Tribunal. Accordingly
notification of the adjourned hearing was to be made by recorded delivery in addition
to any email notification. Mr Knox had not contacted the Tribunal about this
10 adjourned hearing or advised of any difficulty in attending. In the circumstances the
Tribunal assumed that he was aware of the hearing date and decided that it was
consistent with the interests of justice to proceed.

2. The circumstances relating to the appeal are straightforward. Mr Knox ordered
over the internet a Samsung Galaxy Note 4 mobile phone costing £517 to replace one
15 which had been stolen. A copy of certain conditions of purchase are produced
(Bundle, p30). In particular it is provided therein – “As a result prices shown on this
website are the final total you have to pay to have the order delivered to your door
without any hidden charges and Customs delay.” The packaging declared incorrectly
that it contained “camera electronic parts” at a value of £11. As the goods did not
20 conform to that description and were of substantially greater value, they were seized
as liable to forfeiture. The seizure was intimated to the appellant (p37-38). The
seizure was not challenged by the appellant in the Magistrates Court, and his request
to the respondents for restoration was refused. This decision was upheld on review
(p14-16). The appellant now challenges that decision before the Tribunal and seeks to
25 have the phone restored, albeit subject to payment of VAT and customs charges due.

3. Miss Fee founded primarily on the terms of Regulation 20 of the Postal Packets
(Revenue & Customs) Regulations 2011. That provides:-

“Where –

(a) The contents of a foreign postal packet are not in accordance with
30 the accompanying Customs declaration ... The packet and all its contents
shall be liable to forfeiture.”

In these circumstances, Miss Fee continued, the responsibility lay with the appellant.
He should choose a reliable source of supply and so ensure that the goods were
declared accurately and the correct duties accounted for.

4. In the absence of the appellant we noted carefully the terms of the
35 correspondence from him, particularly at pp29 and 35 of the Bundle. He asserts there
that the goods had been under-valued without his knowledge, and that he is happy to
pay all taxes due. He had relied on the supplier to comply with the relevant
Regulations.

5. We wondered whether the decision in *HMRC v Jones & Anor* [2012] Ch 414,
40 might be relevant. It restricts the jurisdiction of this Tribunal where goods have been

5 forfeited as condemned (see paras 71-75). It was not included in the Bundle; Miss Fee did not comment on it; and the appellant obviously has had no opportunity to do so. Certainly it does not seem to assist the appellant. In the event Miss Fee relied on Regulation 20 as resolute of the matter. She noted that sub-Regulation (2) adopted the relevant provisions of the Customs & Excise Management Act 1979 in this context.

10 6. We consider that Miss Fee's argument is correct. The goods have been forfeited in accordance with Regulation 20. That in our view concludes the matter so far as this Tribunal is concerned. No plausible argument to the contrary has been presented. Accordingly, the appeal is dismissed. We are conscious of the financial loss sustained by the appellant. It may be that he has some remedy against his suppliers.

15 7. 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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**KENNETH MURE
TRIBUNAL JUDGE**

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RELEASE DATE: 28 JUNE 2016