



TC03421

Appeal number: TC/2013/06045

VAT – whether due on goods imported – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RAMILA DHOBI

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE JENNIFER BLEWITT
MR MOHAMMED FAROOQ**

Sitting in public at Birmingham on 26 February 2014

The Appellant did not appear and was not represented

**Mr R. Davis, Counsel instructed by HM Revenue and Customs, for the
Respondents**

DECISION

1. By Notice of Appeal dated 21 August 2013 the Appellant appealed against the
5 imposition of VAT charges in the sum of £800 made on clothing imported on 28
September 2012.

2. The Tribunal was notified prior to the hearing that the Appellant would not be
attending due to her husband's ill health. The Appellant requested that the Tribunal
proceed in her absence and take into account all of the factors outlined in her
10 statement of case. We therefore proceeded to hear the appeal and should note that we
took into account not only the Appellant's statement of case but all of her written
submissions contained in correspondence which was provided to us.

Background

3. On 28 September 2012 the Appellant was stopped by a Border Force ("UKBA")
15 Officer in the Green ("Nothing to Declare") Channel at Terminal 5, Heathrow
Airport. The Appellant had arrived from Mumbai with her daughter and husband.

4. The Officer asked the Appellant a number of questions, the nature of which is
the principal dispute between the parties and more about which we will say in due
course. As a result of the answers the Appellant gave, the Officer escorted her to the
20 Red Channel where she was charged, and paid 20% VAT on £4,000 worth of clothing
she had imported. No additional import duty was charged.

5. The Appellant wrote a letter of complaint to the Director of Border Revenue the
following day regarding the treatment she had received from the officer. In summary
the complaints were as follows:

- 25 • The Appellant felt harassed and singled out;
- She had travelled for 15 hours without any sleep the night before and went
through the Green Channel as she had nothing to declare;
- The officer asked how long the Appellant had been away to which she replied
that she had been away for 5 weeks;
- 30 • The Appellant told the officer that she had brought liqueur but no cigarettes and
in respect of gifts she had bought saris and Punjabi dresses for her daughters;
- The officer asked the Appellant how much she had spent abroad and she told
him approximately £5,000, which took into account a trip to Rajasthan;
- 35 • The Appellant was advised that import duty and VAT was payable on the
clothing imported. She offered the officer the receipts and invited him to
check her luggage but the officer ignored this despite her stating that she had

no items to the value of £390 (her personal allowance). The Appellant was told that if she went through the Red Channel she would be charged more;

- The Appellant was taken to the Red Channel and charged £800 even though she did not have goods to the value of £4,000.

5 6. The Appellant also wrote a letter of complaint to the Parliamentary and Health
Service Ombudsman who advised that the decision to charge VAT could be appealed
to the Tribunal. The letter also concluded that there was insufficient evidence to show
that UKBA had acted unfairly as the accounts given by the Appellant and the officer
differed and there was no independent evidence to show which was most accurate. It
10 was, however, likely that the UKBA had failed to advise the Appellant that a review
could be requested and an appeal made against the decision to charge VAT. It was
noted that the Appellant had been compensated by the UKBA in respect of this
complaint.

15 7. The Appellant subsequently requested a review of the decision to charge VAT,
allowing 10 days for a response from the UKBA. No response was received within
that time and the Appellant appealed to the Tribunal prior to a review being carried
out by the UKBA. Nevertheless, a review was carried out and the decision to charge
VAT was upheld. The Appellant was notified of the outcome of the review by letter
dated 14 October 2013.

20 *The case for UKBA*

8. A report from the officer at Heathrow Airport who interviewed the Appellant
was provided to us. It set out the conversation with the Appellant and recorded that
the Appellant had been specifically asked on more than one occasion about how much
she had spent on clothing while abroad. The Appellant's answer was recorded as
25 being £5,000. HMRC relied on this report as evidence that the Appellant had been
asked about the value of her shopping and an unequivocal answer had been given.

9. It was submitted that the officer's evidence was credible and reliable. Mr Davis
invited us to draw the following inferences from the report:

- 30 • The fact that VAT was charged on a discounted amount is indicative of the fact
that the officer did not set out to act unreasonably or unfairly;
- The officer's evidence is that he double-checked that the amount of £5,000
stated by the Appellant specifically related to her shopping;
- The officer acted reasonably by accepting the Appellant's word and not
checking her bags;
- 35 • If, as suggested by the Appellant, Mrs Dhobi was aware of her allowances it is
unlikely that she would have mistaken the officer's question as relating to the
amount spent on her entire trip (an irrelevant question) rather than the value of
her shopping (a relevant question).

- If the conversation took place as reported by the Appellant it is unlikely that the officer would have acted without asking further questions;
- The receipts sent in by the Appellant in support of her case show goods to the value of £364.96 and expenditure (hotel, food, excursions etc) of £354.59. These amount fall far short of the £5,000 stated by the Appellant to have been spent on the trip and therefore the receipts do not reflect the full picture. That being so, the receipts are unreliable.

The Appellant's Case

10. The Appellant helpfully provided us with a statement of case dated 23 December 2013, which set out in full the grounds relied upon. The principal grounds can be summarised as follows:

- The officer at Heathrow Airport asked “*how much have you spent abroad*” to which the Appellant responded “*approximately £5,000 taking into account our trip to Rajasthan.*” The Appellant told the officer “*I have not exceeded the allowance I have receipts and this can be checked in the suitcases.*”
- The Appellant attached receipts showing her expenditure to the statement of case;
- The officer assumed that the £5,000 was spent on clothing which is not correct. The Appellant had allocated £5,000 for the trip and the officer had no intention of listening to her.
- The officer failed to inform the Appellant about her right to appeal and given her tired state she was not in the frame of mind to dispute the £800 charge.

Review

11. Mr Brenton from the Border Revenue reviewed the decision to charge the Appellant £800. He attended the hearing and gave evidence. He explained that he considered the decision to charge the Appellant VAT was reasonable and proportionate. Once the Appellant entered the Green Channel she had, in effect, stated that she had nothing to declare and therefore it was reasonable to assume that she had no intention of paying the VAT or duty legally due on the goods imported.

12. The undeclared goods were liable to forfeiture and the Appellant's actions rendered her liable to prosecution.

13. The officer not only accepted the Appellant's declaration as to the value of the goods imported but also allowed the charges due to be paid. The officer had also deducted £1,000 to encompass the allowances of the Appellant, her husband and daughter.

14. In the absence of any evidence to the contrary, Mr Brenton accepted the officer's account as reliable and upheld the decision to charge the Appellant £800.

Decision

15. We considered the written representations of the Appellant carefully. We were faced with two very different accounts as to what was said to and by the Appellant at Heathrow Airport. As the Appellant was not present at the hearing we could not assess the credibility of her as a witness nor could her account be tested by cross-examination.

16. We were satisfied that the report provided by the officer as to the conversation that took place was, in the main, accurate. We noted the Appellant's assertion that the officer had incorrectly recorded that she had 3 daughters when in fact she has 2, however we were satisfied that this minor point did not undermine the officer's evidence to any significant degree. In our view it was extremely unlikely that an officer, whose job it is to ask travellers about goods imported, would have asked irrelevant questions of the Appellant regarding the amount she had spent on the whole trip. We also inferred from the fact that the officer accepted the word of the Appellant as to the value of goods imported and allowed her to be charged VAT at a reduced rate that the officer had acted reasonably and fairly. In drawing this inference we also concluded that these were not the actions of an officer who had refused to listen to the Appellant or had acted maliciously in charging the Appellant wholly unnecessarily.

17. We noted that the Appellant paid the £800 VAT at the airport and we found as a fact that, even allowing for tiredness, any reasonable person would have disputed sums not due or refused to pay. That the Appellant failed to do so was, in our view, indicative of the fact that goods to the value stated had been imported by the Appellant and VAT was legally due on those goods.

18. We also accepted the submissions of Mr Davis regarding the receipts provided, which fell far short of the £5,000 stated by the Appellant to have been spent on the trip. We were satisfied that receipts did not reflect the full picture and in those circumstances we concluded that they were not reliable as evidence of the true amount spent by the Appellant.

19. We noted the complaint made by the Appellant as to her treatment and the fact that she was not informed about her right of appeal. Whilst this is regrettable, we noted that the Appellant was compensated in this regard and we took the view that the matter had no relevance to the issue before us, namely whether the decision to charge the Appellant VAT was reasonable.

20. We concluded that the decision by the officer to charge the Appellant VAT was both legally correct and reasonable. For the sake of completeness, we also considered the review decision of Mr Brenton, which was completed prior to the Appellant's statement of case being submitted but after an appeal had been made to this Tribunal. We were satisfied that the decision took into account all of the relevant information known at the time of the review and ignored all irrelevant factors. We found as a fact that Mr Brenton's decision was reasonable.

21. The appeal is dismissed.

22. 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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**JENNIFER BLEWITT
TRIBUNAL JUDGE**

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RELEASE DATE: 19 March 2014